operative housing corporation' means a cooperative housing corporation with respect to which the requirements of clause (i) of section 143(k)(9)(D) are met at all times during the taxable year.

"(iii) TENANT-STOCKHOLDER.—The term 'tenant-stockholder' has the meaning given such term by section 216(b)(2)."

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall apply to taxable years beginning after the date of the enactment of this Act.

(b) ELECTION TO HAVE AMENDMENTS APPLY RETROACTIVELY.—Any corporation may elect to have the amendments made by this Act apply to any taxable year, whether beginning before, on, or after the date of the enactment of this Act, to which such amendments do not otherwise apply if the corporation was a cooperative housing corporation during such taxable year.

(c) NO INFERENCE.—Nothing in the provisions of this Act shall be construed as a change in the treatment of income derived by any cooperative housing corporation or any corporation operating on a cooperative basis under section 1381 of the Internal Revenue Code of 1986, and the treatment of such income for any year to which the amendments made by this Act does not apply shall be made as if this Act had not been enacted.

DEATH OF JAMES DENNIS O'CONNOR

Mr. DODD. Mr. President, I rise to say farewell to a close personal friend and a truly great man, James Dennis O'Connor, whose inspiring life, to my profound sorrow, ended on November 11 of this year.

As an attorney in Hartford, Jim brought integrity and nobility to the practice of law. As a superior court judge, he affirmed the durability and vitality of our system of justice and the principles and laws which sustain it. And as a friend, Jim touched the lives of all who were fortunate to know him with his sense of compassion, decency, understanding, and warmth.

It is very difficult for me to accurately express what Jim has meant to me and my family over the years, Mr. President. Jim O'Connor was not like a member of my family. He was a member of my family. His timeless qualities of integrity and sincerity allowed him to bridge the gap between generations, to be a friend to my parents and a friend to me, and my brothers and sisters.

To Jim's wife, Mary Ellen, and his six children, Dennis, Edward, Ellen, Martha, Joan, and Dorothea, I share their grief. I know Jim will be deeply missed. But I am equally sure his legacy will endure, and be a source of comfort.

Judge O'Connor's life began in Hartford in 1928, just before the onset of the Depression. The memory of those early years, when strife and human struggling was a common facet of everyday life, left him with a keen understanding of the value of justice and compassion. He learned early that we need laws that are wiser and better than ourselves, laws that will safeguard us from the vagaries of tyrants and the oppression of the powerful. Through every element of his career, Jim never lost sight of the basic premise that laws are for the benefit of people.

I remember one particular case in which a man was injured by three colliding cars while walking to work one morning. The man, who had lost part of his foot and was unable to work, brought suit against the insurance company of one of the drivers involved. Impatient with the dilatory tactics of the attorneys for the insurance company, Jim finally refused to hear the case another day without first requiring the company to make provisions for the man's family. No legal precedent compelled him to take such action, just a clear simple sense of fairness and justice.

Jim brought to his role on the bench not just an intuitive sense of justice, but a disciplined intellect, acquired at Hartford's Trinity College and the Georgetown University Law School.

He served his Nation with distinction as a naval officer during the Korean conflict.

Those of us who knew Jim O'Connor as a friend, a father, a husband, a counselor, and a brother, will miss him dearly. But far from being impoverished by his death, Mr. President, we are enriched by his life. Jim's character and integrity made each and every one of us a better person for having known him, and for that we will always be thankful.

REGARDING SECTION 8126 OF H.R. 2521, THE FISCAL YEAR 1992 DEFENSE APPROPRIATIONS BILL

Mr. STEVENS. Mr. President, last week Congress adopted the 1992 Defense appropriations bill conference report. Section 8126 of the bill provides a mechanism for Calista Corp., an Alaska Native corporation, to exchange valuable lands and land selection rights it has in national wildlife refuges for other surplus Government property.

Subsection 8126(a) provides that property—as defined in section 8133 of the 1991 Department of Defense Appropriations Act—which is not scheduled for sale prior to 1997, will be available for transfer at the request of the Secretary of the Interior for the purpose of entering into equal value property exchanges with Calista.

Calista owns lands, interests in lands, and entitlements to select additional Federal lands. In addition, through an agreement it has with certain village corporations to act as their agent in these land exchanges, it has the right to convey surface estate owned by the villages.

The provision enables Calista to enter into exchanges with the Secretary of the Interior to convey 210,000 acres of surface and subsurface lands and land entitlements identified in the Calista Conveyance and Relinquishment Document dated October 28, 1991.

Once the Secretary has identified property for exchange, the administering agency should ensure that the property is not wasted or transferred elsewhere. Furthermore, the administering agency should continue to hold and manage the property until title is conveyed, via an authorized exchange, to the Native corporation.

The Secretary has 9 months from the date of enactment to conduct appraisals of the land and interests in land identified in the conveyance document. If disagreements with Calista arise regarding the valuation of the lands package, they may be resolved through the processes established by the 1988 Federal Land Exchange facilitation Act.

For fiscal reasons, this provision includes a cap on the maximum average value per acre of $300 for the entire package of lands identified in the Conveyance and Relinquishment Document, dated October 28, 1991. However, according to a recently conducted appraisal, certain tracts of Calista's lands—including entitlement—possess values substantially greater than $300 per acre. The $300 cap is intended to provide an upper limit on the average value per acre that the Secretary may assign to the entire lands package as he appraises the values of individual tracts.

In making the determination, the Secretary is to use, first the fair market value of the lands using the Uniform Appraisals Standards; second, public interest values, and third, comparable acquisitions and exchanges authorized or mandated by law.

The Uniform Appraisal Standards for Federal Land Acquisitions have been revised recently and are expected to be republished some time in the near future. Federal Government appraisers traditionally have relied on this document in their efforts to determine the fair market value of property. In the past, however, when Federal land acquisition appraisers have attempted inhouse to value remote lands and interest in lands within the boundaries of conservation system units in Alaska, these Uniform Appraisal Standards have proven to be inadequate.

The problem arises because, among other factors, the standards deal only with a traditional market or income approach to valuation. In addition the process provides considerable latitude to exclude comparable sales as being not comparable and fails to give proper weight and consideration to public interest values of land and statutorily mandated or authorized exchanges and acquisition of land. Public interest values are distinct from commercial value, such as the value of timber or minerals for economic use, or values

ascribed to land which can be developed for housing or municipal facilities. For example, while certain lands may have little value in the traditional economic sense, they may have great value as critical habitat for endangered or threatened species or as nesting grounds for plummeting waterfowl populations.

Consequently, in 1976, Congress reinforced a statutory direction regarding public interest values and authorized and directed Federal agencies to consider public interest values in land exchanges and acquisitions. In other land exchanges and land valuations authorized or mandated by law since then—most recently in the Superfund law—The Congress has expressed the view that there are clearly other public values to be considered in such exchanges. It is the intent of this property exchange provision that these other values be properly factored into the appraisals of the lands and interests in lands involved in the Calista land exchange.

Public interest values include, but are not limited to, conservation, biological, environmental, cultural, historical, archaeological, user and other values of land located within national wildlife refuge boundaries in Alaska. Such values contribute toward making the lands of national significance.

The land and interests in lands offered for exchange by Calista located within the Yukon Delta National Wildlife Refuge will, by operation of law, become part of that refuge once they are transferred to the Secretary of the Interior. The lands within the refuge, including Calista's lands, were deemed by Congress through the Alaska National Interest Lands Conservation Act to be national interest lands worthy of being set aside for their intrinsic value as a national wildlife refuge. The national interest nature of the Calista lands and their public interest values should be given appropriate weight in the appraisal process.

In addition, the Secretary is required to consider as comparables other exchanges authorized or mandated by law between the Federal Government and private parties and acquisition of lands and interests in lands by the Federal Government in Alaska, including acquisitions of lands from Native corporations. The Secretary is expected to rely on professional appraisals which utilize the factors required to be considered in section 8126.

Section 8126 also provides that properties conveyed by the United States under this section be treated as conveyances of land entitlement under 43 U.S.C. 1601–162 except for several subsections. Because of concerns expressed by the House Ways and Means Committee, the tax provisions in 43 U.S.C. 1620, 1627, and 1636 were excepted.

Mr. President, I ask unanimous consent to insert in the RECORD at the conclusion of my remarks an analysis of section 8126, the Calista Conveyance and Relinquishment Document dated October 28, 1991, which the legislation references, a letter from Mr. Robert D. Reischauer, Director, Congressional Budget Office.

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

SECTION 8126 ANALYSIS

Section 8126(a). This subsection identifies the property of the U.S. Government which is authorized to be made available for exchange between the Secretary of the Interior and the Calista Corporation once certain terms and conditions are met. Such property is defined in Section 8133 of the Department of Defense Appropriations Act for Fiscal Year 1991 (104 Stat. 1909). The lands, interests in lands and entitlements to lands to be exchanged are identified in "The Calista Conveyance and Relinquishment Document,' dated October 28, 1991. The subsection also provides that the Secretary of the Interior will determine the value of those lands no later than nine months after the enactment date. In determining the value of the Calista lands, the Secretary is required to consider the "Uniform Appraisal Standards for Federal Land Acquisitions," the public interest values of the lands and interests in lands, and previously authorized or mandated exchanges with or acquisitions of lands and interest in lands in Alaska by the Federal government. The process outlined in the 1988 Federal Land Exchange Facilitation Act will be used to resolve any disagreements regarding the valuation of the land package. The subsection also provides that the average per acre value of the lands and interests in lands is not to exceed $300. It also provides the property exchanged with Calista is to be treated the same as property conveyed to other Native corporations under 43 U.S.C. 1601–1642 (except for subsections 1620(a)–(c), (f)–(j); subsection 1627(b) and 1636(d)).

(b). This subsection provides that property held for sale by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation may not be transferred to the Secretary for purposes of an exchange until after October 1, 1996.

(c). This subsection directs the Secretary of the Interior to maintain an accounting record of the value of the lands and interests in lands available to be conveyed by the Calista Corporation. The Secretary is directed to establish a property account on October 1, 1996, with an initial balance equal to the value of the lands and interests in lands that the Calista Corporation has not, at that time, conveyed or relinquished to the U.S. Government. Whatever amounts remaining on that date could be used to acquire by exchange or purchase property identified in Subsection 9102(a)(2) of the Department of Defense Appropriation Act 1990 (103 Stat. 1151).

THE CALISTA CONVEYANCE AND RELINQUISHMENT DOCUMENT, OCTOBER 28, 1991—LANDS, INTERESTS IN LANDS, AND ENTITLEMENTS TO LANDS TO BE CONVEYED RELINQUISHED TO THE U.S. GOVERNMENT

OVERVIEW

The purpose of this document is to identify the lands, interests in lands, and entitlements to lands which are to be exchanged, pursuant to an agreement with the Calista Corporation, for properties of equal value held by the U.S. Government.

The general areas and acreages (210,355 total acres) involved in the exchange are as follows (see enclosed Map #1): Hamilton—8,000 acres of surface and subsurface lands; Dall Lake—10,000 acres of surface and subsurface lands; Tuluksak River Drainage—5,600 acres of subsurface lands; Hooper Bay—27,074 acres of subsurface lands; Scammon Bay—88,507 acres of subsurface lands; Kusilvak—61,174 acres of subsurface lands; Calista 14(h)(8) entitlements—10,000 acres of full fee entitlements (surface and subsurface) to Federal lands.

The acquisition by the U.S. Government of Native inholdings (lands and interests in lands) and land selection entitlements comprising this exchange will provide significant legal rights to the Federal government, which will in turn, enhance the protections afforded to the Yukon Delta National Wildlife Refuge, Alaska. It will help reduce the potential for adverse development of surface and subsurface lands within the boundaries of the Refuge. It will permit public access to surface estates which are not presently permitted. It will reduce future losses of Refuge lands to underselected Native Corporations. It will eliminate the potential disturbance of the surface lands, and their values from development of the subsurface estate. It will provide cost savings to the Bureau of Land Management in avoided conveyance and survey activity which would otherwise take place, and to the Fish and Wildlife Service in managing these inholdings.

The importance of this world class waterfowl habitat is demonstrated by the fact that part of this area was one of the first National Wildlife Refuges in the Nation: President Theodore Roosevelt set aside the first wildlife reserve in the Yukon-Kuskokwim Delta in 1909, in recognition of the value and importance of the land to migratory birds, especially waterfowl. Additional areas were added over the years and, in 1980, Congress combined and enlarged the existing wildlife ranges and refuges to establish the Yukon Delta National Wildlife Refuge.

While the Refuge has moderate populations of mammals, including small furbearers, moose, caribou, and recently re-established musk-ox, the primary wildlife resource is the enormous populations of ducks, geese, swans, shorebirds, and water birds that nest on the Delta. An estimated 100 million waterfowl, shorebirds, and sea birds representing over 50 species use the Delta for nesting and for resting and feeding during migration. A large percentage of the migrating birds of the Pacific Flyway originate from the Yukon Delta.

The importance of the Delta as nesting grounds for North American waterfowl increases yearly as productive prairie pothole nesting habitats in the United States and Canada are drained for agriculture or are lost to drought.

DESCRIPTION OF THE LANDS, INTEREST IN LANDS, AND ENTITLEMENTS TO LAND TO BE CONVEYED

Hamilton/Yukon Delta area—8,000 acres

Location

The Hamilton parcel is located near the delta complex at the mouth of the Yukon River between Apoon Pass and Nanvaranak Slough. It is approximately 20 miles south of Norton Sound.

General description

The Hamilton parcel consists of 8,000 acres of combined surface and subsurface estate. The lands are part of the wet muskeg coastal plain with slough, lake and pond habitats. Several small sloughs head in the parcel and

dozens of small lakes and ponds and their adjacent marshes and wetlands are scattered throughout the parcel. Most of the land is less than 20 feet above sea level and the dwarf tundra vegetation is underlain by sand and silty flood plain material. The southern part of the parcel contains some areas of deciduous shrub land and has more extensive grassy marshlands and riverine habitats. The parcel is five miles south of the Yukon River Delta unit of the historic Clarence Rhode Wildlife Range and the abandoned Village of Hamilton.

Refuge values

The chief habitat and wildlife value of the parcel is waterfowl nesting. The parcel is contiguous to coastal plain habitat to the north and west, and is used by geese, swans, sandhill cranes, ducks, loons, and numerous shorebirds, including curlews, sandpipers, and plovers. Maps of species distribution by density blocks, produced by U.S. Fish and Wildlife, show the area to have medium range densities for pintail ducks, scaup, and tundra swans: one to four birds per square mile, and up to one per square mile densities for Canada geese, arctic loons, and sandhill cranes. Other nesting birds include white-fronted geese, scoters, shovellers, and mallards. Shorebirds of several species are common to abundant. Whitefish, sheefish (inconnu), and northern pike are common in the sloughs and larger lakes. Furbearers such as mink, otter, muskrat, beaver, Arctic and red fox are abundant, but large mammals are rare due to the lack of protective cover.

Hamilton subsurface

The subsurface beneath the Hamilton surface lands is part of the Yukon Delta/Norton Sound Sedimentary Basin. Calista leased the Yukon Delta subsurface lands to Amoco Exploration in 1978. These lands have also had several generations of seismic survey work since the early 1970's and the area continues to receive oil industry attention.

Hamilton parcel land description

Seward Meridian, Alaska, (Unsurveyed).

T. 31 Fl R. 77 W.—Secs. 29 and 30.

T. 31., R. 78 W.—Secs. 1, 2, 11, 12, 13, 14, 23, 24, and 25.

T. 32 N., R. 78 W.—Sec. 35 (fractional); Sec. 36.

Dall Lake Area—10,000 acres

Location

The Dall Lake parcel is located along the southeastern border of Dall Lake southeast of Bethel, Alaska, about 30 miles from Bering Sea waters of Etolin Strait. It borders the eastern boundary of the Nelson Island unit of the Clarence Rhode National Wildlife Range.

General description

The Dall Lake parcel is a surface and subsurface selection of approximately 10,000 acres. The parcel is 12 miles across and extends about eight miles northeasterly into Dall Lake along a series of peninsulas and islands. This parcel consists of low elevation wetlands and islands dotted with innumerable lakes and ponds along the southeastern border of Dall Lake, an extremely large inland lake covering more than 150 square miles. Wet muskeg tundra vegetation and sedge meadow islands and lake margins characterize the habitat at Dall Lake.

Refuge values

The Dall Lake parcel lies within the Yukon-Kuskokwim lowlands unit of the Yukon Delta NWR. This unit is largely wetlands, habitat for a diversity of fish and wildlife including geese, ducks, swans, shorebirds, moose, caribou, many species of furbearers, ptarmigan, and many other bird and mammal species.

The area is an important producer of ducks and is significant as a staging area for thousands of snow geese migrating to and from their nesting grounds on Wrangell Island in the Soviet Far East. U.S. Fish & Wildlife Service has indicated high scaup nesting densities of four to 12 birds per square mile, and pintail and scoter densities of one to four per square mile in the area. Also occurring at densities of one to four birds per square mile are tundra swans, Canada geese, arctic loons, and sandhill cranes. Other species noted in aerial surveys within the parcel area were red-throated loons, white-fronted geese, oldsquaw ducks, and mallards. Both shorebirds and ptarmigan are common in the area.

Approximately 30 musk oxen use the Dall Lake area year around. These musk oxen are part of the growing 100-head mainland herd established on Nelson Island which is currently expanding its range to inland parts of the refuge. Furbearers such as mink, otter, muskrat, and red fox are common in the Dall Lake area and are important subsistence resources. The lakes and waterways contain resident Arctic char, whitefish, northern pike, cisco, and burbot, all used by villagers for subsistence.

Subsurface values

The subsurface beneath the Dall Lake surface lands is in the central portion of the Bethel/Kuskokwim Delta Sedimentary Basin. Calista leased the Bethel Basin lands to Shell Exploration in 1974. Like the Yukon Delta area, these lands have had several generations of seismic survey work since the early 1970's and the area continues to receive oil industry attention. In 1962 a single test well was placed on the flank of what is now defined as the Bethel Basin. In the future it is likely that this sedimentary basin, which is nearly the size of Oklahoma, will receive more exploration.

Dall Lake parcel land description

Seward Meridian, Alaska Unsurveyed.

T. 1 N., R. 82 W.—Secs. 23 to 36, inclusive.

T. 2 N., R. 82 W.—Secs. 6, 7, 18, 19, 20, 21, and 30.

T. 1 N., R. 83 W.—Secs. 2 through 36, inclusive.

T. 2 N., R. 83 W.—Secs. 25 through 35, inclusive.

Tuluksak River Drainage—5,600 acres

Location

The Tuluksak River parcel is located within the eastern border of the Yukon Delta National Wildlife Refuge and extends four miles into the refuge on both sides of the Tuluksak River.

General Description

The Tuluksak River parcel is a subsurface selection of 5,600 acres within the Yukon Delta National Wildlife Refuge. The surface is owned by the U.S. Government. It is the downstream extension of a large gold mineralized placer mining district at Nyac, Alaska. Approximately 10 federal placer mining claims are located within the parcel and the subsurface selection was made on the basis of its mineral potential. The nearest tailings are one mile upstream from the eastern boundary of the parcel. The parcel is located at the point where the Tuluksak River leaves the Kuskokwim Mountain range and flows across the subdued topography of the delta plain toward the Kuskokwim River. The river valley is 250 to 300 feet in elevation, and elevations rise to approximately 900 feet on the perimeter of the parcel. The vegetation consists of mixed white spruce, birch, and poplar forests, with willows and alder along the river and tundra vegetation on the upland benches.

Refuge Values

The Tuluksak River parcel is part of the Kilbuck Mountains unit of the Yukon Delta NWR. This unit is characterized by mountains with narrow deep valleys and small canyons, rock outcrops and bluffs along the rivers and streams, a pattern of tundra and upland habitats, and a number of lakes. The only rainbow trout fisheries identified in refuge waters are found in the major rivers draining the Kilbucks. The unit also contains excellent raptor habitats with gyrfalcons, rough-legged hawks, and golden eagles among the most common nesting species. Large mammals found in the unit include moose, caribou, black and grizzly bear, wolves, and wolverines.

The north bank of the river has two rock bluffs that are suitable raptor nesting habitat. The Nyac area has documented nesting of golden eagles, goshawks, gyrfalcon, merlin, and great horned owls (BLM Open File Report, 1980; Technical Report 8, 1983). Raptors use the river valley for hunting and brood rearing. Both spruce grouse and willow ptarmigan occur here.

The Tuluksak River valley has excellent populations of mammals. Alder and willow have grown up around old mining areas and support increased populations of snowshoe hares, fox, moose, and bear. Beaver have colonized the dredge ponds and are abundant throughout the valley. Presently, 12 radio-collared moose are being monitored as part of an ongoing population study project in the Tuluksak River valley.

The Tuluksak River runs for four miles through the length of the parcel. It is a clear running river and is an anadromous salmon spawning area within the parcel boundaries. Chinook, chum, and coho salmon plus grayling, Dolly Varden/Arctic char, and rainbow trout are present in the river and the area has been the subject of BLM fisheries enhancement projects.

Subsurface Values

This parcel, which has significant gold reserves, includes 5,400 acres of Calista subsurface lands underlying YDNWR surface lands and 200 acres of patentable Federal Placer Mining Claims within the YDNWR.

The Tuluksak In Lieu selections include a major placer gold deposit which will be dredge-mined in the near future. Plans for the extraction of the gold reserves in this area are in the advanced stages. While this dredge mining can and must be conducted in a manner consistent with all environmental regulations, some degradation of the habitat is inevitable. Federal acquisition of these mineral-rich lands will remove the threat of potential adverse environmental impacts on the area from gold mining and eliminate the refuge-versus-development conflict inherent in the split estate. It is significant to note that these are the only remaining Federal Placer Claims in the YDNWR. Mining activities on the Tuluksak River have been identified in the YDNWR Plan as a major threat to the water quality of the refuge.

This parcel contains 13 Federal Placer Claims totaling over 200 acres. Federal acquisition of these claims totally removes this threat of mining within the refuge.

Tuluksak Parcel Land Description, Seward Meridian, Alaska Unsurveyed.

T. 10 N., R. 61 W.—Secs. 7 and 8; Secs. 16, 17, and 18.

T. 10 N., R. 62 W.—Sec. 11; Sec. 12 excluding Native Allotment FF-17230; Secs. 13 and 14.

Hooper Bay Area—27,074 acres

Location

The Hooper Bay parcel is located on Dall Point with Kokechik Bay on the north and Hooper Bay on the south and the Bering Sea to the west. It is adjacent to the Ciarence Rhode National Wiidlife Range unit of the Yukon Delta National Wildiife Refuge on its eastern border.

General Description

The Hooper Bay parcel consists of subsurface estate. The surface is owned by Sea Lion Corporation and is not part of this conveyance. The parcel is coastal plain with innumerable small ponds and lakes and several small sloughs. Most of the parcel is below 50 feet in elevation. Longshore sand spits form northern extensions of the land, and dunes form Dali Point itseif. The viilage of Hooper Bay is located at the mouth of Napareayak Siough on Hooper Bay.

Refuge Values

The Kokechik Bay frontage of this parcel has some of the highest value habitat rankings on the Yukon Wildlife Delta. These lands are biologically productive, tide-influenced marshlands critical to the artic nesting geese species. High densities of nesting emperor, whitefronted, and cackling Canada geese utilize this rich marshland, and it is also important for nesting swans, cranes, ducks, loons and abundant numbers of several species of shorebirds. Northern pintails in the coastal zone occur at three times the density that they occur in the interior delta, averaging four to 12 per square miie in F&WS aerial surveys. Scaup also occur in these densities and other ducks such as oldsquaw, spectacied and common eider, scoters, shoveliers, and mallards also utiiize the habitat. The mudflats and sand spits in both bays are vital feeding and staging areas for vast numbers of migrating waterfowl and shorebirds. The largest breeding colony of Brant geese on the refuge is located on the south shore of Kokechik Bay.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geology is permissive of several mineral deposit types—however, there are no known occurrences of minerals in this pooriy explored region.

Hooper Bay Parcel Land Description

Interim conveyance No. 511: Seward Meridian, Alaska (Unsurveyed).

T. 17 N., R. 93 W:

Secs. 1 to 4, inclusive;

Secs. 5 and 8 (fractional);

Secs. 9 to 14, inclusive;

Secs. 15 and 16;

Secs. 17, 18, and 20 (fractional);

Secs. 21, 22, and 23;

Sec. 24, excluding Native allotment F-14703 Parcel C;

Sec. 25 (fractional), excluding Native allotments F-13207 and F-19116 Parcel A;

Sec. 26, excluding U.S. Survey No. 2026, U.S. Survey No. 4052, and U.S. Survey No. 4420;

Sec. 27, excluding U.S. Survey No. 4420 and U.S. Survey No. 3774;

Sec. 28, excluding U.S. Survey No. 3774;

Sec. 29 (fractional);

Sec. 32 (fractionai), that portion outside Public Land Order 2213;

Sec. 35 (fractional), excluding U.S. Survey No. 4420.

T. 18 N., R. 93 W:

Secs. 4 and 9 (fractional);

Secs. 11 to 16 (fractional), inclusive;

Secs. 21 and 22 (fractional);

Secs. 23 to 27, inclusive;

Secs. 28 and 33 (fractional);

Secs. 34, 35, and 36.

T.16 N. R. 94 W

Secs. 1, 2, and 3 (fractional);

Sec. 4 (fractional), that portion outside Public Land Order 2213 excluding U.S. Survey No. 3774;

Secs. 10, 11, and 12 (fractional), those portions outside Public Land Order 2213.

Interim conveyance No. 579: Seward Meridian, Alaska (Unsurveyed)

T. 17 N. R. 93 W.

Sec. 33 (fractional) that portion outside Public Land Order 2213, excluding U.S. Survey No. 3774;

Sec. 34, excluding U.S. Survey No. 3774 and U.S. Survey No. 4420.

Scammon Bay—88,507 Acres

Location

The Scammon Bay parcel is located on the Bering Sea coast at Scammon Bay on the Yukon-Kuskokwim Delta.

General Description

The Scammon Bay parcel is a large tract (25 miles long by up to 12 miles across) of subsurface estate, whose surface estate is privately owned by Askinuk Corporation, the Native corporation of Scammon Bay village and not invoived in this conveyance. The parcel includes 80,420 acres of conveyed subsurface estate and 8,087 acres of remaining subsurface entitlements at Scammon Bay. The parcel includes about 20 miles of Bering Sea coastline.

The surface overlying this subsurface parcel consists of several distinct habitats. There is a prominent, rocky, mountainous upland to the south which is used by upland ground-nesting birds such as ptarmigan, rock sandpipers, golden and semi-palmated plovers, short-eared owls, and jaegers. Steep rocky bluffs, fast, clear streams, and small sheltered bays characterize the parcel's 14 miles of Bering Sea shoreline on the southern shore of the bay. The mountains rise to an elevation of 1,465 feet within the parcel. The intrusive volcanic rock that forms the mountains is useful as quarry material and is currently being extracted for an airport improvement project at the village of Scammon Bay. The southern border of the parcel is adjacent to the Kokechik Bay/Paimuit unit of the Ciarence Rhode National Wildlife Range which has some of the most significant habitat values on the Yukon-Kuskokwim Delta Nationai Wildlife Refuge due to its intensive use by arctic nesting geese species.

To the north, the overlying habitat is a flat coastal plain utilized by arctic nesting geese such as the endangered white-fronted, emperor, and cackling Canada geese. The coastal plain is dissected by the large, shallow meanders of the Kun River and several small tributaries including the Kikneak and Ear Rivers. Habitats includes tidal sloughts and estuaries, beach ridges and swales, lake and pond shores, and sedge meadows important to nesting and brood-rearing.

Refuge Values

The Scammon Bay parcel is located in the delta coastal plain unit of the Yukon Delta NWR. The dominant feature of this unit is vast wetlands characterized by thousands of thaw lakes and ponds underlain by permafrost. The freeze-thaw cycle coupled with regular tidal and riverine flooding maintain a herbaceous wetland that is excellent waterfowl habitat. It is considered the best goose-brant nesting area in North America. Historically, one half of the continental populations of brant nested on the coastal fringe, as do nearly the entire populations of cackling Canada and emperor geese. Most of the Pacific flyway popuiation of white-fronted geese also nest here. In addition to cackling Canada geese, two other subspecies of Canada geese—both Taverner's and lesser Canada geese—are also found within this unit. The three subspecies appear to favor slightly different zones with cacklers nesting in a ten mile wide band closest to the sea, Taverner's moving inland slightly, and lessers somewhat more inland. These zones, however, do overlap. The area is aiso considered part of the largest and most important shorebird habitat in the Pacific Flyway. It is the largest single expanse of intertidai habitat in North or South America, and provides the major breeding grounds for North American popuiations of black turnstone, duniin, western sandpiper, rock sandpiper, and bartailed godwit, as well as being an important staging area for bristie-thighed curlews.

The periodic flooding of the tidai marshes of the coastal plain creates a rich food source for nesting and rearing young and contributes to goose, swan, and crane densities of one to 12 per square mile, with heaviest nesting densities aiong the coast (US Fish & Wildiife aeriai surveys). Pintail and scaup (four to 12 per square mile), scoter (one to four per square mile), oldsquaw, spectacied eiders, loons (up to 12 per square mile), and shorebirds also nest on the coastal plain. Mink, otter, muskrat, beaver, and Arctic and red fox are common to abundant.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geoiogy is permissive of several mineral deposit types—however, little is known of the occurrence of minerais in this poorly explored region. The value of the subsurface in the Scammon Bay is based to a large extent on the ready supply of sand, gravel and rock. This area is the oniy local source for these materials in a region where such materials are scarce and costly.

Scammon Bay Parcel Land Description

Interim conveyance No. 573: Seward Meridian, Alaska (Unsurveyed)

T. 20 N., R. 88 W:

Secs. 5 and 6;

Secs. 7 and 8, exciuding Native allotment F-19234;

Sec. 18, exciuding Native allotment F-19228 Parcel A;

Secs. 19, 20, 26, and 27;

Secs. 28 and 29, excluding Native allotment F-15947;

Secs. 30 and 35.

T. 21 N., R. 88 W:

Secs. 9 to 16, inciusive;

Secs. 21 to 31, inclusive;

Sec. 32, excluding Native allotment F-19043 Parcel B;

Sec. 33, excluding Native allotment F-19229 Parcel A;

Sec. 34, excluding Native allotment F-18977 Parcel B;

Secs. 35 and 36.

T. 20 N., R. 89 W:

Secs. 1 to 6, inclusive;

Secs. 7 and 8, excluding Native allotment F-19233;

Sec. 9;

Sec. 10, excluding Native allotment F-19045;

Secs. 11 to 16, inciusive;

Secs. 17 and 18, excluding Native allotment F-19233;

Sec. 19;
Sec. 20, excluding Native allotment F-19231 Parcel B;
Sec. 21;
Sec. 22, excluding Native allotment F-19043 Parcel A;
Sec. 23, excluding Native allotment F-19241;
Secs. 24 to 28, inclusive;
Sec. 29, excluding Native allotment F-19231 Parcel B;
Secs. 30, 31, and 32.
T. 21 N., R. 89 W:
Secs. 5 to 10, inclusive;
Secs. 15 to 18, inclusive;
Sec. 19 (fractional);
Secs. 20 to 23, inclusive;
Secs. 25 to 28, inclusive;
Secs. 29 and 30 (fractional);
Secs. 32 and 33 (fractional);
Secs. 34, 35, and 36.
T. 20 N., R. 90 W:
Secs. 1 and 2;
Sec. 3, excluding townsite petition application F-391;
Sec. 4 (fractional), excluding townsite petition application F-391;
Secs. 7 and 8 (fractional);
Sec. 9 (fractional), excluding townsite petition application F-391;
Secs. 12 to 30, inclusive;
Sec. 31, excluding Native allotment F-14759 Parcel C;
Secs. 32 to 36, inclusive.
T. 20 N., R. 91 W:
Sec. 11 (fractional), excluding Native allotment F-19041;
Sec. 12 (fractional);
Sec. 13;
Sec. 14, excluding Native allotment F-19223 Parcel B;
Sec. 15 (fractional);
Sec. 16 (fractional), excluding Native allotment F-19039 Parcel B;
Secs. 17 and 18 (fractional);
Secs. 19 and 20;
Sec. 21 (fractional), excluding Native allotments F-15023 Parcel A and F-19224;
Sec. 22 (fractional), excluding Native allotment F-19224.
T.20 N., R. 92 W:
Sec. 13 (fractional), excluding Native allotments F-19033 Parcel A and F-19044 Parcel B;
Sec. 14 (fractional), excluding Native allotments F-19039 Parcel A, F-19056 Parcel A, and F-19221 Parcel B;
Secs. 23 and 24.

Interim Conveyance No. 959: Seward Meridian, Aiaska (Unsurveyed)

T.20 N., R. 90 W:

Sec. 3, those lands formerly within townsite petition application F-391;
Secs. 4 and 9 (fractional), those lands formerly within townsite petition application F-391;
Sec. 10, excluding U.S. Survey No. 4099, U.S. Survey No. 5050, and Alaska Native Claims Settlement Act Sec. 3(e) applications AA-39616 and AA-39617;
Sec. 11.

Interim Conveyance No. 1058:

A tract of land located within lot 1 of U.S. Survey No. 4099, and additional unsurveyed lands in Sec. 10, T. 20 N., R. 90 W., Seward Meridian, more particularly described as:

Beginning at a point for corner No. 1, identical with corner No. 1, U.S. Survey No. 4099.

From corner No. 1, by metes and bounds, N. 83° 29' E., 149.80 ft., to corner No. 2, a point on the 1-2 line of U.S. Survey No. 4099; thence S. 6° 31' E., approximately 375 ft., to corner No. 3; thence N. 83° 29' E., 300 ft., to corner No. 4; thence S. 6° 31' E., 75.12 ft., to corner No. 5; thence S. 83° 29' W., 449.80 ft., to corner No. 6, identical with corner No. 8, U.S. Survey No. 4099; thence N. 6° 31' W., 450.12 ft., to corner No. 1, identical with corner No. 1, the true point of beginning.

Patent No. 50-84-0792: U.S. Survey No. 4099, Alaska, lot 3, situated near the mouth of the Kun River in the village of Scammon Bay and the designation of U.S. Location Monument No. 4099.

Kusilvak Parcel—61,174 acres

Location

The Kusilvak parcel is located on the Black River several miles west of the Kusilvak Mountains and approximately twenty miles from the Bering Sea.

General Description

This parcel is a subsurface estate and subsurface entitlement of 61,174 acres. It includes 45,458 acres of conveyed subsurface estate and 15,716 acres of remaining subsurface entitlements. The surface estate is owned by Sea Lion Corporation and is not part of the lands to be conveyed. The Black River, a major waterway, runs for about 15 miles through the parcel. The parcel is characterized by coastal lowlands and river floodplains with many large lakes and innumerable small lakes and ponds. The Black River has formed numerous sloughs, oxbows, and cutoff channels.

Refuge Values

The chief habitat and wildlife value of the parcel is waterfowl nesting. It is used by Canada geese, swans, loons, cranes, and many species of ducks, as well as shorebirds. Population densities of northern pintails and tundra swans have been mapped at 4 to 12 per square mile based on USF&W aerial surveys. Canada geese, scaup, scoter, cranes, and loons are common. Whitefish, sheefish (inconnu), and northern pike are important resources of the Black River and are heavily used for subsistence by nearby villages. Furbearers such as mink, otter, arctic and red fox are abundant in the parcel. There is moderate potential for summer and winter range for the expanding mainland musk-ox herd, which is occasionally seen in the southern part of the parcel.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geology is permissive of several mineral deposit types, however, there is little known about mineralization in this poorly explored region. The value of the subsurface in the Kusilvak area is based to a large extent on the ready supply of sand, gravel and rock.

Kusilvak Parcel Land Description

Interim conveyance No. 511: Seward Meridian, Alaska (Unsurveyed).

T.21N., R.84W.—Sec. 6, excluding Native allotment F-17513 Parcel A.
T.22N., R.84W.—Sec. 31.
T.21N., R.85W.—Secs. 2 to 7, inclusive; Sec. 18.
T.22N., R.85W.—Secs. 3 to 10, inclusive; Secs. 15 to 22, inclusive; Secs. 27 to 36, inclusive.
T.23N., R.85W.—Secs. 30, 31, and 32.
T.21N., R.86W.—Sec. 4; Sec. 5, excluding Native allotment F-19237; Sec. 6, excluding Native allotment F-19238 Parcel A; Secs. 13 and 14.
T.22N., R.86W.—Secs. 19 to 25, inclusive; Secs. 28 to 31, inclusive; Sec. 32, excluding Native allotment F-19237; Secs 33 and 36.
T.23N., R.86W.—Secs. 11 to 15, inclusive; Sec. 21; Sec. 22, excluding Native allotment F-18248 Parcel A; Secs. 23 to 26, inclusive; Secs. 27 and 28, excluding Native allotment F-18248 Parcel A; Sec. 29; Secs. 32 to 36, inclusive.

Calista 14(h)(8) entitlements—10,000 acres

These entitlements are to surface and subsurface estate and can be selected from Federal lands within the Calista Region. As in the case above, these entitlements are based on an underselection currently affecting Calista. Like the in Lieu lands, these entitlements will be used to select Federal lands which contain prospective oil and gas horizons, potential mineral deposits, or surface estate development potential, such as developable real estate, hydro power, and commercial uses such as fish processing. Calista is currently leasing several 14(h)(8) tracts to various mineral exploration companies. Calista believes that Federal acceptance of these entitlements will help limit potential adverse impacts on the Refuge.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., November 13, 1991.

Hon. TED STEVENS,
Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR: As you requested, the Congressional Budget Office has reviewed a possible amendment to the fiscal year 1992 Defense Appropriations bill regarding a land exchange with the Calista Corporation. We estimate that enactment of this amendment would not affect the federal budget over the 1992-1996 period. Additional direct spending in the form of monetary credits could be incurred after fiscal year 1996; however, we are currently unable to estimate the magnitude of such costs.

The amendment would require federal agencies, when requested by the Secretary of the Interior, to provide land not otherwise scheduled for sale prior to November 1, 1996, to the Department of the Interior to be used in an equal value exchange with the Calista Corporation. Property held by the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) would not be subject to transfer prior to October 1, 1996. Information from Calista indicates that the corporation would like to exchange about 200,000 acres of land. The Secretary of the Interior would be required to determine the value of these lands within nine months of the date of enactment. The value of any Calista lands not exchanged by the end of fiscal year 1996 would be converted to monetary credits, which could be used to acquire federal properties, including those held by the RTC and FDIC.

Under the land exchange provisions authorized to occur over the 1992-1996 period, we expect that the federal government would give up title to land that it otherwise would not sell. CBO estimates that such a transaction would have no direct budgetary impact because we expect that the federal government would relinquish capital assets that would not otherwise have generated income for the federal Treasury.

The value of any monetary credits would count as direct spending budget authority and outlays in the year they are issued. There is no certainty, however, that monetary credits would be issued. Furthermore, such credits could not be provided until fiscal year 1997.

Monetary credits have a budgetary impact because they can be used in lieu of cash to acquire federal properties and would therefore result in forgone receipts to the federal Treasury. Because the Calista Corporation would be authorized to use its credits to acquire any federal properties, including those held by the RTC and FDIC, we believe that it is very likely that these credits would dis-

place cash receipts in future land sales. While the value of monetary credits issued to the corporation could be significant, we have no basis for predicting how much of the value of the Calista lands would not be covered by land exchanges prior to 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

PRESIDENTIAL ELECTION SYSTEM

Mr. MITCHELL. Mr. President, I am disappointed that Congress could not pass legislation this year to correct a technical problem with the Presidential campaign finance system. The problem arises as a result of Treasury Department regulations issued earlier this year that are politically motivated and inconsistent with the law.

The effect will be to prevent Democratic Presidential candidates from receiving matching funds on a timely basis. In a crassly cynical move that has absolutely no policy justification, President Bush and his Republican colleagues in Congress have blocked legislation to clarify the law.

As a result, it is quite likely that next January when Presidential candidate George Bush submits his request to the Federal Election Commission, he will claim most of the funds available in the Presidential campaign trust fund. The FEC estimates that only a fraction of the matching payments will be available in February and March for the election campaigns of the Democratic candidates.

So what we have here is a case of the Bush administration's Treasury Department issuing an unwarranted regulation, not supported by the law, that creates a situation that enables President Bush to claim the bulk of the trust fund money to the exclusion of Democratic candidates. Then, when Congress considers a minor clarification of the law to permit anticipated receipts to be taken into account, President Bush blocks consideration of the legislation. He even goes so far as to issue a veto threat.

We are led to believe the President does not necessarily oppose this legislation, he simply does not believe it should be done the year before the election. It should be done in 1993 instead. That is an absurdity. This problem was created when the President's Treasury Department issued the regulations this year. It should be corrected this year. It affects the 1992 elections. It makes no sense to wait until after the election is over to fix the problem.

This should not be a partisan issue. All six members of the Federal Election Commission, including the three Republican members and the three Democratic members, support this legislation because they know it simply enables the Presidential public-funding law to work as intended. There is no substantive argument in opposition to the provision. People who oppose this provision are opposed to the Presidential system. If so, they should attempt to repeal that law directly, not interfere with the proper operation of the law.

If the Republican Party and George Bush are opposed to the Presidential public-financing system they should work to repeal the law. At a minimum, candidate George Bush should not accept public funds. It is inconsistent for him to both oppose this provision and take millions of dollars of public funds under the Presidential system.

In fact, George Bush has received more public financing for Presidential elections than anyone in history. As a primary and general election candidate for President and Vice President in 1980, 1984, and 1988, George Bush has received approximately $140 million in public financing under the Presidential-election finance system; far more than any other individual who has ever run for President. He is expected to receive another $70 million for the 1992 election campaign. Does he support this system or is he opposed? If he is opposed he should not be taking the money. If he supports the system, there is no justification for his opposition to this provision to make the system work as intended.

It should be pointed out that the proposed legislation is a minor change that only affects the timing of matching payments in Presidential election primary campaigns. It does not affect the amount of such payments or the recipients of such payments.

The Treasury Department regulations that were issued earlier this year deal with an anticipated temporary shortage of funds for the Presidential election system. Three types of payments are made from the Presidential election fund; for the general election, for the nominating conventions, and for the primary elections. Treasury has interpreted the statute in a manner that requires that amounts from the Presidential election fund first be set aside for the cost of the nominating conventions and the general election even though that is the last of these events which will occur.

After this prepayment is made, payments will be made to the primary candidates based on the amount of money available in the Presidential trust fund. Most checkoff funds are received in March, April, and May, but the Treasury regulations do not permit such funds to be taken into account in making matching primary election payments earlier in the year. As a result, after the initial January 1, 1992, matching payments, it is expected that February and March payments to candidates will only be about 75 percent of what the candidate is entitled to. The difference would be made up later in the year as the checkoff funds are received.

According to the FEC, as of January 1, 1992, there will be approximately $128 million in the Presidential election fund. As a result of the Treasury regulations, $111 million must be set aside for the general election and nominating convention payments, leaving only $17 million as of January 1, 1992, for primary campaigns. The FEC estimates that approximately $14 million in payments will be made to primary candidates on January 1, 1992, leaving insufficient funds for February and March payments. The Treasury appropriations provision simply permits the $33 million in anticipated 1992 tax checkoff receipts to be taken into account according to standard budget procedures.

Depending on when and how candidate Bush raises primary election campaign money, he is likely to receive $14 million in matching payments from the Presidential election fund. The FEC estimates that 80 percent of those payments will be made in January and the remainder in February and March. Democratic candidates are expected to become entitled to matching primary payments later in the year. This provision would assure timely payments both to candidate Bush and to Democratic primary candidates.

HOUSE HELD UP CONFERENCE ON OLDER AMERICANS ACT

Mr. MCCAIN. Mr. President, this is not a proud day for our Nation's seniors. The House of Representatives has just left for the holidays while failing to appoint conferees so that action could be completed on the Older Americans Act reauthorization bill—which includes an amendment of mine adopted in the Senate that would repeal the Social Security earnings test. This is a travesty.

On November 12, the Senate adopted the Older Americans Act reauthorization bill and appointed conferees in the hope that this important legislation might be conferenced and signed into law before Congress recessed for the year. It is of great concern to this Senator, who is a sponsor and strong supporter of the Older Americans Act reauthorization bill, that the House appears to be holding up final action on this critical legislation for our Nation's seniors by not appointing its conferees.

As my colleagues know, the Older Americans Act provides for a number of programs that are essential to the livelihood of our Nation's most vulnerable elderly. It provides for an array of programs on which millions of older Americans depend—vital services including nutrition programs, seniors centers, community and social services, legal services, nutrition and

health promotion programs, and care for frail and homebound seniors. In addition, the act provides job opportunities and protects the basic rights of seniors.

While current law certainly will continue if the reauthorization bill is not signed into law before the end of the year, the effect of this bill's delay will be very serious. For example, delay blocks an additional $70 million in funding for the commodities program that is the nutritional lifeline for low-income seniors. Delay also blocks a critical new home health care program that was to have served as an alternative to institutional care. And, delay blocks the critical new elder-rights program that was to tackle the tragedy and disgrace of elderly abuse.

Mr. President, this reauthorization bill is critical to improving the lives and well-being of millions of older Americans. It is unconscienable, in my view, that this legislation is being held up as a result of the House not appointing conferees.

Mr. President, initially, I thought the fact that the House did not appoint conferees was an oversight, but that simply was not the case. Plain and simple, it was a ploy to avoid having to deal with the Senate's proposal to repeal the last bastion of age discrimination—the Social Security earnings test.

Mr. President, my earnings test proposal was adopted unanimously in the Senate and enjoys the support of a majority in the House. What's more, just as is the case with the Older Americans Act reauthorization bill, this proposal enjoys the support of seniors all over this country and of virtually all of our Nation's major seniors organizations. Accordingly, Mr. President, it was my sincere hope that the House would have appointed its conferees so that we could have completed consideration of this critical legislation and send it to the President for his signature before we recessed for the year. But, unfortunately, that will not happen because the House has turned its back on our Nation's seniors.

PENSION AMENDMENT TO H.R. 3543

Mr. HATCH. Mr. President, the Senator from Missouri has previously emphasized the narrowness of this particular amendment. I wonder if he could comment further on whether he views this amendment as setting any kind of a precedent for further changes to ERISA or in connection with the activities of any other carrier.

Mr. DANFORTH. Let me assure the Senator from Utah, and all of my colleagues, that I do not regard this amendment as setting a precedent of any kind with respect to changes in ERISA or with respect to the activities of any other airline. On the contrary, this amendment was narrowly drafted to apply and respond only to an unprecedented set of circumstances that I think are highly unlikely to recur in other contexts.

S. 474, A BILL TO STOP STATE-SPONSORED SPORTS GAMBLING

Mr. SPECTER. Mr. President, it is with great pleasure that I note that the Senate Judiciary Committee on November 21, voted to report favorably S. 474, a bill to stop the spread of State-sponsored sports gambling. I applaud this resounding vote to support a bill which is now cosponsored by over 59 Senators.

Sports gambling is bad for sports. State involvement in sports gambling puts the imprimatur of government behind the discredited proposition that sports gambling is a public good. Sports gambling can only be profitable if it exploits the popularity of athletics to tempt many additional people to gamble.

The simple fact is that gambling and athletics do not mix. For government to bring them together would be unwise public policy. That is why hundreds of church, youth, and law enforcement organizations throughout the country support the antigambling provision. In the end, it is our youth who will be harmed by the negative values imparted and legitimized by States that authorize sports gambling.

Federal legislation to bar sports lotteries has been pending for 2 years. Indeed, both Houses of Congress independently passed anti-sports-lottery measures last year. Now is the time to pass this important legislation.

I understand that an amendment may be offered to provide a 2-year window for States to exempt themselves from the bill. This amendment would create a great loophole. It would encourage States to rush into authorizing sports lotteries without proper consideration and adequate safeguards simply in order to keep their options open in the future. Then, once such programs were authorized, powerful special interest groups would ensure that those State-sponsored lotteries remained in place. The result would be not only more States with sports lotteries, but more States with hastily conceived sports lottery programs.

I urge my colleagues to support S. 474's purpose of keeping sports and gambling separate by voting against this amendment.

SPORTS GAMBLING

Mr. DECONCINI. Mr. President, it is unfortunate that the Senate will not have the opportunity to enact legislation prohibiting sports gambling this year. We have put together a strong bill that effectively would prevent the legitimization of sports gambling through State seals of approval. S. 474, the Professional and Amateur Sports Protection Act of 1991, would prohibit all sports gambling, by Government entities or individuals, conducted pursuant to State law. It would cover any lottery, sweepstakes, or other betting, gambling or wagering scheme based on competitive games in which amateur or professional athletes participate.

Hearings were held in the subcommittees of both the House and Senate Judiciary Committees this year. During these hearings, the case was made that legislation is needed to stop the spread of State sponsored sports gambling. My bill, S. 474, has been approved by the full Judiciary Committee. The House bill, H.R. 74, was reported out of subcommittee and then passed as part of the House crime bill. The conference committee on the crime bill agreed to include a ban on sports betting in its final report. Fifty-nine of my Senate colleagues have cosponsored my bill, S. 474. Clearly, this is a matter of importance to the Congress.

Swift action is imperative to prevent the proliferation of sports gambling. I fear that States desperate for revenue, whatever the costs, are enlisting the aid of the gambling and lottery industries to bring sports gambling to their States. Technological advances will soon allow these States to effectuate systems where bets could be made through 900 numbers, with wagers paid by credit cards.

States must know explicitly, without reservation, that Congress' failure to enact a sports gambling prohibition this year does not mean that Congress has dropped the ball on this issue. With diligence and vigor, we will move rapidly on this bill at the beginning of next year.

There is widespread support for this legislation. I have heard from many national and local organizations, sports teams, colleges, high school educators, legislators, and many others who have expressed strong support for a ban on sports gambling. Few can disagree with the strong antisports gambling message that has been heard. Mr. President, the future of America's favorite pastime, sports, is threatened. It is imperative that we act quickly.

Although I am disappointed that it appears the crime bill which incorporates the Professional and Amateur Sports Protection Act of 1991 will not become law this year, I am confident that with the broad base of support for this bill, that it will become law early next year.

In the meantime, I urge those States which are considering legislation to enact sports betting to think long and hard about the message they're sending to the young people in America. The revenues it may generate are not worth destroying the reputation of sports and sports heroes. I ask unanimous consent that immediately following this state-

ment five editorials in support of the bill be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

A LOSING BET

(By William F. Reed)

Whenever I go to the racetrack, which is considerably more often than the average citizen, I bet on almost every race. I like the action. I like having a personal rooting interest. What's more, I see absolutely no contradiction between my betting at the track and the fact that I'm dead-flat opposed to any further legalization of gambling on baseball, football, hockey and basketball.

Sure, I've heard all the seductive arguments in favor of legal sports gambling. The main one is that because illegal gambling on sports events is already at least a $38 billion-a-year industry, why not take it away from criminals and put it into the hands of the states? That would remove the stigma from gambling, put illegal bookmakers out of business and give cash-starved state governments a lucrative source of revenue. Simple, huh? Well, don't believe it. I say such a plan would be opening new cans of worms.

The way I see it, there's already too much legal gambling. As recently as 15 or 20 years ago the only places in this country where you could get a bet down without breaking the law were racetracks and the Nevada casinos. The gaming industry was so limited that many people who had no business gambling were discouraged from doing so. To go to a track, for example, you had to have the money for transportation, admission, a program and the Daily Racing Form. In addition to the cost, not everyone could afford the time or the trouble. Sure, there were bookies, but many people were—and are—reluctant to indulge in an illegal activity.

Now, however, we are a nation of gamblers, mainly because legal betting has become so readily available. Off-track betting, which operates in 11 states, is as much a part of some neighborhoods as the convenience store. Casino gambling in Atlantic City is within a day's drive of 60 million people, and you can even play craps and blackjack on riverboats in Iowa and soon in Illinois. Most insidious of all are the various state lotteries, which expose government at its greedy worst.

Even though a lot of lottery tickets are sold to the people who can least afford them, states shamelessly pour millions of dollars into promoting and glamorizing their lotteries instead of emphasizing that the chances of winning are umpteen million to one. The longest shot at the racetrack is far more likely to be a winner than a ticket in most lottery jackpots, yet the public keeps pouring billions down the drain. And to this we're going to add betting on games?

Aside from concerns that the passion to get rich quick through gambling is replacing devotion to hard work and saving as the American way, here are five reasons to oppose further expansion of legalized sports gambling.

Expansion of legalized gambling would induce even more people to become bettors. That, in turn, would only lead to a higher incidence of compulsive gambling. If the sad case of Pete Rose served any useful purpose, it was to emphasize that addiction to gambling can be just as ruinous as addiction to alcohol or drugs. At least Rose could afford his habit better then many others can. How about the thousands of families that are destroyed each year because the breadwinner taps out? How do we reconcile the notion that government is supposed to protect the public welfare with the idea of its simultaneously promoting an activity certain to increase a debilitating addiction?

Fan hostility toward athletes, already a growing concern, would only increase. With more people having their hard-earned cash at risk, there would be more second-guessing, especially about crucial decisions and plays that affect the point spread. My hunch is that legal betting on soccer in Europe has to be one of the factors behind the many riots that mar matches there.

Increased gambling on baseball, football, basketball and other sports would have a serious negative impact on horse racing and dog racing simply because team sports are so popular. Some may shrug this off as the law of the marketplace, and of course it is. But do states really want to risk further damaging industries that have proven their ability to generate thousands of jobs and millions of dollars in revenue but are already showing signs of weakness?

Legalized gambling would not drive the illegal bookmakers out of business because state-run betting operations would not be able to issue credit, which is one of the bookies' major enticements to gamblers.

Legalized gambling just doesn't make sense from a practical standpoint. For openers, who would establish the betting line? Are states willing to trust some guy in Las Vegas? How would the states know that the oddsmaker would not be susceptible to a bribe? What would a state do if it suddenly found itself taking a bath because of a bad line? A bookmaker can balance his books by laying off bets with other bookies. I'm not sure states would be willing or able to do the same thing.

Oh, yes. I also should mention the moral contradictions. Let me see if I've got this straight. The numbers racket is illegal if it's run by mobsters but perfectly all right if the states run it and call it a lottery. And betting on games is illegal if you call your friendly neighborhood bookie, but it's O.K. if the government gets into it. Everybody see the difference? If so, there are a lot of guys in jail for illicit gambling—most of whom have been apprehended at considerable cost to the taxpaying public—who would like an explanation.

[From the New York Times, Nov. 22, 1991]

SHAME OF THE STATES

(By William Safire)

HARPER'S FERRY, W. VA.— In Deadwood, S.D., where in 1876 Wild Bill Hickok was shot in the back during a poker game while holding a hand of aces and eights, gambling was re-introduced in 1989. Despite a betting limit of $5, the amount wagered by tourists and other suckers in the once-moribund town has already passed a third of a billion dollars.

That's only for openers. South Dakota's state lottery, reaching for the youth market, has also invested in video games, the modern equivalent of state-sponsored slot machines. West Virginia is experimenting with video machines at racetracks.

New York and Connecticut up the ante with telephone off-track betting, likely to spread to taxes and computer moderns for hacker-touts. And liberal Iowa, on the pretense of reviving interest in the less savory elements of its history, has launched riverboat-gambling on the Mississippi—retaining 20 percent of casino winnings, which longtime gamblers grumble is too much vigorish.

All this means that Americans at the state level are deciding that gambling is good—not just a tolerable evil, but a positive value. Gambling has become a goal of public policy.

Only a few years ago, proponents of state lotteries were claiming that state control would channel the profits of an unstoppable human frailty toward good ends. Why let numbers racketeers and Mafia casino operators bilk the public, their argument went—why not steer those ill-gotten gains into public schools?

The answer is spreading like a poison through state and local governments: immoral means have never led to moral ends. We are no longer skimming the profits from a criminal activity: we are putting the full force of government into the promotion of moral corruption.

What am I, some kind of stiff? Is a friendly game of gin rummy at a penny a point to be frowned upon, or a church social that raises its costs at a bingo game to be condemned, or a privately owned gambling yacht catering to rich drunks cause for conservative concern?

I'm a libertarian. If people want to titillate themselves with a game of chance, or delude themselves into thinking they can beat the odds, that's their private business. I just do not think it should be the public business.

Gambling promotion has become a key to state budget-balancing. Card-carrying right-wingers are not supposed to mind taxing the poor, but really soaking the poor—as this excessively regressive taxation does—sticks in my craw.

Why? Because it is wrong for the state to exploit the weakness of its citizens. It is the most unfair and painful form of "painless" taxation. The money isn't coming from a few big bookies and croupiers, but from the pockets of millions.

And gambling taxation feeds on itself. We cannot give up the state income from betting, say legislators who feel guilty about pretending that gambling is good, because the states have become dependent on the money, or because other states will use casinos to lure their tourism. They have become as hooked on gambling as a source of revenue as any compulsive gambler betting the milk money.

Here's what you can do to stop the explosion of government-sponsored gambling:

Tell your local television anchor you've had it with media hype of gambling. Features of giggling lottery winners or hoohahing over million-dollar jackpots is cheap-shot journalism, show us some people impoverished by gambling, or expose the cost of the state bureaucracy pushing it.

Apply truth-in-advertising to state-sponsored slots, lotteries and video games. Display prominently the odds against winning; state the number of losers for every winner. Demand stations make free equal time available for anti-gambling messages.

Demand that gubernatorial gamesters stop using their "take" for advertising; the creation of fresh demand for gambling by a public agency is against the public interest.

Tell your kids that gamblers are life's losers. Private gambling, like prostitution, should not be illegal, but it should not be treated as a value. And to make the state hustling of gambling profits the basis for state education is like shooting Marshal Hickok in the back.

[From the Cincinnati Enquirer, Aug. 20, 1991]

GAMBLING

Prohibition is the best thing that could happen to the idea of lottery betting on sports events. And that is exactly what U.S. Rep. John Bryant, D-Texas, is trying to do

with a bill that would make the practice illegal nationwide.

How ridiculous for professional sports to work so hard to stay free of the taint of gambling only to have state governments undermine the efforts. There will always be some illegal gambling. But that is limited, and will never convey the legitimacy of state-sponsored lottery betting.

The pros realize this. The Cincinnati Reds and Bengals have joined a coalition of Ohioans Against Sports Gambling to lobby for passage of Congressman Bryant's bill. Meanwhile, the group is working to keep Ohio legislators fully apprised of the harm that sports gambling would do.

The Bengals' Mike Brown said it well: "We feel legalized sports gambling promotes the wrong reason for rooting for the home team. We want people to cheer for us to win, not to cover the spread."

State lotteries are big business. There's no doubt about that. They are lucrative and competitive. And, because that's so, there is growing concern that the desire for growth is smothering good judgment.

State-sponsored sports gambling would undermine all the care and caution that have gone into keeping pro sports clean. It might even jeopardize an industry that cities such as Cincinnati and Cleveland depend on. That is simply too much to risk.

The Bryant bill should pass. And with a groundswell of public support.

CONGRESS SHOULD HALT LEGALIZED SPORTS BETTING

Commissioners of major league baseball, basketball, and football urged Congress this week to halt the spread of legalized sports betting across the nation. Representatives of revenue-hungry states, and of casinos eyeing millions of dollars in new profits, are complaining. But Congress should ban new state schemes to sponsor gambling on football or other sports. Legalized gambling could corrupt professional athletics. The United States already has too many forms of betting. The last thing the nation needs is a new enticement to gamble.

Paul Tagliabue of the National Football League, Fay Vincent of Major League Baseball, and David Stern of the National Basketball Association all testified before a congressional subcommittee Wednesday. "We do not want our games used as bait to sell gambling," said Mr. Tagliabue.

Mr. Tagliabue knows as well as anyone that illegal betting on football is already something of a national passion. But he and other commissioners argue that there's no reason to make gambling opportunities even more available.

As the recession forces states to search for new revenue, legalized sports betting looks like the next stop on government's eternal search for a painless fiscal cure. Oregon has a lottery tied to the outcome of pro sports, and Nevada allows sports betting in casinos.

Jack Gallaway, president of TropWorld Casino an entertainment resort in Atlantic City, says sports betting should be the next major item on the New Jersey casino industry's agenda. And Steven Perkins, chairman of the Casino Control Commission, sounds favorable to the idea. Race track operators, fearing even stiffer competitors, fearing even stifer competition from casinos, say they would want a piece of any new action. The pressure is on, and building.

Sen. Bill Bradley, a star with the New York Knicks before he entered the Senate, is among the cosponsors of the bill to ban new sports betting. As the commissioners testified, legal sports gambling leads to a situation in which fans start cheering to beat the spread, not just for the home to win. "When our fans begin to leave games feeling disappointed or cheated even though 'their' team has won, that spells trouble," said the NBA's Mr. Stern. Legal betting would also make it more likely that underworld types would try to fix a game. Even if that didn't happen, fans would be suspicious.

Gambling fever has gripped the United States. Almost every state in the nation now has some form of gambling, from jai alai to greyhound racing to casinos. For people who like to gamble, and who can bet sensibly, there are abundant opportunities.

But some people can't bet sensibly. Encouraged by billboards and TV ads, they bet—and lose—their mortage money, or the family food money. The time to call a halt is now. Congress should enact a federal ban on new forms of sports betting.

[From the USA Today, June 26, 1991]

STATES SHOULD KEEP OUT OF SPORTS BETTING

States are becoming addicted to gambling.

Gambling is big business: $290 billion is bet each year. Like high rollers deeply in debt, states are relying more and more on games of chance to lift them out of their fiscal ruts.

Iowa, closely followed by Illinois, is leading the charge down the Mississippi with riverboat gambling.

Thirty-three states and the District of Columbia have joined in the lottery craze.

New Jersey, Nevada, and South Dakota allow casino gambling.

A USA Today survey shows 13 states have considered or are considering joining Oregon and Nevada in legalizing betting on sporting events.

That concerns the heads of all the professional sports leagues as well as amateur athletics. Today, they'll tell a Senate panel they want to keep sports gambling from spreading to other states.

Despite the views across the page, the commissioners are right.

In previous editorials, USA Today has opposed states' spending large sums on lottery promotions; it has also opposed a national lottery that would complete with the states.

Sports gambling is another bad bet for states—

Because it encourages gambling particularly among our youth.

Because it can lead to crime, one study showed 10% of teen-agers committed crimes to support their habit.

Because money doesn't always go where it is intended; in Oregon, for the first two years, much of the revenue went into the general fund instead of college sports.

Because the odds are poor, the odds of winning Lotto America, for example, are 13 million to 1.

And because it preys upon the poor.

Gambling is especially bad for sports because it would raise concerns about the fixing of games. Fans would root for their bets rather than for their home teams.

States see gambling as a way to fill their coffers, but too many people see it as a way to fulfill their dreams.

Look across the USA, and you'll see the broken lives and unfulfilled dreams of those who took the risk—and lost.

Art Schlichter's promising National Football League career was cut short when he was suspended for gambling.

Chet Forte was at the pinnacle of the TV industry at ABC Sports until sports gambling destroyed his life.

Pete Rose was headed for baseball's Hall of Fame.

Compulsive gamblers have doubled in the last decade to 8 million—a million of them teen-agers.

YOUNG GAMBLERS

A study of college students in six states found:

Students who had gambled sometime in their lives: 67%.

Gambled weekly: 26%.

Gambled more than $100 in one day: 11%.

Fit criteria for pathological gambler: 5.7%

William C. Smith, counseling coord., Bryant College, R.I.

Gambling is already reaching the saturation point. States should not be using sports to try to make a big score.

SECTION 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET

Mr. SASSER. Mr. President, I hereby submit revised budget authority allocations to the Senate Committees on Environment and Public Works and Banking, Housing, and Urban Affairs and aggregates under section 9 of the concurrent resolution on the budget, House Concurrent Resolution 121.

Section 9(e) of the budget resolution states:

(e) TO FUND SURFACE TRANSPORTATION.—

(1) IN GENERAL.—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding for surface transportation within such a committee's jurisdiction if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously-passed deficit reduction) in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

(2) REVISED ALLOCATIONS.—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) REPORTING REVISED ALLOCATIONS.—The appropriate committee may report appropriately revised allocations pursuant to section 302(b) and 602(b) to carry out this subsection.

The report of the Senate Budget Committee to accompany the budget resolution makes clear one of the available applications of this language. On page 55, the report states:

The Surface Transportation Act reserve fund is designed to cover, among other initiatives, deficit-neutral Federal-Aid-Highway, Section 3 Mass Transit Capital Grant, and Highway Safety Grant initiatives.

On June 4, 1991, the Environment and Public Works Committee reported S.

1204. S. 1204 qualified as "legislation that increases funding for surface transportation within such a committee's jurisdiction," in the words of the budget resolution, addressed matter discussed in the report of the Budget Committee, and met the other requirement of section 9 of the budget resolution that

* * * to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit * * * in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

As S. 1204 complied with the conditions set forth in the budget resolution, under the authority of section 9(e)(2) of the budget resolution, on June 11, 1991, I filed with the Senate appropriately revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out section 9 of the budget resolution. These revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates appear at page 14173 of the CONGRESSIONAL RECORD for June 11, 1991.

The Senate passed and went to conference with the House of Representatives on the House companion measure, H.R. 2950. Just this morning, the committee of conference on H.R. 2950 submitted a conference report on the legislation. As did S. 1204, the conference report on H.R. 2950 plainly qualifies as "legislation that increases funding for surface transportation within such a committee's jurisdiction," in the words of the budget resolution. It addresses matter discussed in the report of the Budget Committee. The conference report on H.R. 2950 also meets the other requirement of section 9 of the budget resolution that:

* * * to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit . . . in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

As the conference report on H.R. 2950 complies with the conditions set forth in the budget resolution, under the authority of section 9(e)(2) of the budget resolution, I hereby file with the Senate appropriately revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out section 9 of the budget resolution.

There being no objection, the allocations were ordered to be printed in the RECORD, as follows:

REVISED RESOLUTION TOTALS PURSUANT TO SECTION 9(e) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR 1992

[Dollars in millions]

	Fiscal year	Dollars
Budget authority allocation to Environment and Public Works	1992	$18,911
	1992–96	110,885
Budget authority allocation to Banking, Housing, and Urban Affairs	1992	107,394
	1992–96	246,309
Transportation budget authority function total	1992	35,512
Resolution budget authority total	1992	1,270,612

CONFERENCE REPORT ON HOUSE JOINT RESOLUTION 157

Ms. MIKULSKI. Mr. President, I rise in support of this conference report and urge its adoption by the Senate. This conference report contains language with respect to FEMA's disaster program which should help obviate the need for future emergency supplementals. The language reflects an agreement with the administration regarding what the average, and therefore predictable, need for FEMA disaster assistance is—$320 million per year.

Under the language, if the President requests and Congress appropriates this amount—but natural disasters occur which result in a need greater than $320 million—any amount above the $320 million would be designated as an emergency and therefore would not score against the domestic discretionary spending cap. If the President requests less than the $320 million, then the administration has agreed that any amount required above the President's request will be designated as an emergency.

If, on the other hand, Congress appropriates less than the historical average of $320 million—or the President's request, whichever is less—and requirements for FEMA disasters exceed the amount appropriated, then only the amount above $320 will be declared an emergency.

Mr. President, I know this sounds confusing, but I believe that by reaching agreement with the administration on an appropriate amount for the average need for FEMA, we can avoid in the future the kind of situation in which we now find ourselves—an $800 million backlog of needs for FEMA funding. This supplemental will take care of that backlog, but it will also help make sure that FEMA won't run out of money for disasters in future years.

CRIME BILL CONFERENCE REPORT

Mr. DOLE. Mr. President, as Yogi Berra once said, "It's deja vu all over again."

Last year, the House passed a tough antianti crime bill. The Senate passed a tough anticrime bill. And the Democrat-controlled conference committee threw them both away, and reported out a bill that did nothing to help law-abiding Americans.

This year, the House passed a tough anticrime bill. The Senate passed a tough anti crime bill. And, in the spirit of the season, the Democrat-controlled conference committee has sent the American people a turkey.

My friends on the other side of the aisle point to the good things in this bill—to the new Federal death penalty—to more money—money that is authorized, but not appropriated, by the way—for America's law enforcement community.

And no doubt about it, this bill does have some good provisions in it. But just because the radio works, does not mean that you should keep a car that is a lemon. And this bill is a lemon.

On March 11, President Bush challenged Congress to pass tough, anticrime legislation within 100 days.

Today, 260 days later, we are asked to pass legislation which falls far short of what President Bush requested, and falls short of what the American people demand, in at least five very important areas.

First, President Bush asked for legislation to limit the unreasonable appeals used by convicted criminals to delay their sentences.

The bill before us, however, would allow convicted criminals to use new laws to overturn old convictions. Indeed, in the words of the National District Attorneys Association, "passage of this bill is tantamount to handing the jail house keys to thousands of convicted State and Federal prisoners."

Second, President Bush asked for legislation that would impose an enforceable Federal death penalty on the most heinous of crimes. And the Senate and House did just that.

The bill before us, however, creates the Federal death penalty with one hand, and takes it away with the other, as it contains no safeguards to prevent the obstruction of the Federal death penalty through endless collateral litigation.

Third, President Bush asked for legislation which would stop obviously guilty criminals from being set free on a technicality.

The bill before us simply codifies existing exclusionary rule law, and through skillfully written language, would actually require the exclusion of more evidence than the existing rules.

Fourth, President Bush asked for legislation which would come down on the side of victims of crimes of sexual violence. The President proposed, and both Houses of Congress passed legislation to do just that—legislation that threw the book at recidivist rapists and child molesters.

The conference committee, however, did the following:

It threw out provisions requiring increased maximum penalties for rapists and child molesters.

It threw out provisions requiring HIV testing of Federal sex offenders, with disclosure of test results to the victim.

It threw out provisions mandating that the Government pay the cost of HIV tests for victims of Federal sexual crimes. Instead, the committee wants victims to pay the cost out of their own pocket.

It threw out provisions requiring restitution to victims of rape, child molestation, and child sexual exploitation, whether or not physical injury results from the crime.

And, by the way, it also threw out provisions which increased the penalties for selling drugs to pregnant women.

And, finally, Mr. President, the bill before us would overturn the Supreme Court decision of Arizona versus Fulminante.

The practical effect of this action is that confessed killers, rapists, drug traffickers, and other criminals, will have their convictions overturned.

For these reasons—and many more—President Bush has pledged to veto this bill. It's a veto that is in the best interests of law-abiding citizens. And it's a veto that will be sustained.

Mr. President, if the Democrats are looking for a campaign issue, they have got it. I will be perfectly willing to put the President's proposal and the one the Democrats rammed through the conference committee sight unseen, side-by-side, and let the American people decide who's in their corner.

ON PASSAGE OF H.R. 3327

Mr. SPECTER. Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, I am pleased to support the passage of H.R. 3327.

This bill would require the Secretary of Veterans Affairs to designate one of the Assistant Secretaries in the Department of Veterans Affairs [VA] as the chief minority affairs officer of the Department. That individual would be required to investigate VA's policies as they affect beneficiaries who are members of minority groups; assess the needs of those beneficiaries; and to advise the Secretary on the effect of VA policies on such beneficiaries to ensure that minority group beneficiaries are afforded an opportunity to participate fully in VA's activities and benefits.

This is an important provision, Mr. President, and very similar to a provision the Senate recently passed in S. 869. By placing this duty at the Assistant Secretary level, this provision demonstrates the commitment of the Congress to equality in opportunity for all of our veterans.

I urge my colleagues to support this important bill.

CRIME BILL CONFERENCE REPORT

Mr. BIDEN. Mr. President, today, the Senate Republicans took the final step in the legislative process, and killed what would be the toughest anticrime law in U.S. history.

In brief, the highlights of this package include: The Senate-passed Brady bill, imposing a national 5-day waiting period for handgun purchases, and a system of background checks for those seeking to buy handguns; a vast expansion of the death penalty—to 53 offenses—including the murder of a police officer, murder in the course of rape or child exploitation, drive by shootings, and the death penalty for drug kingpins; a $1 billion authorization for local police; a new drug emergency areas plan to help hard-hit cities; a program for prisons to hold drug criminals; boot camps at old military bases to hold youthful offenders; a police corps, to put more police officers on the streets; new gun-crime penalties for using a gun during a crime, stealing a gun, for owning a gun if you are a felon—and even the death penalty for Federal gun murders; aid for crime victims; reform of habeas corpus and the exclusionary rule; initiatives to fight gang violence and rural crime; and measures to protect our children from abuse, and from drunk drivers.

It was a vast bill and a comprehensive approach to fighting crime in America today.

The conference report received much praise, but also, much criticism. Let me start with the latter.

One set of criticisms came from my friends on the left. Many are death penalty opponents; a position I respect tremendously, even if it is one I do not share. Others fear that the habeas corpus and exclusionary rule provisions go too far in cutting back on civil liberties.

To these people I say, "yes, the bill does restrict some liberties." It limits your right to buy a gun on demand. It limits your freedom, if you commit certain crimes, by imposing new, higher, mandatory sentences. It limits the right to endless appeals.

These are limits on civil liberties. But the basis for the civil liberties of all Americans is a Nation governed by the rule of law. And the lawlessness in our streets today is undermining the public's confidence in that system.

When confidence in the rule of law erodes, sweeping measures—which threaten to wipe out civil liberties altogether, gain in credence. We can see this happening already: Compare the bill the Senate votes on today to the one that the President of the United States proposed, just 6 months ago. His bill: permitted deportation of U.S. residents without a hearing and without legal representation; allowed the use in evidence of any gun, however seized by police—even if the police broke down every door on a block on a whim; totally eliminated any Federal court review of death sentences, as long as State courts heard the case.

And the list goes on. Unless we take steps to control crime, I say to my progressive friends, the more draconian proposals that we have successfully resisted in this bill—proposals that would strip liberties without making our streets safer—will gain acceptance.

This bill would have served to fight crime, while doing the least possible damage to legitimate civil liberties concerns. It is always a balance, and I believe we should have accepted the balance struck here.

The more vocal criticism of this bill has come from the right—largely from the President, and from other allies of the National Rifle Association.

I understand the position of the allies of the NRA. They don't like the Brady bill. They never have. And even though polls show that 80 percent of NRA members, and 90 percent of the American public support the Brady bill, these die-hards will not quit.

But, of course, they do not want to come right out and say, "We oppose this tough crime bill because we oppose the Brady bill." So instead, they reach into their bags and pull out a label that is so tired, and so worn—and they say: "This bill is pro-criminal."

Frankly, I am sick and tired of hearing this. Pro-criminal? I do not know anyone in the Senate who is "pro-criminal." The very term is offensive; it demeans our debate; it is the cry of those so bereft of arguments of substance that they fall to using shrill attacks, instead of reasoned appeals.

Well, let's lay our cards on the table. I supported this bill. Am I "pro-criminal?" The Fraternal Order of Police supported this bill. Are they "pro-criminal?" The National Association of Police Organizations supported this bill. Are they "pro-criminal?"

No one should be throwing labels around like "pro-criminal." If you called this bill pro-criminal, you called its supporters pro-criminal. And I defy—no, I dare—any of my colleagues to take this floor and call the major police organizations of this country pro-criminal.

The supporters of this bill—the police who wanted us to pass this bill—don't stand on the Senate floor to fight crime. They put their lives on the line to fight crime.

So I say to my Republican friends: the police don't want your tough on crime speeches anymore. They don't want to hear you say, "I voted against this crime bill to wait for another one with a better habeas."

America's police want your help, they wanted your vote for this bill. And we owed it to them.

A "pro-criminal" bill, the critics say? A bill with 53 death penalty offenses, "pro-criminal"? A bill that required background checks before gun purchases, to keep guns away from criminals, "pro-criminal"? A bill to add more police, more prosecutors,

more DEA and FBI agents, more prisons, more boot camps, "pro-criminal"? A bill to raise the penalties for gun crimes, for drug dealing, for drunk driving, "pro-criminal"?

"Oh, but what about habeas corpus," the critics say. This bill limited prisoners to one Federal appeal, within 1 year—an unprecedented limit on the great writ. What about exclusionary rule? This bill provided a good faith exception to that rule, where police have a warrant. What about coerced confessions? All this bill would have done was make it illegal to use at trial confessions obtained through unconstitutional coercion.

There they are, the so-called pro-criminal provisions in this bill: limited appeals, limited exclusionary rule, no coerced confessions. To even claim that this bill was pro-criminal is to see what garbage that charge is.

The administration always complains about criminals getting off on technicalities. But in using habeas corpus as a reason to kill the Brady bill, the President got the NRA off on a technicality.

Yes, the district attorneys said this bill was soft on crime, because they put habeas reform first on the list of what they wanted done to fight crime.

With all due respect, the only risk district attorneys take each day is the danger of a paper cut from a habeas petition. Habeas reform might make them safer.

But our police risk their lives each day from bullets and guns. They want the Brady bill. They want death penalty for cop killers. They want stiffer penalties for gun crimes. They want more prisons to keep the criminals off the streets. They want training and equipment.

That's what this bill would have done. So if you voted "no" you can say it was to protect DA's from paper cuts from habeas petitions. To protect cops from handgun killers, you must have voted "yes."

What did the police say about this bill? The Nation's largest police group, the F.O.P., said: We "call on Congress to adopt, and for the President to sign, this bill. It is the toughest anticrime legislation to emerge from Congress in recent memory, and should become law."

The Nation's second largest police group, the National Association of Police Organizations, said: We "support—prompt enactment of the crime bill as reported out of conference—[it is] tough anti-crime legislation."

And they concluded with: "We urge you to enact this badly needed anti-crime legislation immediately."

The International Association of Chiefs of Police—the police chiefs—wrote that they "support the conference report," saying, "the net effect of—the conference report will benefit the public at large as well as those who are charged to protect them."

If you voted against these men and women who are asking for your help, you can tell them you did it because you want to protect the NRA more than you want to protect our police; or because you care more about the technicalities of habeas corpus reform than you do about the death penalty and putting more cops on the street.

Tell them what you will. I will say only this, in conclusion.

We are in the midst of the third straight year, under this President, of a national record for murders. A record every year of this Presidency.

We are in the midst of an all-time record for rapes. More Americans are addicted to cocaine and heroin today than ever before.

Today, we could have done something about this—we could have expanded the death penalty, required background checks for handgun buyers, we could have beefed up our police departments and prisons.

But this bill was voted down, killed by the Republicans in the Senate at the behest of the President.

There will be no Brady bill. There will be no death penalty. There will be no added police, prisons, prosecutors. There will be no increased penalties.

People will die as a result. That's the truth. People will die from crimes that we could have stopped with this bill. People will die while we are waiting for another crime bill.

Tell the folks back home that you voted this bill down because you wanted a better habeas corpus. Say you voted against it because you wanted a better exclusionary rule, or because you think we need to use coerced confessions—not police or prisons—to fight crime.

Say what you will. But the fact is this: We could have passed a tough anticrime bill today if the President and the Republicans in the Senate had wanted to do so.

Mr. President, I ask unanimous consent that assorted documents in support of the crime bill be printed in the RECORD.

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

LAW ENFORCEMENT SUPPORTS THE CRIME BILL

Law Enforcement support for the Crime Bill Conference Report has been overwhelming. Here is what the nation's largest police organization are saying:

Fraternal Order of Police: We "call on Congress to adopt, and for the President to sign, this bill. It is the toughest anti-crime legislation to emerge from Congress in recent memory, and should become law."

National Association of Police Organizations: "We believe that the Bill's positive response to the need for overall improvement in law enforcement far overshadows any possible disagreement over individual provisions. * * * As a significant body of law enforcement officers who risk life and limb daily to protect the American public, we urge you to enact this badly needed anti-crime legislation immediately."

International Association of Chiefs of Police: "The[] provisions in the Conference Report will benefit the public at large, as well as those who are charged to protect them * * * we support the Conference Report."

International Brotherhood of Police Officers: "America needs a crime bill now—in this session, passed by the Congress and signed by the President. * * * As the President of [IBOP], I urge you to adopt the conference report and pass this important legislation."

Police Executive Research Forum: "The Crime Bill provisions that mandate a waiting period between the purchase and receipt of a handgun and support for state and local law enforcement agencies * * * are signs to law enforcement that Congress is ready to help police do their jobs. * * * [T]he Crime Bill will advance law enforcement's commitment to protecting our nation's citizens. * * * PERF supports passage of this legislation. * * *

International Union of Police Associations: "[W]e recognize[] the real need for enactment of the Conference Committee version of the Crime Legislation and support it fully."

National Organization of Black Law Enforcement Executives: "The National Organization of Black Law Enforcement Executives is grateful to you and your colleagues for recognizing the necessity to propose the Crime Bill. NOBLE, an organization representing 2,500 law enforcement executives, who in turn, represent the populations in most major urban cities in our nation, is pleased to endorse this proposed legislation."

Mothers Against Drunk Driving: "Mothers Against Drunk Driving looks forward to the passage of [the Conference Report] and the implementation of the Drunk Driving Child Protection Act."

FRATERNAL ORDER OF POLICE,
Columbus, OH, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BIDEN: I have had the opportunity to review the contents of the compromise reached by the House and Senate conferees who met on November 24 regarding H.R. 3371, the Omnibus Crime Control Act of 1991. On behalf of the 230,000 members of the National Fraternal Order of Police (NFOP), the largest organization of law enforcement professionals in this country, I am pleased to advise you of our support for the conference agreement.

Clearly, the legislative process is the art of the possible triumphing over perfection. The NFOP certainly would have preferred certain language not presently found in the Conference agreement such as the Senate provisions on corpus reform, the "Police Officers' Bill of Rights," and semiautomatic assault weapons as well as the House language on "good faith" warrantless searches by police. However, the conference agreement also has much to recommend it, including the so-called "Brady" language on handgun purchases, reinstatement of the federal death penalty for a variety of federal crimes, the establishment of a police corps program, and the funding of vitally needed local anti-crime initiatives nationwide, just to name a few.

Those of us charged with enforcing the laws of this nation need good legislation to help us do our job, not endless finger-pointing and jockeying for some temporary partisan political advantage. Although the

NFOP is prepared to continue to work for enactment of legislation in the areas not adequately covered in the conference agreement, let us move forward on that which is attainable. Accordingly, I call on the Congress to adopt, and for the President to sign, this bill. It is the toughest anti-crime legislation to emerge from Congress in recent memory and should become law.

With kind personal regards, I remain

Sincerely,

DEWEY R. STOKES,
National President.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.,
Washington, DC, November 25, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing on behalf of the 135,000 rank-and-file police officer members of the National Association of Police Organizations ("NAPO"), to express our support for prompt enactment of the Crime Bill as reported out of conference on Sunday.

First, let me say that NAPO has followed the development of the Crime Bill closely during this congressional session and believes the version which has been reported out of Conference to be tough anti-crime legislation which goes a long way toward meeting the acknowledged need for substantial improvements in America's criminal justice and crime detection and prevention systems. While we do not agree with each and every provision of the Conference version, and especially regret the deletion in Conference of the Senate-passed Assault Weapons Ban and Law Enforcement Officers Bill of Rights, we believe that the Bill's positive response to the need for overall improvement in law enforcement far overshadows any possible disagreement over individual provisions.

Further, as we have said repeatedly in the past, we do not believe that so critical a national priority as the battle against crime should be mired in political partisanship. Hence, the sooner the current Crime Bill is enacted, the sooner the many reforms and innovations that it contains can be implemented.

As a significant body of law enforcement officers who risk life and limb daily to protect the American public, we urge you to enact this badly needed anti-crime legislation immediately.

Very truly yours,

ROBERT SCULLY,
President.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,
Arlington, VA, November 25, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: I have always felt it important that our federal legislators hear from representatives of the law enforcement community on critical issues facing the country in a clear and timely manner. It is out of this concern that I, as President of the International Association of Chiefs of Police, write to you at this vital time. Members of the Senate and House of Representatives have conferenced the Crime Bill and it is now awaiting ratification by both chambers in preparation for sending it on to the President for his signature.

The Conference Report addresses many issues of concern to the Law enforcement community. Some of these elements are reflective of IACP's longstanding legislative agenda and we are pleased to see them incorporated into this proposal. Key among them are: a national waiting period for the purchase of a handgun; expansions of death penalty provisions in federal law; additional funding support for state and local law enforcement; and, increased support for federal law enforcement efforts. The Conference Report also incorporates many salutary provisions such as anti-gang violence programs; rural crime initiatives; expansion of aid to victims of crime; establishment of funding for emergency crime areas; and, measures designed to protect our children from abuse.

The net effect of the changes of these provisions in the Conference Report will benefit the public at large as well as those who are charged to protect them.

As you know, Mr. Chairman, IACP has been on record as supporting the President's Crime Bill. It is important to note that we also have advocated other provisions not contained in that measure. While we support the Conference Report, we recognize that it does contain some elements that could be strengthened. We hope to have the opportunity in the months ahead to work with you and representatives of the Administration to address these issues.

I appreciate having this opportunity to share my views with you and look forward to working with you in the future on these and other issues of mutual concern.

Sincerely,

C. ROLAND VAUGHN III,
President.

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS,
Arlington, VA, November 26, 1991.

Hon. JOSEPH BIDEN,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN BIDEN: I am writing on behalf of the thousands of rank-and-file police officer members of the International Brotherhood of Police Officers (IBPO), to express our support for prompt enactment of the conference agreement to accompany H.R. 3371, the Crime Bill.

Throughout this session, both the Senate and the House of Representatives devoted considerable time and attention to developing proposals aimed at reducing crime in this country. Both the House and the Senate approved crime legislation (H.R. 3371 and S. 1241) by wide margins. Overall, we believe that the conference agreement attacks the substantive problems of crime in America by providing increased resources to the front lines, including state and local officers. Once enacted, we hope that the Congress will swiftly appropriate the $1 billion that Senator Biden's provision authorizes for state and local aid.

America needs a crime bill now—in this session, passed by the Congress and signed by the President. While the IBPO does not agree with each and every position to which the Conferees agreed, overall the bill is tough and fair. Faced with the prospect of no bill at all, there is no doubt that this crime legislation should be approved quickly.

Political shell games are of no use to the American people, who wish to remain safe in their homes, or to the professional law enforcement practitioners who fight crime in this country.

As the President of an organization that represents rank and file officers on the front lines in the war on crime and drugs, I urge you to adopt the conference report and pass this important legislation.

Sincerely,

KENNETH T. LYONS,
National President.

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO,
Alexandria, VA, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The International Union of Police Associations, I.U.P.A., AFL-CIO which represents over 40,000 working street level police officers and over 140 local police unions throughout the country, worked long and hard with your staff and the staff of the supporters of the current crime legislation in the House to achieve the best possible end result. We do support the final result.

We have some concerns with the Crime Bill as approved by the Conference Committee. A Police Officer's Responsibility Act on the Moran model meets a serious need in the effort to modernize and reform American policing; and the Police Corps seems to us to be wrong headed in its use of a corps of well meaning college students as a replacement or partial replacement for long term professional working cops. The Police Corps should be made of working professional cops. It should be designed to provide educational benefits to young people with a proven record of police work; not to attract college students who would otherwise be uninterested in police work to that career. We also have some concern about the lack of assault weapon protection in the final bill.

However, even with all these concerns, we recognized the real need for enactment of the Conference Committee version of the Crime Legislation and support it fully.

Sincerely,

ROBERT B. KLIESMET,
International President.

POLICE EXECUTIVE RESEARCH FORUM,
Washington, DC, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: On behalf of the members of the Police Executive Research Forum (PERF), I would like to thank you for your efforts on the Crime Bill. PERF members represent the largest jurisdictions in this country, serving more than 30 percent of the nation's population. They are overwhelmed by the crime-related violence and decay they see destroying their communities. We applaud attempts by you and your colleagues to do something about it.

The Crime Bill provisions that mandate a waiting period between the purchase and receipt of a handgun and support for state and local law enforcement agencies, in particular, are signs to law enforcement that Congress is ready to help police do their jobs.

It is true that PERF members do not support every provision of this comprehensive package, but on balance we believe the passage of this bill will advance law enforcement's commitment to protecting our nation's citizens. While there are issues raised by the Crime Bill that can be more adequately addressed in the future, PERF supports passage of this legislation and appreciates your efforts to meet law enforcement's needs.

Sincerely,

DARREL W. STEPHENS,
Executive Director.

NATIONAL NETWORK FOR
VICTIMS OF SEXUAL ASSAULT,
Arlington, VA, November 25, 1991.

Hon. JOSEPH BIDEN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to thank you for your help in ensuring that the crime bill conference report includes provisions important to victims of crime.

We are particularly grateful for your help in preventing House amendments to the Victims of Crime Act which would have made serious cuts in federal funding for crime victim assistance. Those cuts could have resulted in reduced services to victims of crime at a time when violent crimes against American women and children are at an all-time high.

We look forward to Congressional passage of the crime bill; and, to a more secure and stable future for crime victim assistance efforts as a result of your work.

Sincerely yours,

MARY ANN LARGEN,
Executive Director.

NATIONAL ORGANIZATION OF BLACK
LAW ENFORCEMENT EXECUTIVES,
Washington, DC, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The National Organization of Black Law Enforcement Executives (NOBLE), is grateful to you and your colleagues, for recognizing the necessity to propose the Crime Bill. NOBLE, an organization representing some 2,500 law enforcement executives, who in turn, represent the populations in most major urban cities in our nation, is pleased to endorse this proposed legislation.

There are issues contained in the Bill that we, along with other law enforcement organizations, wish could be modified, however, they are not sufficient to prolong the enactment of this much needed legislation.

Let me take this opportunity again, to thank you for your participation in our 15th Annual Conference in Philadelphia last August. Your stirring and informative remarks fell on attentive ears, and we consider ourselves to be your ally in the struggle for justice.

Sincerely,

CASSANDRA E. JOHNSON, J.D.,
Executive Director.

MOTHERS AGAINST DRUNK DRIVING,
Irving, TX, November 25, 1991.

Hon. JOSEPH H. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: Mothers Against Drunk Driving is pleased to note the inclusion of the "Drunk Driving Child Protection Act" as an element of the conference agreement on H.R. 3371. As you well know, this legislation, which enhances the penalties for drunk driving on federal property when a minor child is in the vehicle, was included in the Senate-passed anti-crime package as Title XVIII of S. 1241.

The Drunk Driving Child Protection Act will send a clear signal to the states as regards to their own penalties for drunk driving when minor children are involved. Drunk driving is a crime. Drunk drivers chose to commit this crime, but children who have no option but to get in a car with an impaired father, mother or guardian are its innocent victims. Once again, you have demonstrated leadership in proposing and passing legislation sensitive to the needs of the victims of the crime of drunk driving.

Mothers Against Drunk Driving looks forward to the passage of H.R. 3371 and the implementation of the Drunk Driving Child Protection Act.

Sincerely,

MILO KIRK,
President.

U.S. CONFERENCE OF MAYORS,
Washington, DC, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: Congratulations on shepherding a crime bill through the Conference Committee which will work both to prevent crimes from occurring in the first place and to strengthen and enforce the laws against those crimes which do occur. The bill includes several provisions of particular importance to cities, including the waiting period in handgun purchases, direct funding to cities for community policing, and an increased authorization for the enforcement block grant.

Typical of most compromises, the crime bill does not satisfy the needs of all parties. It does include, however, enough of the provisions included in the House and Senate-passed versions and called for by the Administration, that it should be enacted into law.

America's mayors urge the Congress to pass the conference report on the crime bill and the President to sign it. Should the President veto the bill, as he has indicated he will do, we urge the Congress to override that veto. Attached is a statement on the crime bill which our President, Boston Mayor Raymond Flynn, is issuing today.

Sincerely,

J. THOMAS COCHRAN,
Executive Director.

NATIONAL LEAGUE OF CITIES,
Washington, DC, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the 16,000 cities and towns represented by the National League of Cities, I would like to express NLC's support for the immediate passage of two provisions contained in the 1991 Anti-Crime Conference Report. One would require a five-day waiting and cooling-off period for handgun purchases. The other would call on the Attorney General to study the procedures followed in internal, noncriminal investigations of local law enforcement officers.

NLC believes that the Senate-passed handgun provisions contained in this legislation would provide a modest, yet critical step towards reducing the incidence of crime and violence that plagues cities and towns across the country. The House-passed study provisions would provide essential documentation of effectiveness and fairness of the policies and practices used to conduct noncriminal internal investigations of state and local law enforcement officers.

These provisions should be approved by the Congress and signed into law by President Bush before the Congress adjourns for the year.

Sincerely,

DONALD J. BORUT,
Executive Director.

NATIONAL WOMAN ABUSE
PREVENTION CENTER,
Washington, DC, November 25, 1991.

Senator JOSEPH BIDEN,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The National Woman Abuse Prevention Center would like to express our support of The Violent Crime Control and Law Enforcement Act of 1991, the "Crime Bill," which has just emerged from Conference Committee. We believe that the Conference Report takes some very strong measures that are urgently needed for increased protection and services for victims of domestic and sexual crimes.

We are particularly pleased with the Conference version of the amendments to the Victims of Crime Act removing the "cap" from the VOCA Fund, making the Crime Victims Fund a permanent account, and establishing a fine collection center which will aid in the collection of up to a billion in federal fines going to the Fund. In addition the bill strengthens the consideration of "Victim Impact Statements" at trial and offers victims the chance to speak at the sentencing of their assailant.

In particular, we are encouraged by the inclusion of the Brady Bill in the Conference Report. As you know, hand guns play a significant factor in the three to four thousand domestic violence deaths annually. The Brady Bill is one small, but critical, step toward curbing that violence.

We were disappointed that Senator Biden's Violence Against Women Act, which we believe is critical to improved safety and protective services for battered women and sexual assault victims across this country, could not be included in the Crime Bill. We know his commitment to that bill remains strong, and look forward to its continued progress. And although neither our organization individually, nor the Domestic Violence Education and Legislation Coalition, the coalition of national and state domestic violence organizations, support the death penalty, we believe that the prevention provisions and the increased penalties under the Crime Bill are very strong, and we support the Conference Report for that reason.

If there is anything we can do to be of assistance, please let us know.

Sincerely,

MARY PAT BRYGGER,
Executive Director.

MIDNIGHT BASKETBALL LEAGUE INC.,
Hyattsville, MD., November 25, 1991.

Re section 1831 of the House version of the Crime bill.

Hon. JOSEPH R. BIDEN,
U.S. Senate, Judiciary Committee, Washington, DC.

DEAR SENATOR BIDEN: The bi-partisan sponsorship of this bill is reflective of the wide-spread support for the concept and goals of the Midnight Basketball League, a sports linked life skills training program.

The league was named by the President as one of the "Thousand Points of Light." The National Association of Midnight Basketball Leagues (NAMBL) has been established to insure a uniform national network in order to be attractive to national corporate sponsors.

The NAMBL expects to match the federal funding dollar for dollar in order to assure the viability of the public-private partnership at the national level.

The number of cities joining the Association is increasing at an accelerated rate.

This letter requests your support in the continuing struggle to slow down the transi-

tion of many of our young adults from high-risk to the Criminal Justice System.

Very truly,

G. VAN STANDIFER,
President.

DEPARTMENT OF JUSTICE,
New Orleans, LA, November 26, 1991.

Hon. J. BENNETT JOHNSTON,
U.S. Senator,
Washington, DC.

DEAR BENNETT: I write to you because I understand that the House will shortly consider the conference report on H.R. 3371, the crime bill. I oppose the habeas corpus provision passed by the Senate, which embodies the Administration's proposal, and support the House habeas corpus provision, which is contained in the conference report. I urge you to do the same.

I am a member of the Emergency Committee to Save Habeas Corpus, which was formed to oppose the habeas corpus provision in S. 1241, the Senate crime bill. You should receive a separate letter from the Emergency Committee on this issue.

My reasons for urging you rejection of the Senate habeas corpus proposal and your support of the conference report are set forth in the attached letter that I sent to Don Edwards, Chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights.

As Attorney General, I am convinced and I hope you will agree with me on these three issues. First, habeas corpus must be reformed. Second, habeas corpus is a fundamental right that must be protected. Third, the House habeas provision best meets these goals. The Administration proposal contained in the Senate bill, by contrast, would actually increase litigation, delay finality and dispense with fundamental rights.

If you have any questions about this issue, please feel free to call on me.

Sincerely,

WILLIAM J. GUSTE, Jr.,
Attorney General.

NOVEMBER 26, 1991.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SPEAKER: I am writing to express my strong support for the habeas corpus reform provisions contained in the Conference Report to H.R. 3371. These provisions significantly improve and streamline the habeas process while retaining the right to federal review of unconstitutional state court convictions. Contrary to the contentions of the Administration, this bill is not more liberal than current law on habeas corpus.

As you know, I was the Attorney General of the State of Texas for eight years. I was known as a tough law enforcement officer. I was a strong advocate of the death penalty. I believe that the criminal justice system should function efficiently. Nevertheless, I feel that H.R. 3371, not the Administration's more extreme approach, is the appropriate solution to the problems with the process. In a word, this legislation would reform habeas corpus; it would not end it.

There is clearly a need for reform, especially with respect to capital cases, but I believe that H.R. 3371 addresses the real problems with the present system; inadequate representation by trial counsel, no time limits on petitions, successive petitions, and retroactive applications of new rules of law. This reform can and must be accomplished without sacrificing the right to habeas corpus review, which is one of our most basic protections against the imprisonment or execution of innocent persons.

Because of these concerns, I have joined with more than 90 others, many of whom are present or former prosecutors like myself, in forming the Emergency Committee to Save Habeas Corpus. I think I can safely say that all of us want to fight crime. We all agree that we, and our elected representatives, must not squander our precious constitutional rights in our zeal to appear "tough on crime."

Sincerely,

JIM MATTOX,
Attorney and Counselor.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, November 27, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: After reviewing the contents of the recent compromise reached by the House and Senate conferees, I, as president of the National Sheriffs' Association, would like to inform you that the sheriffs of this nation wish to go on record as supporting the 1991 Crime Bill.

We are aware that the Conference Report addresses many issues of great concern to the law enforcement community. Among them include: the national waiting period for the purchase of a handgun; additional funding support for state and local law enforcement; expansion of the death penalty provision in federal law; and, the rural crime initiatives.

Additionally, it is our opinion that the Bill is negligent in other areas, such as: provisions on habeas corpus reform, semi-automatic assault weapons, as well as the language on "good faith" warrantless searches by police.

This bill is the toughest anti-crime legislation to surface in many years. We are convinced it should become law.

Respectfully,

MARSHALL E. HONAKER,
President,
National Sheriffs' Association.

Mr. THURMOND. Mr. President, I rise in strong opposition to this conference report on the crime bill. This bill is a travesty which does more to advance the interests of convicted criminals than it does to protect victims of violent crime. The Attorney General has recommended that this sham bill be vetoed and President Bush has written the Senate Republican leader stating his intention to veto the measure if it ever reaches his desk.

The average American today is no stranger to the volume of violent crime ravaging our cities and towns. Every citizen knows that a principle reason for the growth of violence is that our criminal justice system has become soft on heinous criminals, failing to impose swift, effective punishment. Offenders who commit violent offenses no longer expect to be held accountable for their actions. Incredibly, this feeble conference report continues this trend by siding with the criminal.

Over the last several years, many of us have been engaged in an ongoing effort to redress these inadequacies in the criminal justice system. This effort resulted in the passage of a Senate bill and a House bill containing proposals on the death penalty, habeas corpus reform, and the exclusionary rule. Yet, these proposals were substantially different in the two bills and, unbelievably, a number of provisions in the bills expanded the rights of criminal defendants.

Prior to convening the crime conference, I had expressed concerns about the ratio of Democrats to Republicans. Frankly, I felt that there was an effort to stack the deck in favor of death penalty opponents and in favor of a weak crime bill. Unfortunately, I was correct. The conference was unfairly balanced, and rigidly scripted by the majority, where the views of Republican conferees were ignored. Although this report is being called a compromise by some, it is no such thing. With remarkable consistency, the Democrat controlled conference committee rejected the tougher option on these major points and opted instead for provisions that handcuff law enforcement and reduce the safety of law abiding citizens. While I truly want a crime bill, I will not accept a bill which expands the rights of criminals. This bill is not an anti-crime bill. It is a procriminal bill.

HABEAS CORPUS

For example, the most troubling provision in this bill is the habeas corpus language. Although the Senate passed tough habeas corpus reform by a vote of 58 to 40 as part of S. 1241, this conference report adopts the liberal House language on this subject. It systematically reverses over 14 Supreme Court decisions favorable to law enforcement and, according to the Department of Justice, will throw the prison doors wide open for thousands of dangerous criminals throughout the Nation. Standing alone, this provision is enough to compel the Senate to reject this conference report.

Those who support this report have stated that the habeas provision in the Senate bill is tough. Yet, they claim the conference report still limits appeals. This is not correct. Without question, this provision expands the rights of death row inmates. This death row inmates' wish list is opposed by President Bush, the Attorney General of the United States, the National District Attorneys Association which represents our city and county prosecutors, the State attorneys general, the National Association of Attorneys General, the Conference of Chief Justices, numerous law enforcement organizations, and crime victims groups.

Thirty-one State attorneys general, 16 Republicans and 15 Democrats, recently wrote President Bush urging him to protect the American people and veto any bill which contains this habeas corpus proposal. They stated that any bill containing this weak proposal, and I quote: "cannot be described accurately as an anti-crime bill but would instead be a pro-criminal

bill and particularly a pro-convicted murderer bill." We must not ignore and dismiss out of hand the concerns of these law enforcement officials who clearly understand the devastating and adverse effect of this conference report.

Mr. President, I strongly concur with their assessment. There are currently over 2,500 individuals on death row. Yet, since 1972, only 159 brutal murderers have had their sentences carried out. This is due to the continued abuse of habeas corpus law by the death row inmates and their liberal lawyers who are set on eliminating the death penalty de facto.

DEATH PENALTY

Mr. President, although this conference report sounds tough, it is not. Another example of this is the death penalty. Although the report authorizes the death penalty for over 50 Federal offenses, the trial procedures make it extremely unlikely that the death penalty would ever be imposed. Furthermore, the habeas proposal contained in this report renders the death penalty meaningless since virtually no sentence will be implemented. In addition, the report rejects a Senate passed provision which made murders committed with a firearm a Federal death penalty offense.

EXCLUSIONARY RULE

The House crime bill, as well as the President's bill, responded to some of the serious problems caused through application of the exclusionary rule. All too often in violent crime and drug cases, evidence is excluded at trial simply because the law enforcement officer innocently violated search and seizure rules. The House passed provision codifies and expands upon the good faith exception to the exclusionary rule as embodied in U.S. versus Leon. It provides that when an officer acts in good faith compliance with the fourth amendment, any evidence obtained therefrom will be admissible as evidence in a criminal trial.

The conference report rejects this important measure and instead rolls back court decisions to the detriment of law enforcement. It substantially narrows the good faith exception to the exclusionary rule. This provision handcuffs law enforcement in their efforts against criminals. It is yet another provision which expands the rights of criminals.

ADMISSABILITY OF CONFESSIONS

Unbelievably, this report contains a board provision which mandates automatic reversal of criminal convictions based on improper admission of a defendant's statements or confession at trial. This new rule applies even in cases where it is shown beyond a reasonable doubt that the error was a harmless error and could not have affected the outcome of the case. It overturns the Supreme Court case of Arizona versus Fulminante which correctly allows the "harmless error" rule to apply to confessions by criminals. According to the Department of Justice, the result of this pro-criminal provision will be the release of an untold number of murderers and other violent criminals. The decision of the conference to include this measure in the report reflects an arbitrary determination on the part of liberal members to free criminals on the basis of technicalities.

SEXUAL VIOLENCE AND VICTIMS' RIGHTS

This report also rejects several provisions aimed at fighting sexual violence and increasing victims' rights. For example, this report rejects a proposal which increases the penalties for repeat rapists and child molesters. In addition, the House bill contained mandatory restitution requirements for victims of rape, child molestation, sexual exploitation, and other crime victims. The Senate bill contained mandatory restitution requirements for all crime victims. The conference report rejects both of these measures. Incredibly, this report also drops language which required HIV testing for Federal sex offenders with disclosure of the test results provided to the victim. Apparently, the privacy of an accused rapist is more important to this report's advocates than the peace of mind of a rape victim.

Mr. President, the Republicans only recently saw the conference report. It is over 500 pages long. The report has undergone numerous changes since the conference last met and contains provisions which were in neither the House nor the Senate bill. Yet, a cursory review of this measure reveals numerous other troublesome provisions which coddle criminals. For example, the bill includes a measure which will require treatment on demand for prisoners and reduces their sentence for participating. It mandates that the Department of Justice consider facilitating the interests of violent criminals by incarcerating them closer to their home. Numerous mandatory minimum penalties for serious offenses such as selling drugs to children and violent firearm crimes have been stripped from the bill. In addition, the conference report weakens measures passed by both bodies aimed at fighting terrorism. Incredibly, it also subjects individual law enforcement officers and their agencies to Federal lawsuits for violating criminals' rights. How can anyone claim this is a tough crime bill?

In closing, this so called crime bill conference report is a travesty which undermines the interests of law enforcement, prosecutors and victims. It makes promises it cannot deliver on and virtually eliminates the death penalty. It sounds tough, but it isn't. Although this bill contains many provisions which I strongly support, these provisions cannot overcome the damage the rest of the bill does to our Nation's criminal justice system.

The advocates of this liberal, pro-criminal bill will argue that they are supporting a tough crime bill. They will claim to be spending more money on law enforcement while failing to provide a means to come up with the $3 billion it promises to them. The irony here is that, according to the Attorney General, Congress failed this year to fully fund the President's budget for law enforcement, slashing it by $472 million.

This bill should be seen for what it is, a travesty. It expands the rights of criminals at the expense of the law abiding, the prosecutors, law enforcement and crime victims. The American people are demanding that the Congress pass real reform. Anything less is not acceptable. If this bill passes, the only people celebrating will be death row inmates and other violent criminals. A vote in favor of this report is a vote against the death penalty. A vote in favor of this bill is a vote against the law abiding and victims of crime.

The American people are calling for a tough crime bill which punishes those who choose a life of crime. This conference report is anything but that. For this reason, and the other reasons I have mentioned, it must be rejected.

Mr. President, I ask unanimous consent that numerous statement and letters expressing opposition to this conference report be made a part of the record immediately following my remarks. These letters include a letter from President Bush, a letter from Attorney General Barr, 31 State attorneys general and numerous prosecutors.

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

[From the Washington Times, Nov. 27, 1991]

* * * AND ON CAPITOL HILL

The tale of Henry "Little Man" James has gripped the nation's capital like few others. "I feel like killing somebody," he told his companions, who related the story to police. Police say he then went on to do just that, opening fire with a 9mm handgun and killing Patricia Diann Lexie instantly.

The police caught him, but it will hardly matter. This week in Washington a House and Senate conference committee agreed to an "Omnibus Crime Bill." Although it purports to be something different, the bill perpetuates the criminal justice status quo in this country—ensuring that people who commit crimes like the one Little Man is accused of never feel the sting of society's uitimate sanction, capital punishment.

The major issue of the crime bill has been reform in habeas corpus, the process by which capital felons appeal state death sentences in federal courts. As it now stands, convicted murderers have numerous opportunities to appeal their conviction or sentence. President Bush and congressional conservatives wanted to reform the process so that a convicted murderer would have just two fair shots at a federal appeal. According to the president's plan, originally passed by the Senate, a capital felon could appeal his conviction once on technical grounds and then again on the basic question of guilt or innocence.

But the final bill actually liberalized habeas corpus procedures. It tosses out 14 Supreme Court cases that have already imposed marginal limitations on death-penalty appeals. It allows serial appeals; it bars state courts from appointing counsels to defendants in capital cases, requiring instead that lawyers be appointed by criminal rights advocates; and it permits confessed and convicted murderers to go free if there is a technical flaw in their confession, even if the independent evidence of guilt is overwhelming.

Some Democrats, nonetheless, are trying to claim that their bill proves they are tough on crime and Mr. Bush is not. In a fatuous political provocation, the Democrats used the bill to add 50 new crimes to the list of federal capital offenses. "Although this bill purports to permit imposition of the death penalty for several new Federal offenses," Mr. Bush wrote to Sen. Bob Dole Monday, "it adopts procedures that virtually ensure the death penalty will never be imposed."

Cold-blooded murderers deserve to die. Mr. Bush shouldn't stop emphasizing this point or struggling to reestablish the legitimacy of capital punishment in the American system of justice. Capital punishment not only serves the practical purpose of permanently removing dangerous criminals from the streets, it reaffirms our faith in the moral order that makes civilized society possible. When a nation's elite loses the political will and moral courage to protect the lives of innocent people by imposing a proportional and just punishment on murderers, life becomes cheap.

If the proponents of the Omnibus Crime Bill want to know just how cheap, they can find out this evening when the shadows begin spreading across the city. They should pick any direction and try walking out 10 or 12 blocks from the Capitol, alone. Then they should remember that the late Patricia Dlann Lexie was out one evening last week in a car, with her husband by her side. She at least had some reason to think she was safe.

THE WHITE HOUSE,
Washington, DC, November 25, 1991.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate, Washington, DC.

DEAR BOB: Since March, I have been calling on the Congress to pass a tough crime bill that will remove the handcuffs from law enforcement and end needless delays in the criminal justice system. For too long, the scales of justice have been tipped in favor of criminals instead of law-abiding Americans. The American people want a crime bill that will make the system tougher on criminals than it is on law enforcement and crime victims.

After months of delay, the Congress is now presented with a conference report drafted in the last hours of this session. Once again, just as they did last year, Democrat conferees from the Senate and House have demonstrated that they are willing to overlook the will of their colleagues and the American people. Clearly, the American people deserve better.

The crime bill produced by the Democrat-controlled conference is unacceptable. The bill rejects many of the primary goals the Administration set forth as necessary for an acceptable crime bill. One essential goal of our proposal is to end frivolous post-appeal challenges brought by convicted criminals, particularly death row inmates, through meaningful habeas corpus reform. By overturning critical Supreme Court decisions that have reduced the abuse of habeas corpus, the conference bill actually weakens current law by expanding a criminal's ability to frustrate the system.

Another goal of the Administration's bill is to ensure that criminals do not go free on legal technicalities when a police officer is acting in good faith. This conference report does just the opposite. Again, it retreats from current law by throwing out court decisions that recognize the legitimacy of such a good faith exception to the exclusionary rule.

Finally, although this bill purports to permit imposition of the death penalty for several new Federal offenses, it adopts procedures that virtually ensure the death penalty will never be imposed.

I will not accept any effort by the Congress to turn the clock back on the progress we have made in the courts on criminal justice reform. If this bill is presented to me, I will veto it and insist that Congress pass a crime bill that will strengthen our criminal justice system.

Sincerely,

GEORGE BUSH.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, November 25, 1991.

Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR MR. MINORITY LEADER: I join men and women of law enforcement around the country and victims of crime in voicing my strenuous objections to the so-called "crime bill" reported by the House and Senate conferees this weekend. While law enforcement groups and victims of violent crime cry out for the Congress to move forward aggressively on criminal justice reform, the conferees now propose that we take a significant step backwards. The proposed legislation actually overrules several recent Supreme Court decisions favorable to law enforcement. This conference report does more for those convicted of crimes than it does for those victimized by them.

The American people know that our criminal justice system is failing because convicted criminals are able to escape just punishment through endless delays and repetitive technical legal maneuvering. This abuse has deprived our criminal justice system of any finality: convicted criminals can perpetually reopen and relitigate their cases even when their appeals have been completed and when there is no question as to their guilt. The guilty thus avoid punishment by filing frivolous habeas corpus petitions that drag on for years, consume valuable law enforcement resources, and reopen the wounds of victims and survivors. State law enforcement agencies demand relief. And yet, the conferees now propose that we actually create broad new avenues and new loopholes by which convicted criminals can exploit the system and evade punishment. The conferees propose to make the current situation worse by: (1) overruling certain reasonable limitations recently established by the Supreme Court on successive habeas corpus petitions; (2) imposing substantial costs on the states to fund these frivolous challenges while offering no prospect of finality and no relief to their already overburdened systems; and (3) offering criminals wider opportunities for continued frivolous delays than are allowed even under existing law.

The conferees also propose to step backwards on reasonable reform of the exclusionary rule. By rolling back court decisions which allow for the admissibility of evidence when police have acted in good faith, the conference report will handcuff police and increase the number of criminals who escape justice on legal technicalities.

Finally, in authorizing $3 billion for law enforcement programs the bill offers only a mirage. Authorization of this funding when there is no appropriation is essentially meaningless. The irony here is that the Congress failed this year to fully fund the President's budget request for law enforcement, slashing it by $472 million—a 64% cut in the increases sought by the President. Dangling the empty promise of more grant programs before the eyes of state law enforcement cannot camouflage a weak crime bill.

In sum, the conferees have let down law enforcement, let down victims, and let down those in Congress who voted for tough anti-crime measures. This "whirlwind weekend conference" cannot obscure the fact that the Congress has again failed to deliver on serious criminal law reform. If this bill comes to the President's desk, I will urge him to veto it.

Sincerely,

WILLIAM P. BARR.

NATIONAL DISTRICT
ATTORNEYS ASSOCIATION,
Alexandria, VA, November 25, 1991.

Re. Vote on Crime Bill

Hon. GEORGE J. MITCHELL,
Hon. ROBERT DOLE,
U.S. Senate, Washington, DC.
Hon. THOMAS S. FOLEY,
Hon. ROBERT H. MICHEL,
U.S. House of Representatives, Washington, DC.

DEAR GENTLEMEN: The American people have been mugged again—this time by the leadership of the United States Congress. The nation's prosecutors strongly oppose the so-called "crime control" bill approved in Sunday's conference and urge both House and Senate to reject it. This bill does far more to advance the interests of convicted criminals than it does to protect victims and law-abiding citizens. In fact, passage of this bill is tantamount to handing the jail house keys to thousands of convicted state and federal prisoners.

The bill advances the rights of convicted criminals by providing golden opportunities for them to use new case law to overturn old convictions. This is accomplished through the repeal of several Supreme Court precedents in the habeas corpus provision approved by the conference. It also provides unworkable counsel standards in death penalty cases that violate the most basic tenets of federalism.

The conference committee in nearly every instance chose the weakest provisions with respect to law enforcement. It rejected the House limitations on application of the exclusionary rule. It overturns the Supreme Court decision in *Arizona* v. *Fulminante* through a provision that may have far reaching effects and which was not even the subject of hearings. Finally, the conference chose the weaker provisions on death penalty offenses and procedure.

It is a sad day when the will of American people to enact tougher criminal laws is so completely thwarted. We urge you to reject this poor excuse for a crime control bill.

Sincerely,

THOMAS J. CHARRON,
President.

NOVEMBER 21, 1991.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As the chief legal or law enforcement officers of our states, we

are writing to express our alarm at the habeas corpus provisions contained in H.R. 3371, as it was passed by the U.S. House of Representatives, and to urge you to veto any legislation containing those provisions.

We need legislation that will support law enforcement, promote finality of judgment, and ensure fairness to crime victims and their survivors. In spite of that need, a bare majority of the House of Representatives has passed habeas corpus provisions that would have the opposite effect. Those provisions are so inimical to law enforcement, are so unfair, and would have such a devastating effect on the interests of victims and survivors of violent crimes, that we urge you to veto any so-called anticrime bill containing any of the principal provisions relating to habeas corpus that are now found in H.R. 3371.

One of those provisions would effectively repeal the non-retroactivity doctrine of *Teague* v. *Lane*, 489 U.S. 288 (1989, and related Supreme Court decisions, thereby drastically undermining finality of judgment and increasing relitigation and delay manyfold. The House bill accomplishes this result by defining more narrowly than *Teague* the class of "new rules" that do not apply to cases on habeas review, and thus it provides more grounds for litigation after the conviction is final. The *Teague* doctrine, however, acknowledges that federal habeas corpus is not intended "to provide a mechanism for the continuing reexamination of final judgments based upon later emerging legal doctrine."[1]

Without the *Teague* doctrine, and under the House provision, Robert Alton Harris, who brutally murdered two teenagers in 1978 near San Diego, California and who confessed seven times, would be able to perpetuate his case under federal habeas corpus.[2] This House provision also overturns *Buter* v. *McKellar*.[3] These are only two examples, as any effort to undercut *Teague* would affect capital and non-capital judgments in nearly every state. Moreover, *Teague* doctrine must be viewed in the context of *Griffith* v. *Kentucky*, 479 U.S. 314 (1987). *Griffith* holds that "new rules" are always applied retroactively at any stage during direct review, i.e., before the conviction becomes final. The Senate already rejected a measure which would have undermined the *Teague* doctrine. In the event the conferees fail to follow the Senate lead, we urge you to veto any bill containing any provisions, such as those in H.R. 3371, which reverse the *Teague* non-retroactivity doctrine in any way.

Another provision of H.R. 3371 would impose draconian requirements concerning appointment, qualification, performance, and compensation of counsel in capital cases. Those provisions are so onerous, are so contrary to basic notions of federalism, and depart so significantly from what the Constitution requires, that they are obviously an attempt to indirectly impede, obstruct, or abolish capital punishment. For example, under H.R. 3371, if the state fails to satisfy each of the counsel requirements, three harsh penalties are imposed: (1) an indefinite stay of execution is granted; (2) the traditional presumption of correctness afforded to state court findings of fact is eliminated; and (30 the presentation and consideration of new claims in federal court in disregard of the well-established exhaustion and procedural default doctrines is permitted. H.R. 3371 therefore encourages "sandbagging" of state courts, disrespects comity and federalism interest, and promotes more litigation on whether the state has satisfied each of the technical counsel requirements.

In contrast, the Senate-passed legislation rejected a compulsory approach on the states and allows states to opt-in to the reforms. In this manner, the Senate bill contains the recommendation of the Powell Committee which recognized that "it is more consistent with the federal-state balance to give the States wide latitude to establish a mechanism" for the appointment of counsel.[4] In the unexpected even that any state, which opts in to the reforms, failed to promulgate an adequate appointment of counsel mechanism, the Powell Committee left that final determination with the federal judiciary.[5] We urge you to veto any so-called anti-crime bill which contains extra constitutional requirements concerning counsel in any case or class of cases, such as those provisions found in H.R. 3371.

Finally, in the name of placing reasonable limits on "successive petitions," H.R. 3371 instead promotes more, not less, litigation. H.R. 3371 is broader than the Senate-passed legislation, which is based upon the Powell Committee recommendation, because the House measure includes vague language permitting successive petitions concerning "the validity of the sentence under Federal law."

There is nothing in the habeas corpus provisions of H.R. 3371 that is favorable to any interest other than convicts' interests. Any bill containing the provisions discussed above cannot be described accurately as an anti-crime bill but would instead be a pro-criminal bill and particularly a pro-convicted murderer bill. The habeas corpus provisions contained in H.R. 3371 stand in stark contrast to those which the Senate passed in July. We do wholeheartedly support the habeas corpus provisions contained in Title XI of S. 1241. Those provisions, unlike the ones contained in H.R. 3371, would promote finality, fairness, and prompt resolution of litigation.

There are some other provisions in H.R. 3371 and in S. 1241 which would aid law enforcement and promote the interests of victims and survivors of violent crime. However, there are no provisions in either bill, and none that the Conference Committee could report out, that would justify signing into law any bill containing habeas corpus provisions similar to those contained in H.R. 3371.

We appreciate your interest in this matter and hope that, if it becomes necessary, you will exercise your veto power to protect the American people from pro-criminal legislation such as the three provisions discussed above relating to habeas corpus that are contained in H.R. 3371.

Sincerely,

Daniel E. Lungren, Attorney General, California; Mike Moore, Attorney General, Mississippi; Don Stenberg, Attorney General, Nebraska; Robert T. Stephan, Attorney General, Kansas; Marc Racicot, Attorney General, Montana; Ernest D. Preate, Jr., Attorney General, Pennsylvania; Grant Woods, Attorney General, Arizona; Charles E. Cole, Attorney General, Alaska; Elizabeth Barrett-Anderson, Attorney General, Guam; Joseph B. Meyer, Attorney General, Wyoming.

Linley E. Pearson, Attorney General, Indiana; Mary Sue Terry, Attorney General, Virginia; Robert J. del Tufo, Attorney General, New Jesey; John P. Arnold, Attorney General, New Hampshire; Dave Frohnmayer, Attorney General, Oregon; Gale A. Norton, Attorney General, Colorado; Frankie Sue del Papa, Attorney General, Nevada; James H. Evans, Attorney General, Alabama; Ken Elkenberry, Attorney General, Washington; Mark W. Barnett, Attorney General, South Dakota; Jeffrey L. Amestoy, Attorney General, Vermont; Michael J. Bowers, Attorney General, Georgia.

Larry Echohawk, Attorney General, Idaho; Richard N. Palmer, Chief State's Attorney, Connecticut; Richard P. Ieyoub, Attorney General-elect, Louisiana; Mario J. Palumbo, Attorney General, West Virginia; Lacy H. Thornburg, Attorney General, North Carolina; J. Joseph Curran, Jr., Attorney General, Maryland; T. Travis Medlock, Attorney General, South Carolina; Charles M. Oberly, III, Attorney General, Delaware; Dan Morales, Attorney General, Texas.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, PA, November 25, 1991.

Re: Habeas Corpus Provisions of H.R. 3371

DEAR MEMBER OF CONGRESS: Today you will be asked to vote on a conference report on the Crime Bill. We urge you to vote to reject this proposal.

From the states' perspective, the most important provision in this report is the reform of federal habeas corpus. This report does nothing to further that reform and is, in effect, a step backwards. The report essentially reverses a major Supreme Court ruling, *Teague v. Lane*, which discourages relitigation, successive petitions and delay, and encourages prosecutors and the public to believe that there is finality in state criminal court judgments. This report language turns back the clock. It gives the defendant new grounds for an appeal and does nothing to end frivolous and successive appeals which plague the criminal justice system and which this crime bill was intended to rectify.

The very reasons for our opposition to H.R. 3371 are the reasons we support S. 1241. We support this Senate habeas corpus reform measure because it is wrong for our government to allow a seemingly endless series of federal court appeals from state criminal convictions by murderers. The Senate bill would bring finality to those appeals; we support these changes.

This conference report is not a strong "anti-crime bill." This proposal favors the convicted murderer, revictimizes the survivors of a murder victim, and penalizes the states. We urge you to reject it.

We attach for your information a recent letter to the President signed by 31 state Attorneys General, which further explains our position.

Very truly yours,

Ernest D. Preate, Jr., Chair, Criminal Law Committee, National Association of Attorneys General.

Robert J. Del Tufo, Attorney General of New Jersey, Vice Chair, Criminal Law Committee, National Association of Attorneys General.

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[1] *Sawyer v. Smith*, 110 S. Ct. 2822, 2827 (1990).

[2] *Harris* v. *Vasquez*, No. 90-55402,—F.2d—(9th Cir. Aug. 21, 1991).

[3] 110 S. Ct. 1212 (1990).

[4] Judicial Conference of the United States, Report and Proposal of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, at (Aug. 23, 1989).

[5] *Id.*

NOVEMBER 15, 1991.

Hon. GEORGE J. MITCHELL.
Hon. JOSEPH R. BIDEN, JR.,
U.S. Senate, Washington, DC.
Hon. THOMAS S. FOLEY,
Hon. JACK BROOKS,
U.S. House of Representatives, Washington, DC.

GENTLEMEN: As elected Democratic prosecutors from across the nation representing tens of thousands of crime victims, we call upon you for help. For months we have supported a workable crime bill designed to help the crime fighters and victims, not the criminals. We managed to get such a bill through the Senate, only to have it eviscerated in the House of Representatives. As state and local leaders of the Democratic Party, it is hard to explain to our constituencies why our Democratic leaders in Congress continually hamstring our efforts to combat crime.

The House Bill (H.R. 3371) contains several provisions which are repugnant to law enforcement efforts. If these provisions remain in the crime bill, prosecutors of both parties nationwide will ask the President to veto it, and we have every indication that the President will do so. To make the bill palatable, we urge the conference committee to adopt the Senate version, and specifically:

(1) Strike the language in Title XXI, Section 1104 that overturns existing retroactivity standards as defined in Teague v. Lane, 489 U.S. 288 (1989) and Butler v. McKellar, 110 S. Ct. 1212 (1990). The practical effect of this section would be to allow state prisoners much greater latitude in applying new legal precedents to overturn old convictions.

No conviction would ever become final. It would further aggravate the already critical problems of delay and abuse in capital cases and continue to undermine the faith of the American people in the criminal justice system.

(2) Strike or substantially modify the counsel standards for capital cases in Section 1105 of Title XI. These standards are unworkable and violate the most basic tenets of federalism. The proposal would bar state court judges from appointing counsel in capital cases. The power to appoint would be placed either in a state-wide defender organization, a death penalty resource center, or a committee of lawyers appointed by the highest court in the state. The qualifications for death penalty lawyers, beginning with two lawyers at the trial stage and on through certiorari in the U.S. Supreme Court, are so stringent that the pool of eligible counsel would be so limited as to thwart and delay death penalty litigation, not improve it. In addition, the appointment of counsel provision appears to interfer with state's rights, where eighty percent of all cases are litigated. Apparently no thought has been given to the financial obstacles in funding such an approach.

(3) Strike the language in Section 1106 that allows successive federal habeas petitions if proven facts undermine a court's confidence in the "validity" of a capital sentence under federal law. This provision is ambiguous and is an invitation to procedural abuse.

(4) Institute the same time limits and statutes of limitations for federal habeas corpus proceedings approved by the Senate in July.

In summary, these few provisions in the House bill are so damaging that we prosecutors would prefer no crime bill unless changes are made. All of us have a lot at stake in this matter. We are very close to having a good crime bill of which persons on both sides of the aisle can be proud. A lot of study, research, and effort has been expended and should not be wasted. On a more partisan note, we, as local Democratic leaders believe in the power of good government to improve and protect the quality of each citizens life, regardless or race, creed, color or socio-economic status.

Pervasive, invidious, violent crime, which strikes disproportionately at the poor and minorities is the single greatest threat to our citizens lives. Hopefully our Democratic Party will send side by side with our law-abiding citizens—*not* with convicted criminals.

Thank you for considering our views.

Sincerely,

Robert H. Macy, District Attorney, Oklahoma City, OK; Edwin L. Miller, Jr., District Attorney, San Diego County, San Diego, CA; Carl K. Kirkpatrick, District Attorney General, Kingsport, TN; Newman Flanagan, District Attorney, Suffolk County, Boston, MA; Robert E. Colville, District Attorney, Allegheny County, Pittsburgh, PA.

Michael P. Barnes, Prosecuting Attorney, St. Joseph County, South Bend, IN; William C. O'Malley, District Attorney, Plymouth County, Brockton, MA; William L. Murphy, District Attorney, Richmond County, Staten Island, NY; William E. Davis, County Attorney, Scott County, Davenport, IA; Arlo Smith, District Attorney, San Francisco County, San Francisco, CA; Arthur C. Eads, District Attorney, Bell County, Belton, TX.

Robert L. Deschamps, County Attorney, Missoula County, Missoula, MT; Stephen D. Neely, County Attorney, Pima County, Tucson, AZ; Danny E. Hill, District Attorney, Potter County, Amarillo, TX.

CONFERENCE OF CHIEF JUSTICES,
November 6, 1991.

Hon. STROM THURMOND,
U. S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THURMOND: I am writing on behalf of the Conference of Chief Justices to ask your support for adoption of the Senate habeas corpus provisions during the upcoming House-Senate Conference on the Omnibus Crime Control Act of 1991. The Senate provisions represent true reform of habeas corpus; the House provisions do not.

The Conference has expressed its position on habeas corpus reform in a number of resolutions over the last several years, the most recent having been adopted at the Conference's Forty-Third Annual Meeting in Philadelphia on August 8, 1991.

I enclose copes of the several resolutions for your consideration. As you will note, the resolutions highlight the Conference's support for the recommendations of the Powell Committee and for the preclusive effect of a full and fair adjudication of a prisoner's habeas claims by a state court.

The August 1991 resolution reaffirms the Conference's "long standing position in support of limiting federal habeas corpus in death penalty cases when state proceedings have rendered a full and fair adjudication of the claim." The resolution also makes clear that the Conference "considers the language of the Senate Judiciary Committee 'full and fair' standard as including a determination by the federal courts of whether the claim was (1) decided on the merits, (2) met a minimum standard of reasonableness, and (3) conformed to federal procedural requirements." Finally, the resolution states that the Conference expresses no opinion on any other parts of the Omnibus Crime Control Act of 1991.

I respectfully request your favorable consideration of the Conference's position and urge you to appoint to the Conference members who are serious about habeas corpus reform. If you should desire further information on the matter, please do not hesitate to call on me.

Sincerely,

HARRY L. CARRICO,
Chairman, Committee on State-Federal Relations.

CITIZENS FOR LAW AND ORDER, INC.,
Oakland, CA, November 26, 1991.

STATEMENT ON CRIME BILL CONFERENCE COMMITTEE REPORT

Our organization, together with its national coalition partners and our more than 100,000 members, stand in firm opposition to the alleged "anti-crime" bill which Senate-House conferees agreed upon Sunday evening. As concerned citizens and as victims/survivors of violent crime we reject this crime package in its entirety due to its lethal anti-victim provisions contained in its so-called habeas corpus reform provisions. These provisions attack the very heart of the criminal justice system and thus fatally infect all other sections of the conferees' crime package. Congress must reject it!

Our organization has always been convinced that genuine habeas corpus reform in capital cases is a fundamental and indispensable element in the battle against violent crime in our nation. The conferees' choice on Sunday evening of the House version of habeas reform over that of the Senate dealt a severe body-blow to the legitimate needs and concerns of our country's homicide victims/survivors. It absolutely nullifies any hope of real reform of current abuses. Furthermore, it makes the current situation worse by allowing retroactive application of Supreme Court decisions in habeas proceedings.

The worst torment that homicide survivors must endure after the loss of their loved ones is the lack of closure to grief and the lack of finality of judgment. The House version of habeas reform, adopted by the conferees on Sunday evening, does nothing to alleviate these matters but instead accentuates them. The conferees' adopted version of habeas reform now insures continued victimization and re-victimization of survivors of murdered loved ones.

True habeas reform demands time limits on Federal Court deliberations; it must mandate priority treatment for capital cases in habeas proceedings; it must restrict successive petitions to issues of guilt/innocence; it must maintain the current *Teague* v. *Lane* doctrine of non-retroactivity. Any purported reform without all these elements is a sham and a charade. The conferees' version lacks them all!

For too many years, victims/survivors have been ignored by the criminal justice system while primary focus has been directed to defendants/prisoners. Nowhere has this been more flagrant than in Federal habeas proceedings. Survivors wait for years for jury verdicts and sentences to be actualized while death-row killers abuse the system with impunity through the endless filing of baseless and repetitive appeals. This is neither fair, just, or equitable. Yet the conferees' version of habeas reform will not only perpetuate this situation, it will aggravate it! Congress must say no to this bill!

JACK COLLINS,
Eastern Regional Director, CLO.

CONCERNED CITIZENS
EQUAL JUSTICE,
Greenville, SC, September 12, 1991.

HON. STROM THURMOND,
U.S. Senate, Washington, DC.

This is to urge support of House Bill 1400. While we are all concerned about what appears to be an increase in crime in this country. We are equally concerned with encroachment on the Constitution to deal with it. The proposed Senate changes in habeus corpus places our personal liberties in jeopardy, weakens the federal court system, and increases the risk of innocent defendants being executed due to lack of adequate counsel nor review.

We urge you to actively support House 1400 habeas reform, rather than the Senate version.

Sincerely,

J.M. FLEMMING,
Chairperson.

ROBERT H. MACY,
District Attorney,
Oklahoma County, November 25, 1991.

HON. DAVID BOREN,
U.S. Senate, Washington, DC.

DEAR SENATOR BOREN: As a veteran prosecutor with over thirty years in the criminal justice system and as President-Elect of the National District Attorney's Association, I am appalled at the action of the Conference Committee on the Crime Bill. In almost every instance, the conferees voted for the version that most favored the criminal element, not the prosecutors and victims. While pretending to pass a tough crime bill with additional application of the death penalty, the conferees included provisions which will prevent the death penalty from ever being carried out. The provisions on Habeas Corpus will perpetuate endless delays in all capital litigation. In its present form, this bill is totally unacceptable to the prosecutors of this nation.

Those of us who have dedicated our lives and careers to protecting the innocent victims of crime and prosecuting violent vicious criminals are better off under the present state of the law than we will be if this bill is enacted. On behalf of the nation's prosecutors, I respectfully request that you vote against passage of this bill.

Respectfully,

ROBERT H. MACY,
District Attorney.

NINTH CIRCUIT STATE ATTORNEYS GENERAL ASSOCIATION ON PENDING FEDERAL HABEAS CORPUS REFORM LEGISLATION—ADOPTED JUNE 17, 1991

Whereas, the Ninth Circuit State Attorneys General Association is an association of the elected Attorneys General from the nine western states within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, which is the largest federal appelate court in the nation. The states within the Ninth Circuit include Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Orgeon, and Washington;

Whereas, each of these State Attorneys General offices has an active case load and day-to-day involvement on federal habeas corpus cases in the U.S. District Courts of their respective states and in the U.S. Court of Appeals for the Ninth Circuit;

Whereas, the U.S. Congress is currently considering legislation which would reform the general federal habeas corpus process;

Whereas, seven of the states within the U.S. Court of Appeals for the Ninth Circuit have adopted procedures for the imposition of capital punishment for aggravated murder which each respective state Attorney General office has obligations to defend in Federal court. These states included Arizona, California, Idaho, Montana, Nevada, Oregon and Washington; Now, therefore, be it

Resolved, That the Ninth Circuit State Attorneys General Association, by unanimous vote of each Attorney General after evaluating the impact of pending reform legislation, including S. 19, S. 618, S. 635, and S. 1241:

(1) concludes that meaningful federal habeas corpus reform is necessary to promote the finality of state court judgments, curb repetitious and unnecessary litigation, and restore public confidence in the criminal justice process;

(2) strongly endorses the provisions of S. 635, Title II & X, as the best legislative package currently before the U.S. Senate to remedy the problems of lack of finality and unnecessary and incessant litigation currently experienced under the federal habeas corpus process;

(3) strongly urges Congress to adopt a reform package which contains general habeas corpus reforms, along the lines of S. 635, Title IIA, which includes:

(a) reasonable time limits for the filing of habeas petitions;

(b) deference to state court rulings which are the product of full and fair state adjudication; and

(c) authority for federal courts to dismiss frivolous claims when state remedies have not otherwise been exhausted;

(4) strongly endorses the full and fair adjudication standard contained in S. 635 and urge Congress to adopt for this federal standard of review the full and fair opportunity standard employed in *Stone* v. *Powell*, 428 U.S. 465, 494 (1976);

(5) strongly endorses the adoption of a statute of limitations for the filing of habeas corpus petitions, and recommends that a petitioner have 90 days to file the petition with up to a 90-day extension for a showing of good cause and that a court be required to enter a written order articulating the grounds for the good cause extension;

(6) strongly supports a provision which mandates that capital cases shall be given priority in federal court and a provision which adopts time limits for federal court review of these cases. If a federal court failed to timely act, we recommend that the automatic stay would expire so that the presumptively valid state court judgment could be enforced. Any time limits on federal appellate court review should include a 30-day time limit for a determination on whether to rehear a case or rehear a case en banc;

(7) strongly supports legislation which maintains the limits on successive petitions adopted by the U.S. Supreme Court in *McCleskey* v. *Zant*, 59 U.S.L.W. 4288 (1991) and which would build upon this standard, as proposed in S. 635;

(8) strongly supports capital case reforms which include an appointment of counsel mechanism:

(a) which is limited to post-conviction review;

(b) allows states to develop appointment of counsel standards;

(c) reserves the unitary review processes (for the simultaneous state appellate court consideration of the direct appeal and state habeas petition) for those states which have adopted such procedures;

(d) develops a mechanism which precludes repetitious litigation of the adequacy of the appointment of counsel mechanism once the mechanism has been judicially upheld or certified as adequate by a judicial or non-judicial entity;

(e) adopts a remedy for the technical or inadvertent noncompliance with any such appointment of counsel mechanism which preserves judicial determinations as long as the effective assistance of counsel was otherwise rendered;

(9) strongly supports legislation which preserves the exhaustion doctrine, which as a matter of comity, respects the integrity of state processes;

(10) strongly supports legislation which preserves the procedural default doctrine;

(11) strongly opposes any provisions which would erode or modify the non-retroactivity doctrine of *Teague* v. *Lane*, 489 U.S. 288 (1989), or otherwise expanded the two exceptions to this doctrine;

(12) supports legislation which would allow the certificate of probable cause requirement, under 28 U.S.C. §2253, to serve the screening function intended under *Barefoot* v. *Estelle*, 463 U.S. 880 (1983);

(13) strongly opposes legislation which would undercut principles of finality, disrespect state processes, and encourage repetitious litigation, such as the provisions of S. 1241 which includes undefined "miscarriage of justice" standards for successive petitions and allows new federal claims which were not raised in state court "due to the ignorance or neglect of the prisoner or counsel;"

(14) strongly opposes any habeas corpus reform package which contains any version of the so-called Racial Justice Act, which:

(a) overturns the U.S. Supreme Court decision in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987);

(b) is based upon an unsound statistical premise;

(c) alters the traditional focus of our criminal justice system on whether the charged crime was committed by permitting statistics and information from unrelated cases to be considered; and

(d) most importantly, would have the practical effect of abolishing capital punishment in those states which have adopted constitutional procedures for capital punishment while doing nothing to promote racial justice.

Charles E. Cole, Attorney General, Alaska; Daniel E. Lungren, Attorney General, California; Larry Echohawk, Attorney General, Idaho; Frankie Sue Del Papa, Attorney General, Nevada; Ken Eikenberry, Attorney General, Washington; Grant Woods, Attorney General, Arizona; Warren Price, III, Attorney General, Hawaii; Marc Racicot, Attorney General, Montana; Dave Frohnmayer, Attorney General, Oregon.

THE DEPARTMENT OF LAW,
STATE OF GEORGIA,
November 25, 1991.

Hon. WYCHE FOWLER, JR.,
U.S. Senator, 204 Russell Building, Washington, DC.

Re: Conference Committee Proposals on Habeas Corpus Reform.

DEAR SENATOR FOWLER: I have just learned that on Sunday, Novemer 24, 1991, the Senate/House Conference Committee met and reported out the Conference version of the Omnibus Crime Control Bill. Insofar as habeas corpus reform issues are concerned, I understand that this Bill adopts the House version of these so-called reforms. As I have expressed on numerous occasions, in my opinion, the adoption of these House habeas corpus measures, particularly that measure

which would result in the overturning of the principles in *Teague* v. *Lane*, would have disastrous consequences insofar as the operation of the writ of habeas corpus and thus the operation of the criminal justice system.

The overruling of *Teague* insures that courts are free to apply new rules of constitutional interpretation to old cases, thus changing the rules of the game for the state long after the trial occurred and the conviction became final. This undermines the essentials of fairness to both sides as well as finality.

I urge you to attempt to defeat the House version of "habeas corpus reform," as it overturns the hard won victories and landmark court cases in this area which have already been achieved in the Courts.

Sincerely,

MICHAEL J. BOWERS,
Attorney General.

THE FOLLOWING LIST OF VICTIMS GROUPS, STATE ATTORNEYS GENERAL, DISTRICT ATTORNEYS, LOCAL LAW ENFORCEMENT AGENCIES, AND LAW ENFORCEMENT ORGANIZATIONS HAVE EXPRESSED THEIR SUPPORT FOR A TOUGH CRIME BILL

ATTORNEY GENERAL

The attorneys general of the following 31 States have called upon President Bush to veto this "pro-criminal" bill:

California, New Jersey, North Carolina, Connecticut, Idaho, Nevada, Vermont, Nebraska, Alabama, Wyoming, Alaska, South Dakota, Indiana, Virginia, South Carolina, Delaware, Mississippi, Colorado, Pennsylvania, Texas, Arizona, Montana, West Virginia, Washington, Kansas, Oregon, New Hampshire, Georgia, Guam, Maryland, and Louisiana.

THESE PROSECUTORS OPPOSE THIS "PRO-CRIMINAL" BILL WITH ITS WEAK HABEAS CORPUS REFORM

National District Attorneys Association, California District Attorneys Association, Conference of District Attorneys, Oklahoma City, Oklahoma District Attorney, San Diego, California District Attorney, Kingsport, Tennessee District Attorney, Boston, Massachusetts District Attorney, Pittsburgh, Pennsylvania District Attorney, South Bend, Indiana District Attorney, Brockton, Massachusetts District Attorney, Staten Island, New York District Attorney, Davenport, Iowa District Attorney, San Francisco, California District Attorney, Belton, Texas District Attorney, Missoula, Montana District Attorney, Tucson, Arizona District Attorney, and Amarillo, Texas District Attorney.

VICTIMS GROUPS

Concerned Citizens Equal Justice, Citizens Against Violent Crime, Memories of Victims Everywhere, The Joey Fournier Anti-Crime Committee, Survival, Inc., Justice for Murder Victims, Justice for Homicide Victims, Inc., League of Victims and Empathizers, Inc., and Citizens for Law & Order.

LAW ENFORCEMENT ORGANIZATIONS WHO OPPOSE THIS BILL'S HABEAS CORPUS AND EXCLUSIONARY RULE

National Law Enforcement Council, Fraternal Order of Police, National Troopers Coalition, National Sheriffs Association, Federal Investigators Association, Federal Criminal Investigators Association, International Narcotic Enforcement Officers Association, Airborne Law Enforcement Association, Society of Former Special Agents of the F.B.I., Commission on Accreditation for Law Enforcement Agencies, Inc., Massachusetts Association of Italian American Police Officers, Massachusetts Crime Prevention Officers Association, California Correctional Peace Officers Association, and Greater Boston Hotel Security Directors Association.

Mr. CHAFEE. Mr. President, before the Senate today is the conference report for S. 1241, the omnibus crime measure, approved by the Senate in July. I have mixed feelings about this bill; but I will give my support to it. I do so for one major reason: The inclusion of the provision, known as the Brady bill, that establishes a national 5-day waiting period for the sale or purchase of a handgun.

Frankly, I am disappointed with many aspects of the conference's work. First, the lack of the provisions on firearms. I am disappointed that both the limitations on magazine capacity and the ban on certain semiautomatic assault weapons were stricken from the bill.

To my view, these provisions make sense. I do not believe that gun controls are the sole answer to crime. But they can help. And it simply does not make sense to craft crime-fighting measures that do not include stricter controls on guns. Too many times this Nation has heard what one witness to the recent slaughter in Killen, TX, called "that terrible stillness of death." In Oklahoma, Kentucky, California, and recently in Texas and in Michigan—all over the country we have seen senseless loss of life by guns.

It is clear that we have a big problem in this country, and it is guns. We have far too many and they are too available. Stricter controls on guns simply are no sacrifice compared to the grief caused by such deaths.

That is why I am sorely disappointed that the Senate assault weapons ban was deleted from the final report. However, there is a bright note: the retention of the Brady provisions.

The Brady provisions included in this bill take us closer to the goal of preventing the senseless loss of life by ensuring that guns do not fall into the wrong hands. Pursuant to this measure, a national five-business-day waiting period before the purchase of a handgun will be established; during this time, local law enforcement will be required to carry out a background check on the prospective buyer to make sure that he or she is not a felon or other person prohibited by law from carrying a gun. Meanwhile, the Attorney General will set up a system for a national instant criminal background check that, once certified to be in place, will cause the national waiting period to be repealed.

Frankly, I would have preferred that the waiting period remain in place ad infinitum in order to provide a cooling off period for those buying a gun while in the grip of a strong emotion, or drugs or alcohol. Many individuals commit gun-related crimes in a moment of anger or rage, or when they are affected by drink or drugs. Also, persons suffering from depression are often tempted by easy accessibility to a gun to do harm to themselves or others. So I would have preferred that the waiting period be permanently established. But this is a compromise measure, and it is still a significant one that will do a great deal of good.

The fact that the waiting provisions are included in this bill is itself a tribute to the two people who have worked so hard and long for a national waiting period, and for whom the bill is named: Sarah and Jim Brady. They have logged thousands of hours over the past few years chasing down legislators, talking to them, and getting attention focussed on the bill; and their tireless efforts have paid off. My hat is off to both Jim and Sarah.

Now to the other elements of the bill. Clearly I have serious objections to the bill's death penalty provisions. I do not support capital punishment. Countless studies have shown that it does not deter would-be criminals from committing a crime. Furthermore, it is a form of punishment that can never be undone, even if the accused is later found to be innocent of the crime for which he or she was put to death.

While the conference report is better than the Senate-approved legislation, in that it does not provide for the option of capital punishment for homocides involving firearms, and does not impose the death penalty on the District of Columbia, it remains a bill chock-full of new death-eligible crimes.

I noted during last year's debate on crime that the Senate seems to want to apply the death penalty to every crime but school truancy! There are 50-odd new death-eligible crimes in this bill, and they include such so-called threats to public safety as murder of Federal egg inspectors. They also include such rare crimes as genocide and train wrecking. I fail to see how providing for the option of capital punishment for these crimes will stem street crime. I suspect that they won't, and that this exercise in toughness boils down to rhetoric, pure and simple.

Other provisions in the bill include those on the exclusionary rule, and on habeas corpus proceedings. During Senate debate, I voted against extending the good faith exception of the exclusionary rule to warrantless situations, and am pleased that the conference report holds to this view. On habeas corpus, the report's provision is noticeably different than the Senate version, and has many imperfections. This is a difficult and complex issue: how to ensure that the great writ of habeas corpus is not weakened and constitutional rights not violated, while at the same time striving to prevent costly and time-consuming abuses.

In sum, this conference report is far from perfect. To my view, there is only

one provision that I think will make a real difference to Americans, and that is the Brady bill—a bill we have been trying to pass for several congressional sessions now—and for that reason alone, I will support this measure.

Mr. HATCH. Mr. President, in February, the President sent us a strong, comprehensive crime bill. In July, this Senate passed the essential elements of the crime bill. It contained some of the finest, toughest anticrime provisions that I have seen in my 15 years in this body.

But where are those tough crime provisions today? You won't find them in this conference report.

If you want those tough anticrime provisions you will have to go get them out of the waste paper baskets of the House Judiciary Hearing Room in the Rayburn House Office Building.

This is a sham bill—a soft-on-crime bill, embodying virtually all of the objectionable provisions that responsible law enforcement agencies, prosecutors, and Attorneys General oppose.

My colleague Senator KENNEDY and my colleague Senator METZENBAUM voted for this so-called crime bill. They approved of it. And we know that they are longstanding, earnest, principled opponents of the death penalty.

Yet, the chairman of the Judiciary Committee wants to claim that the bill we are considering today is the toughest death penalty bill in years. If that is true, then why did longstanding opponents of the death penalty vote for it? Why, because this bill's obvious purposes are not to provide for an enforceable death penalty, but to make sure that there never will be one.

I do not think that these distinguished legislators were fooled into supporting a bill so opposed to their deeply held principles. And I do not think that any one in this Chamber or in the nation will be fooled either by the futile attempt to call this liberal wish list an anticrime bill.

Christmas has come early for the liberals in America. The House and Senate conferees have granted them their entire Christmas list. Just do not try to walk down the streets of your own neighborhood at night.

RETROACTIVITY PROVISION

Mr. President, this bill contains a dangerous innovation in criminal law. It is section 204 of the habeas corpus title. This section governs the retroactive effect of Supreme Court decisions.

Even though this Senate rejected a similar retroactivity provision last summer, the Senate Democratic conferees agreed to accept House-passed language on this subject.

The question of whether a decision of an appellate court shall have prospective or retroactive effect is intimately connected with the question of whether a criminal conviction can ever be final.

All habeas petitioners are prisoners whose cases are considered final. They are attempting to reopen long-finished cases.

Under current law, a defendant whose appeal is pending can generally take advantage of any recent or new court decision that is favorable to him. However, once his direct appeal is finished, and his case is considered final, he cannot avail himself of newly-announced court decisions that are designed to govern the proceedings in future cases.

This sensible rule is the only one that allows a criminal case to achieve any degree of finality. The rule, moreover, is a salutary one because it encourages the courts to develop new and more fair rules of criminal procedure free from the fear that a newly-prescribed rule will have the effect of opening the jailhouse doors.

The Miranda case is a good example of how these principles work in action. When the Supreme Court laid down new rules which all future defendants could claim, the Court specifically held that the rules would only apply prospectively. How could they have held otherwise? To say that the specific Miranda rules must have been given before the Miranda case had even been decided would have meant that virtually every prisoner in America would have had to be let out of prison. Had the Supreme Court not have possessed the power to specify that its decision would apply only prospectively, we can certainly assume that it would never have decided Miranda as it did. The same is true of Escobedo versus Illinois and any number of other leading cases in the field of criminal procedure.

But those who advocate congressionally mandated retroactivity would take this power away from the Supreme Court. They would instead give to an individual Federal district court hearing a habeas petition the power to overrule the holding of the court on the question of retroactivity. They would, moreover, allow the district court to apply new rules retroactively to criminal cases that have already become final—thus opening up for review cases that may have been settled for years or decades.

As Attorney General Thornburgh observed last year, this innovation would overrule several leading Supreme Court cases and would "resurrect the chronic problems of unpredictability and lack of reasonable finality of judgments" which those decisions put to rest—Letter of Dick Thornburgh to Senator THURMOND, March 15, 1990, page 7.

No efficient system of criminal justice can function under such an arrangement. If nothing else, the retroactivity rule contained in this bill would encourage prisoners to file repetitious petitions simply on the hope that their petition may be heard by a new district judge—one who may decide the retroactivity issue differently than the previous judge. At least under the current system, the Supreme court sets the rules and they apply nationwide.

Congressionally mandated retroactivity is not designed to achieve justice—it has two objectives: to prevent the execution of persons who have been otherwise unsuccessful in preventing the carrying out of their death sentences and, in noncapital cases, to extend and perpetuate the pernicious influence of the liberal decisions of the Warren Court.

The best thing about the Warren Court is that it came to an end. But this bill would allow key Warren Court decisions to be applied to criminal cases where even the Warren Court said they should not apply.

But there is another, more fundamental objection to congressionally legislated retroactivity. The Supreme Court's rulings on retroactivity should not be overruled by a single Federal trial judge whenever that judge determines, on whatever basis, that it is just to give the defendant the benefit of a law that the Supreme Court has ruled the defendant should not receive the benefit of. I question whether Congress even has the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. But, even if we do possess that power, it is clearly unwise to exercise it. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system.

Let me illustrate how the Supreme Court's retroactivity doctrine works in practice and the benefits which flow from it. The doctrine has recently been addressed and clarified by the Supreme Court in the leading case of Teague versus Lane, February 22, 1989. There the Court reaffirmed the long-standing rule—which is also the law in most States—that newly announced rules of criminal procedure do not apply to cases that have already become final. That is the only workable standard of retroactivity in the criminal law. Congress should not now confuse a subject which the Supreme Court has so recently straightened out.

No habeas reform is worth reversing the Teague case. No habeas reform is worth reopening the long-final convictions of every prisoner in America, which is what reversing Teague will do.

Section 204 of the habeas title proposes to set up criteria by which judges not on the Supreme Court can determine that decisions of the court should have an effect directly contrary to that which the Court has concluded they should have.

That is clearly unconstitutional. The Supremacy clause of article V clearly establishes that the Supreme Court is the final arbiter of such matters, not the 700 or more federal district court judges.

More importantly, consider the precedent that this bald-faced attempt to tamper with already decided Supreme Court cases establishes. If Congress does have the power to determine when certain Supreme Court decisions shall apply and when they shall not—despite the Court having determined otherwise—then Congress will surely have the power to determine who shall be bound by those decisions, what precedential effect they shall have, or any other aspect of the holding with which it might disagree. Why don't we alter the amount of damages if we think the Court has given too little or too much? It would be no more absurd than for Congress to say, as this bill does, that Federal trial judges must follow our standards, and not the Court's standards, in deciding when the Court's decisions shall be applied prospectively and when they should be applied retroactively.

This clearly unconstitutional provision is going to be bounced quicker than any law Congress has ever previously passed. Congress simply has no power to tell the Supreme Court what its decisions mean.

Nor do we have the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system.

Section 204 of the habeas corpus title would encourage prisoners to file repetitious petitions simply on the hope that their petition may be heard by a new district judge—one who may decide the retroactivity issue differently than the previous judge. Under current law, the Supreme Court sets the rules and they apply nationwide.

There is another important point to be made about retroactivity. If the Supreme Court cannot adopt new rules of criminal procedure that are prospective only, then it is certain the Court will be less likely to adopt new rules to control the abuses of State and local police which we all agree are essential. The Court's retroactivity doctrine is essential to the development and growth of our law of criminal procedure.

Consider the Miranda case, or Escobedo versus Illinois. Both of those cases announced unprecedented new rules of criminal procedure, but the Court specifically noted in each case that the rules were prospective only. They would apply to all cases on appeal but not to those that had already become final; meaning, of course, that Miranda violations would not provide a ground for relief on habeas corpus. How could the Court have ruled otherwise? Had it not possessed the flexibility to make Miranda prospective only, the Court's ruling in that case would have opened an unimaginable floodgate of new demands for the release of State prisoners already in confinement. The Court would never have issued the Miranda opinion had it not possessed the authority to make its new rule prospective only. We should consider what other similar unforeseen consequences to the development of the law of criminal procedure in this country may lie in store if we adopt today this revolutionary restriction on the authority of the Supreme Court.

It is difficult, I admit, to explain what the retroactivity issue is all about. But imagine how much more difficult it will be to explain to our constituents why it is that infamous criminals will be receiving new trials decades after their convictions: Does either Senator from Arizona know how he will be able satisfactorily to explain to citizens of that State why he may have voted for a provision that would probably allow the Tison Brothers to receive new trials?

How will the Senators from California explain the new trials that will be sought for Charles Manson and Sirhan Sirhan; for Juan Corona and the Hillside Strangler—new trials that will be sought and, in many cases, mandated by this bill's provision that Supreme Court cases never before considered relevant to their trials now must be applied to give them new rights.

I know that I cannot now explain to my own constituents why it is that one man, William Andrews, has been on death row in Utah for 17 years. The whole point of starting this habeas debate was to shorten the ordeal for my State and for the victims of Andrews' unspeakable crimes.

But section 204—the retroactivity provision—makes the Andrews prosecutors go back to square one. To start all over again.

This is not mere conjecture on my part. Just last year, Andrews' defense attorney announced that he would be asking a Federal court in Utah to free Andrews based on a recently decided 1991 Supreme Court case relating to the composition of juries.

The Supreme Court has already held that this 1991 decision does not apply to persons such as Andrews who were convicted in 1974. Therefore, we know that Andrews will not succeed in being freed from his death sentence on this basis—or do we?

If the bill before this body today is passed, then it is a whole new ball game for William Andrews; it is a whole new ball game for the Charles Mansons and Ted Bundys of the world. This bill tells them that their cases will never be over, so long as the Supreme Court continues to issue new opinions.

Before we get lost in the abstractions of habeas corpus law, before we wear out our hands wringing them over the supposed constitutional rights of vicious murderers, we need to remember the real consequences of serious criminal cases—the deaths, the shattered lives of those left behind, the families who must go on without their fathers or other loved ones.

Most importantly, for today, we must understand how these cases will continue to blight peoples' lives if the retroactivity provision of the conference report, section 204, becomes law.

William Andrews continues to appeal his sentence and has so far succeeded in delaying his execution for 17 years.

But today, at last, the end is in sight. But not if we are so unwise as to pass the conference report. If the retroactivity provision of this bill passes, the Andrews case will never end. Of that I am certain.

In 17 years of appeal, William Andrews has not raised one single meritorious issue on appeal. Not one. But the supporters of this bill now propose to allow Andrews to go back in time to 1978, when his criminal conviction became final, to let him see if he can't find one more case, one more argument, one more chance to avoid his death sentence.

The proposed repeal of the Supreme Court's retroactivity cases is the greatest gift to prison inmates in America—and it applies to all State prisoners—that has ever been proposed.

That's why the President will veto it. That is why every attorney general of every State that I know of opposes it.

That is why on June 25, 1991, 16 of the elected State attorneys of the State of Florida wrote their Senators, urging them not to vote for any amendment that would repeal or restrict the Supreme Court decision in Teague versus Lane.

Only one habeas amendment considered by this body met the criteria for their support—it was the habeas title of S. 1241 that now lies in the trash bin of the Judiciary Committee conference room, replaced by the entirely unacceptable House habeas provisions.

Mr. President, since 1976, over 3,000 persons have been sentenced to death row, yet only slightly more than 100 of these sentences have been carried out. I am continuously asked by Utah citizens, in letters too numerous to count, what is going on here? What is wrong with our criminal justice system? Well, I think we all know what is wrong—it is the Federal habeas corpus system.

We all know what is wrong—we all know how to fix it. And if we do not know then we've got the attorney generals, the prosecutors, and the law enforcement personnel of virtually every jurisdiction on record to tell us.

They all say one thing: pass habeas reform, but do not overturn the good decisions of the Supreme Court. Do not let the House liberals overturn Teague versus Lane and reopen cases that have been closed for decades.

If any Senator today has any question about whether this conference re-

port is truly a crime bill, they do not have to take my word on it. Call your own State's attorney general and ask him or her. They know the issue, and I am confident as to what their response will be. They know this is no crime bill and that is what most will tell you—Democrat and Republican alike.

I hope, Mr. President, that at sometime in the future I may finally provide a favorable answer to my constituents who ask what is wrong with the criminal justice system. I hope I can someday finally tell them that Congress has acted to end the absurdity of endless 15- and 18-year appeals.

I certainly hope that I do not have to tell them that Congress has actually acted to make things worse by passing the conference report. I know that I will never be able to explain that one to them.

Reversing Teague versus Lane, as the conference report does, will be the greatest gift to prison inmates in years. Every convict will immediately want to subscribe to U.S. Law Week, so that on Monday mornings he or she can look to see what new decisions have been handed down by the Supreme Court—what new case can be cited in a new habeas petition seeking release from jail and return to the streets.

This issue is not about whether State prisoners are to have one bite of the apple. Every convicted prisoner gets eight or nine bites of the apple on direct appeal and through State postconviction procedures before he even turns to Federal habeas.

William Andrews has already received 27 bites—but the crime bill conferees have decided to give him just as many chances to appeal again. Reversing the Supreme Court's retroactivity decisions will, in effect, allow William Andrews to start his appeals all over again.

I will allow convicted prisoners a second bite of the apple, and a tenth bite too. But I will not give them the whole orchard as the conference report does.

Let us be frank about what is going on here. My friends on the other side of the aisle calculated that they could throw anything they want into a bill, slap the word crime on the cover, and that the President would sign it. They realized that the President would recognize it as a procriminal anticrime bill, but they were gambling that he would not be able to explain to the American people the important but somewhat technical reasons why this is so.

Well, it may be true that the statutory changes in the habeas statute that the President and I so strongly object to are obscure, but the effects of those changes are easily understood by anyone. In fact, those changes present very simple direct questions such as the following:

Do you think that Charles Manson, who was sentenced to death in the late 1960's, should be given new rights to file new appeals at this time?

That is a very simple question. So is this one: Do you think that Richard Speck, who was sentenced to death for murdering eight nurses in Chicago in 1966, should be given new rights to reopen his case at this time? How do the Senators from Illinois feel about that one—I am sure that their constituents would like to know.

If you think that these brutal murderers, as well as their cohorts on the Nation's death rows, should be given such new rights, then vote for the conference report. If you do not, then oppose it and demand from the Senate conferees that they stand by the strong habeas bill that passed this body by a 20-vote margin last July.

By all means, if you want to open up new unlimited avenues of appeal for all felons in America, here is your chance: The conference report provides a golden opportunity. But if you are truly interested in dealing with the crisis of endless appeals and the resulting misdirection of our Nation's crime-fighting resources, then join me in opposing this pernicious bill.

THE SO-CALLED VIOLENT CRIME CONTROL ACT

Mr. SEYMOUR. Mr. President, the 311 inmates on California's death row can sleep easy tonight. The majority party presiding over the crime bill conference committee has insured that these heinous criminals will have numerous—or I should say endless—opportunities to delay their sentences.

For more than 5 years, leaders of criminal justice reform have attempted to make sense out of our Federal habeas corpus process. As my colleagues know, this process is designed to ensure an individual has received a fair trial, but it also works to encourage never-ending appeals that delay the imposition of the death penalty and prolong the agony that families and friends of crime victims are forced to endure. In July 1990, a bipartisan majority of the Senate passed a comprehensive crime bill that included meaningful reform of the habeas corpus process—reform based largely on the recommendations of the reform commission chaired by retired Supreme Court Justice Lewis Powell. However, the Democrats scuttled these reforms at the 11th hour of the 101st Congress.

We took up crime legislation again this year to finish the job, to finally enact habeas reform that ensures finality in the criminal justice system, and ends the years of frivolous appeals that is at the heart of the public's lack of faith in the criminal justice system.

Californians have reason to be of little faith. Since the Supreme Court reversed its previous decision on the constitutionality of capital punishment in 1976, not one single condemned criminal has realized the full extent of the sentence imposed by a jury of his peers. In fact, nationally only 3 percent of all those sentenced to death since 1976 have been executed—3 percent.

Californians have more than lost faith. They are fed up. Frankly, so am I. Overwhelming majorities of Californians have passed countless initiatives that reaffirm their support of capital punishment. They even have ousted two State associate justices and the chief justice of the California Supreme Court largely because of their refusal to effectively enforce capital punishment. And now the majority of the crime conference committee rightly deserves the scorn of law-abiding Californians because they have singlehandedly denied my State the ability to truly enforce capital punishment.

Earlier this year, Californians had reason to be hopeful that Congress finally would reform the habeas system. For the second consecutive year, a bipartisan majority in the Senate passed effective habeas reform. However, the House of Representatives darkened their hopes and enacted so-called habeas reform that would actually be even worse than current law.

If there was any doubt that members of the majority were really serious about enacting true habeas reform, it ended last Sunday, when the majority steamrolled a conference report that contained the House habeas corpus provisions.

Just how bad is the House's habeas reform proposal?

Bad enough to reverse 14 years of responsible Supreme Court decisions, including the landmark Teague ruling, that limit endless delays and frivolous appeals in death penalty cases.

Bad enough to allow condemned prisoners to delay a full year before applying for Federal habeas corpus.

Bad enough to reject the Senate's proposal that habeas petitions for condemned criminals be limited to new claims that have not been "fully and fairly" heard in State courts.

More importantly, bad enough to contain enough loopholes, legal trapdoors, and other broad definitions that promote new, unnecessary litigation, rather than finality and fairness.

Despite all of this, Democrats will continue to claim they've offered comprehensive reform of the habeas system.

Reform for who? Law enforcement? The leaders of law enforcement certainly do not think so. In fact, 31 of the Nation's 50 attorneys-general signed a letter to the President urging him to veto any crime bill that contains the House's habeas provisions.

Let me repeat that: More than a majority of the State's chief law enforcement officers in the Nation—16 Republicans and 15 Democrats—concluded that this so-called reform bill is a sham. In fact, California's top cop, Attorney General Dan Lungren, called the conference report "a fraud on the people of California and most particu-

larly on the crime victims of the State of California." Mr. President, I will ask unanimous consent that the remarks of the attorney general be placed in the RECORD following my remarks.

Furthermore, every district attorney in my State wrote to the California congressional delegation in an unprecedented, bipartisan show of support for the Senate's habeas reform provisions and strong opposition to the pseudo-reforms offered by the majority in the House.

Let me repeat that: Every single one of my State's 58 leading law enforcement officials wrote to me and my California colleagues to state that the Senate passed the true reform bill. I have a copy of this letter and I will ask unanimous consent that a copy of the California district attorney's letter be printed in the RECORD following my remarks.

I have also heard from local prosecutors, police chiefs, sheriffs, and members of rank and file law enforcement—the men and women on the front lines of violent crime—and they are virtually united in their support for the Senate's provisions.

So let us be clear about the rhetoric that is being passed around here. The Democrats are not reforming the habeas process. They are deforming it. Indeed, the Democrats are not kidding when they say theirs is a tough crime bill. The problem is it is tough on law enforcement.

That is why I cannot vote for this conference report. Though it contains some measures that enhance existing law or create new anticrime programs, this conference report loses sight of why we considered crime legislation in the first place. We were to finish the job of the 101st Congress and pass a bill to restore the Federal death penalty and reform the habeas process. Yes, this bill authorizes the death penalty for more than 50 Federal crimes. And many Democrats—some for the first time—can go back to their districts and say they supported a bill that has a death penalty. They'll say: I can be tough on crime, too." Well, do not be fooled by these anticrime wannabes. This conference report may have a death penalty on paper, but without true reform of the habeas system, we can never have a death penalty in fact.

The people of California know this all too well. We have had a death penalty on paper for years, but never-ending, often-frivolous habeas appeals have made the death penalty nonexistent.

In fact, absent true habeas reform, the phrase "capital punishment" is liberalspeak for "life in prison."

And nothing in this conference report will change that. An analysis of the habeas provisions in this conference conducted by Attorney-General Lungren concluded that these provisions hardly can be called reform. In fact, he concluded that these provisions would actually promote more litigation, more delays, more frivilous abuses of our criminal justice system than current law. And his conclusions are shared by a majority of his fellow State attorneys general.

In short, Mr. President, this conference report does not lend a hand to law enforcement. It handcuffs law enforcement.

Our State has a living symbol of this tragic problem: Robert Alton Harris. My colleagues have heard his story before. I do not think a majority of the conference committee listened. In 1978, Robert Alton Harris brutally murdered two youths in San Diego. He not only confessed to his crime, he laughed about it. No remorse, Mr. President, for the vicious crimes he committed. But for more than 10 years, Mr. Harris has effectively used the Federal habeas process to delay his sentence. He has delayed his execution for more than 10 years. He has abused a process designed to ensure fairness. No doubt, he has not stopped laughing. This conference report gives this murderer one more reason to laugh at this system.

Harris' story is more than enough to demonstrate the need for the Senate's habeas reforms—reforms that have bipartisan support; reforms that are overwhelmingly supported by law-enforcement; reforms that should not have been rejected. The conference report's habeas procedures will not bring Harris and other thugs any closer to execution than current law. Even a majority of State attorneys-general concluded that Robert Alton Harris "would be able to perpetutate his case under the Federal habeas corpus."

So how can I or any of my colleagues in good conscience vote for this conference report when it fails to achieve what we set out to do? How can I explain my vote to crime victims' friends and family members who for years have been calling for finality and fairness to this process when this legislation falls far short of that goal?

Therefore, let me make this clear. A vote for this crime bill is a vote for business as usual—for delays and frivolous litigation. A vote for this crime bill is a vote to deform, not reform, our criminal justice system. A vote for this crime bill is a vote to effectively deny a State's ability to enforce the death penalty. A vote for this crime bill is a vote to prolong the agony that plagues victims' friends and family. A vote for this crime bill is a vote to insure that the number one cause of death for condemned criminals like Robert Alton Harris will continue to be old age.

The American people will not be fooled by the efforts of some Democrats to draft foolhardy legislation and call it a crime bill compromise. Sure it is a compromise. Law enforcement, crime victims' survivors, and law-abiding citizens—all are compromised by this conference report.

Let us not send this bill to the President. Why waste time? Let us send it back to the conference committee. After all, their job was to reach an agreement on comprehensive legislation that helps, not handcuffs, law enforcement in their fight against violent criminals.

Their job is not finished.

I ask that the material to which I referred be printed in the RECORD.

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

FEDERAL CRIME BILL A FRAUD, LUNGREN SAYS

SACRAMENTO.—At a Capitol news conference today, Attorney General Dan Lungren called on President Bush to veto the federal crime bill that was reported out of a conference committee in Washington yesterday. Lungren criticized the conference committee for adopting, in a hasty three-hour closed session, provisions that would extend the ability of death row inmates to delay and relitigate their cases, making a situation already in need of reform much worse.

The Attorney General's Statement to Capitol reporters follows:

"I feel duty bound to inform you of probably the greatest fraud that I have seen in my first year as Attorney General and frankly, in my ten years as a member of Congress. The Federal Crime Bill produced by the Conference Committee late yesterday is a fraud on the people of the State of California and most particularly on the crime victims of the State of California. In fact, this legislation, in its current form, is a slap in the face of all victims.

"The voters of California may have removed Rose Bird from the California Supreme Court but the spirit of Rose Bird is alive and well in the Halls of Congress.

"Accordingly, I have today personally contacted the White House to urge the President to veto this shameless bill. This bill does nothing to assist with the problem of violent crime in the United States. Rather, it is a retreat from law enforcement's efforts to do something about violent crime. It is a major retreat in the area of habeas corpus because it overturns approximately 15 U.S. Supreme Court decisions including the most important one, the Teague case.

"This has a direct application to those of us in California, specifically in death penalty cases and in the Robert Alton Harris case. It looked like we were seeing some light at the end of the tunnel in the Harris case. We thought we might finally have the judgment of the people of California carried out. Now, we see this shameless Crime Bill coming out of the Congress of the United States.

"There is really nothing positive one can say in support of this bill in its current form. This legislation would impact California more dramatically than any other state in the union. It is time that the people of California know how their Representatives voted on this matter. They ought to ask Representatives Matsui, Fazio, Pelosi, Boxer, Miller, Dellums, Stark, Edwards, Lantos, Mineta, Panetta, Beilenson, Waxman, Roybal, Berman, Levine, Dixon, Waters, Dymally, Anderson and Torres why they have voted for the habeas corpus provisions now contained in the conference report.

"I have respect for members of Congress who are against the dealth penalty and say that up front. But it is very difficult to accept people who at home say they are for the

death penalty and vote continually in the Halls of Congress to make sure it is impossible to have the death penalty carried out in California or anywhere else.

"We are not going to stand for this in California. We have urged the President to send a veto message as soon as possible. The stories that have come out of Washington so far have suggested that this is a tough crime bill. This is not a tough crime bill, this is not even a soft-time crime bill. This is a pro-convicted murderer bill."

Lungren, along with 30 of his colleagues from other states, sent President Bush a letter on November 22, detailing their serious concerns about the House version of the crime bill and urging the President to veto any bill containing habeas corpus provisions that will allow convicted death row inmates to delay and relitigate their cases.

All 58 district attorneys in California have also joined Lungren in support of reasonable habeas corpus reforms. In addition, today the National District Attorneys Association blasted the bill reported out of the conference committee as a "poor excuse for a crime bill," which "does far more to advance the interests of convicted criminals than it does to protect the victims and law-abiding citizens."

STATE OF CALIFORNIA,
OFFICE OF THE ATTORNEY GENERAL,
September 20, 1991.

DEAR CALIFORNIA CONGRESSIONAL DELEGATION MEMBER: Collectively, as the Attorney General and as District Attorneys from each of the 58 counties in California, we handle every aspect of a criminal case, including the trial, appeal and habeas corpus proceedings in state and federal court. Because of the effect federal habeas corpus reform has on our operations and the State of California, we are sending you this joint letter to stress the urgency of congressional action and to request your support for meaningful federal habeas corpus reform.

It is now beyond any doubt that the habeas corpus process is in dire need of reform. Unnecessary delay and repetitious litigation permitted under our habeas corpus process has resulted in a lack of finality in our criminal justice system. In turn, this has caused a loss of public confidence in the ability of our criminal process to impart fair and certain justice. Further, under the current process, reasonable state court determinations are not accorded due deference in federal court and the deterrent effect of the death penalty and other criminal punishment has been blunted.

It is no wonder that the calls for federal habeas corpus reform have been heard from all levels of state and federal government. On March 13, 1991, President George Bush asked that within 100 days, Congress pass his omnibus crime bill, which contains habeas corpus reforms. Former U.S. Supreme Court Justice Lewis F. Powell, Jr., has chaired a committee, consisting of other federal judges, which proposed specific reform recommendations which now provide the primary framework for congressional legislation. In his last Year-End Report of the Federal Judiciary, Chief Justice William H. Rehnquist asked Congress to "give serious attention to badly needed reforms in this area, with a view to assuring counsel to capital defendants and assuring to the states the necessary degree of finality, in federal habeas proceedings." California Supreme Court Chief Justice Malcolm M. Lucas has stressed the need for reform as cochairman of the American Bar Association Task Force on Death Penalty Habeas Corpus and in other statements. In March of this year, former state legislator and judge and now U.S. Supreme Court Justice Sandra Day O'Connor noted the need for reform in a speech at the Crime Summit in Washington, D.C. California Governor Pete Wilson emphasized reform in his State of the State Address and, more recently, made it the subject of his weekly radio address. On May 23, 1991, and July 29, 1991, the California District Attorneys Association Board of Directors unanimously adopted three resolutions urging the California congressional delegation to adopt habeas corpus reforms similar to those included in H.R. 1400, Titles II & X, and S. 1241, Title XI & §4923. On June 17, 1991, more than half the state Attorneys General sent a joint letter to members of the U.S. Senate Judiciary Committee supporting the reform provisions contained in these measures. Also on June 17, 1991, the Ninth Circuit State Attorneys General Association, consisting of state Attorneys General from the nine western states, also adopted a unanimous resolution urging Congress to adopt habeas corpus reforms and supporting these bills. On July 11, 1991, the Senate adopted meaningful habeas corpus reforms by a substantial, bipartisan vote in S. 1241 Title XI & §4923.

With so much agreement on the need for reform, the key public policy question before the House of Representatives is what specific reform provision should be adopted. At a minimum, we believe meaningful habeas corpus reform should include:

(1) An appointment of counsel mechanism which preserves the California unitary review process and permits states to determine competent counsel standards for post-conviction review;

(2) Provisions which retain and build upon the rational limits on successive petitions recently recognized by the U.S. Supreme Court;

(3) A standard of federal court review which respects "full and fair adjudications" in state courts;

(4) Reasonable time limits for the filing of a habeas petition and for the determination of a petition in federal court; and

(5) General habeas corpus reforms (similar to H.R. 1400, Title II(A), and S. 1241, Title XI(A)).

These reforms are required because they restore reasonableness to our criminal justice process. Further, the deterrent effects of criminal punishment can be reinstated by these reforms which ensure finality to state court judgments.

Significantly, relief under the statutory writ of habeas corpus is not eliminated by the adoption of these reforms. Instead, a state prisoner is guaranteed one full, fair and adequate round of post-conviction review. Any subsequent review will be permitted whenever a showing of factual innocence is made. Appropriate time limits also ensure that federal review will not be unduly postponed by the filing or judicial consideration of the petition.

We oppose legislation which would add or promote unnecessary delay and repetitious litigation to the criminal justice system. We are also against any measure which would effectively abolish the death penalty, such as H.R. 2851, The Fairness in Death Sentencing Act (formerly entitled the "Racial Justice Act"). This legislation would permit a claim of discrimination based upon a statistical showing on the prosecutor. We believe this statistical approach is unsound and detracts from the traditional criminal justice focus on the particular circumstances of whether the individual committed the charged crime. Finally, we oppose any effort to undermine the non-retroactively rule of *Teague* v. *Lane*, 489 U.S. 288 (1989). Newly established judicial rules are and should be applied during direct review; they should not be applied for the first time on collateral review, as the U.S. Supreme Court has repeatedly recognized.

We also wish to stress that the current habeas corpus reform proposals do not affect the Great Writ in the Constitution. To the contrary, as Justice Powell and others have noted, the reforms involve the non-constitutional post-conviction remedy first adopted by the Congress in 1876. Since habeas corpus reform is a statutory matter, we look to Congress to adopt these reasonable and long overdue reforms. Concomitantly, only Congress has the power to restore reasonableness to and public confidence in our criminal justice system. We urge your action and support for meaningful habeas corpus reform along the lines of the reform provisions contained in H.R. 1400 during this session of Congress.

Sincerely,

Daniel E. Lungren, Attorney General;
John E. Martin, County of Calaveras;
John J. Meehan, County of Alameda;
Henry G. Murdock, County of Alpine;
Larry Dixon, County of Amador;
Michael L. Ramsey, County of Butte;
John R. Poyner, County of Colusa
Mike Nail, President, 1990-91, California District Attorneys Association and District Attorney, Solano County;
Gary T. Yancey, County of Contra Costa;
William A. Cornell II, County of Del Norte;
Walter J. Miller, County of El Dorado;
Edward Hunt, County of Fresno;
Robert Holzapfel, County of Glenn;
Terry R. Farmer, County of Humboldt;
William E. Jaynes, County of Imperial;
L.H. Gibbons, County of Inyo;
Edward R. Jagels, President, 1991-92, California District Attorneys Association, County of Kern;
Garry R. Consalves, County of Kings;
Steve Hedstrom, County of Lake;
Mark Nareau, County of Lassen;
Ira Reiner, County of Los Angeles;
David Minier, County of Madera;
Jerry Herman, County of Marin;
George Griffith, County of Mariposa;
Susan Massini, County of Mendocino
Gordon Spencer, County of Merced;
Ruth Sorensen, County of Modoc;
Stan Elier, County of Mono;
Dean Flippo, County of Monterey;
Anthony Perez, County of Napa;
Mike Ferguson, County of Nevada;
Michael Capizzi, County of Orange;
Paul Richardson, County of Placer;
Mike Crane, County of Plumas;
Grover C. Trask II, County of Riverside;
Steve White, County of Sacramento;
Harry J. Damkar, County of San Benito;
Dennis Kottmeier, County of San Bernardino;
Edwin L. Miller, County of San Diego;
Arlo Smith, County of San Francisco;
John Phillips, County of San Joaquin;
Barry LaBarbera, County of San Luis Obispo;
James P. Fox, County of San Mateo;
Thomas W. Sneddon, Jr., County of Santa Barbara;
George Kennedy, County of Santa Clara;
Arthur Danner, County of Santa Cruz;
Dennis Sheehy, County of Shasta;
Wesley Travis, County of Sierra;
Pete Knoll, County of Siskiyou;
Gene L. Tunney, County of Sonoma;

Donald N. Stahl, County of Stanislaus;
Carl V. Admas, County of Sutter;
Thomas Hilligan, County of Tehama;
David L. Cross, County of Trinity;
Gerald F. Sevier, County of Tulare;
Eric Du Temple, County of Tuolumne;
Michael Bradbury, County of Ventura;
David C. Henderson, County of Yolo; and
Charles O'Rourke, County of Yuba.

THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1991

Mr. SPECTER. Mr. President, for the second time in 2 years, we are confronted with complex and technical anticrime legislation reported by a conference committee in the waning hours of a session. The 1990 anticrime bill conference had dropped many of the most contentious provisions even though versions of many of them had passed both Houses. Even though many of the toughest provisions were dropped from last year's bill, I was able to support it. Regrettably, I am unable to support this conference report. In any event, I am opposed to cloture at this time. So that extensive debate is necessary at a minimum.

As far as I am concerned, the core issue on this bill is how we handle Federal intervention in State capital cases, which means that we must make meaningful reform to the process of Federal court review of State death sentences under habeas corpus petitions.

The death penalty is a vital and valuable tool of law enforcement. Based on my long experience as an assistant district attorney and then as district attorney of Philadelphia, I am convinced that the death penalty is a deterrent to violent crime.

Unless and until we make meaningful reform in Federal habeas corpus procedures, however, the imposition of the death penalty will be delayed interminably by Federal judicial intervention. These delays have made the death penalty, the most severe sanction a society can impose, the laughing stock of the criminal justice system. Endless delays in Federal court and the constant bucking of habeas corpus cases between State and Federal judicial systems for as many as 18 years, leads to disrespect for the death penalty and ultimately the entire criminal justice system.

For many years, we have been struggling to reform habeas corpus to make Federal intervention in State criminal convictions fairer, less onerous to the States, and more sensible. I believe that last year the Senate passed a sensible approach when it adopted an amendment I had coauthored with Senator THURMOND. I think that the reforms proposed in that legislation would reduce delay and make the process fairer to petitioners.

First, any reform proposal needs to impose strict time limits on the filing of habeas corpus petitions and on the time for Federal court consideration of these petitions. Both the Specter-Thurmond amendment of last year and the provisions of the Senate-passed habeas reform in S. 1241 this year contained such time limits. Counsel for the petitioners and for the State must be prepared to give these cases priority. It is not too much to demand that counsel be prepared to move forward on these cases with dispatch. Likewise, the courts must be prepared to advance capital habeas petitions to the top of their dockets and to give them the highest priority. Imposing stringent time limits on all actors in the process would go a long way to reducing the delays.

Next, comprehensive and sensible habeas corpus reform ought to mandate or encourage the elimination of State post-conviction proceedings as a prerequisite for getting into Federal court. From personal experience, I do not believe that State postconviction review is ever truly effective. Typically, in Pennsylvania, the matter is heard by the same judge who tried the case and who has already ruled on postverdict motions. Then, the appeal in the State system goes back to State supreme court, which would have already upheld the conviction once. Only one issue typically cannot be raised on direct review, and that is the adequacy of trial counsel.

The answer, it seems to me, is to require or at least encourage States to adopt the unitary review procedure followed by California, in which a convicted defendant files a petition for postconviction relief prior to the direct appeal being heard. During the consideration of this petition, the State trial court may consider a claim of ineffective assistance of counsel. An appeal from a denial of that claim can then be consolidated with the direct appeal.

Allowing Federal intervention after one direct appeal through the State judiciary in which all issues are presented would do away with much of the confusion that exists from the current exhaustion doctrine. No finer example of the ridiculous state of the law on this issue can be found than Peoples versus Castille. In Peoples, a defendant in a noncapital case, raised an issue for the first time in a direct appeal to the Pennsylvania Supreme Court for discretionary review. That court denied review without stating reasons. The defendant then sought habeas relief. The matter went all the way to the Supreme Court, which decided that the claim had not been exhausted because the reasons for the Pennsylvania Supreme Court's denial of review were not stated, thus making it impossible to determine whether the issue had been adjudicated in the State courts. This ping-pong game between State and Federal courts must stop, even if it means encroaching on States' authority to correct the errors of their own courts. In the long run, allowing early Federal intervention, but allowing it only once, will improve rather than detract from Federal-State comity.

After a single appeal through the State judiciary in which all issues are presented for adjudication, a petitioner should get one review through Federal habeas corpus relief at which all issues can be raised. Thus, I do not accept a narrow reading of the Senate-passed bill's preclusion of Federal habeas relief if a claim has received a full and fair adjudication in the State courts. Everyone sentenced to death in a State court is entitled to have all constitutional claims affecting his conviction and sentence fully adjudicated once, but only once, in Federal court.

After a petition for habeas corpus is denied, successive petitions ought not be permitted except for the most compelling reasons, such as newly discovered evidence that undermines the court's confidence in the defendant's guilt, that could not have been obtained at the time of trial through the exercise of due diligence. Successive petitions should be permitted only by leave of the circuit court of appeals.

If we establish tight timeframes for filing petitions and for their consideration and do not allow successive petitions to be filed, one of the most vexing issues becomes much less important. The issue that has caused the greatest amount of debate on this issue is the retroactive applicability of new constitutional rules created by the Supreme Court during the now-lengthy pendency of habeas corpus petitions. Under existing law, it takes years to conclude these proceedings, and courts frequently create new constitutional rights in the interim. In 1989, however, the Supreme Court severely restricted the ability of habeas corpus petitioners to take advantage of new constitutional rights in Teague versus Lane.

Of course, a strict timetable on habeas petitions alleviates this problem. It is unconscionable to carry out the death penalty where that result might be altered had a constitutional right created by an intervening Supreme Court decision been applied. The Specter-Thurmond amendment, which was adopted by the Senate in 1990, struck the right balance.

Finally, if the process is to work smoothly and to ensure a full and fair exposition of all issues at trial, on appeal, and during the presentation of the habeas corpus petition, I believe that comprehensive reform requires that competent counsel be provided to indigent defendants at all stages of the process, from trial through habeas review.

Last year's Specter-Thurmond amendment and my bill this year, S. 19, would have accomplished the goals I have outlined. It represents what I believe to be a commonsense approach to habeas corpus reform. I supported the Senate-passed habeas reform proposal because in most respects I supported

its provisions. I was deeply concerned, however, about the restriction of habeas review when an issue had received a full and fair adjudication in the State courts.

I regret not being able to support the habeas reform proposal in the conference report. The conference report does not establish a sufficiently strict timetable for filing the habeas petition. It includes no time limits on Federal court consideration of capital habeas petitions. It would leave the law unclear on successive petitions.

This conference report does not reform the elements of current habeas corpus law that are most in need of reform: the delay and the ping-ponging of cases between State and Federal courts.

Mr. President, I am prepared to keep on trying to reform habeas corpus practice until we get it right. I do not think that this conference report gets it right. Although there are other important issues—some of which I agree with and others of which I disagree—the habeas corpus issue is so important that the bill should be rejected so that we do get it right in reconsideration.

Mr. GRASSLEY. Mr. President, despite my high personal regard for my Senate colleagues on both sides of the aisle who worked on this conference report, I rise in strong opposition to the crime bill conference report.

My strong feelings against this product are in no way a commentary against the hard work and effort expended.

Indeed, I regret that I was not permitted to join the conference.

This is not a crime bill, although it is a crime. The majority of the conferees simply adopted whichever body's provision on a particular area was weaker. Just as the Holy Roman Empire was neither holy, Roman, nor an empire, this Crime Control Act has little to do with crime, provides precious little control, and even less action.

The report does skillfully exploit a situation—the end-of-the-session need for the Democrats to pass something for public relations purposes to blunt a Presidential attack on a Congress that is not interested in fighting crime. It would be a cruel hoax to pass this ineffectual bill.

This report fails to protect the first civil right of every American: To be free—in person, in home, and in the neighborhood—from the threat of violent crime. How does this bill fail to do that?

Mr. President, let me count the ways.

There is no reform of Federal habeas corpus procedures. This means that lengthy, spurious, and repetitious claims by inmates will continue to thwart the imposition of valid State death penalties. The fact is—the death penalties supposedly created by one hand of this bill are taken away with the other. Year after year, overzealous lawyers will essentially defeat the death penalty by delaying its imposition, turning a death sentence into a life sentence combined with endless petition filings.

The conferees could have remedied the situation by adopting Senate language that would have provided one chance for habeas corpus, with limited exceptions. The Senate language also would have confined habeas petitions to claims that were not fully and fairly considered by State courts. In addition, the Senate bill would have eliminated the exhaustion of State remedies requirements, permitting Federal courts to dismiss frivolous claims as they arose, rather than seeing the same petition many times until exhaustion was completed.

But the conferees were interested only in the weaker House bill. That bill contained none of these reforms. In fact, the House bill adopted by the conferees is worse than current law. It would permit prisoners to apply new decisions retroactively to their case. No matter how irrelevant or trivial, those cases will produce a flood of new petitions. This is not only unfair from a legal perspective, but it also will lead to prisoners filing new petitions forever. Yogi Berra may have said, "It's never over til it's over," but then he never filed a habeas petition.

Under this bill, habeas corpus will never be over. The convicted criminal will never be stopped from filing petitions, and the criminals' victims and their families will never heal their wounds.

This bill creates no good-faith exception to the judge-made exclusionary rule. An objective good-faith exception to the exclusionary rule would allow reliable evidence—including narcotics seized from a drug trafficker—to be admitted into evidence in a criminal trial. The conferees adopted the weaker Senate version.

As is well known, the exclusionary rule is not a constitutional guarantee. It is a judge-made rule to deter abusive police practices. The overtechnical use of the exclusionary rule has resulted in criminals being set free, not because they are innocent, but because the evidence necessary to convict has been seized by an honest mistake.

There should be room to distinguish between a wholly unreasonable search of one's person or home and the simple and honest mistake—made in good faith—of a law enforcement officer conducting a search under sometimes life-threatening circumstances. that is just common sense.

Once again, the conferees rejected the good House language on this point, and adopted the weaker Senate language. And once again, the conference report is worse than existing law. Under current law, a facially valid warrant is sufficient to trigger the good-faith exception unless the basic provisions are absent. A reviewing court can easily determine if this test, as well as the test of a neutral and detached magistrate, are met.

The conference report is worse because it creates loopholes if the magistrate was intentionally or recklessly misled. Every defendant will claim that the warrant was issued in those circumstances. That claim will require hearings and delay and expense to resolve—to the detriment of our criminal justice system.

Can we really expect—as this report seems to demand—that an officer should crossexamine the issuing judicial officer as to possible deficiencies in the warrant?

The conference report's exclusionary rule excludes the possibility of reform.

The conference report will exclude evidence of confessions. The conference report will exclude so-called coerced confessions even if the error is harmless beyond a reasonable doubt to the issue of guilt.

Once again, the conference report overrules a Supreme Court decision that is tough on crime.

I am not advocating that police beat confessions out of arrestees. That's not the issue here. The concern relates only to police informers in prison cells whose status is not disclosed to the defendant.

The conference report is nonsensical as it relates to guns. The bill makes innocent, law-abiding citizens want to purchase a gun.

At the same time, it is weak on provisions that affect the role and use of guns in the commission of crimes. For instance, the report dropped the Senate provision that would have permitted a penalty increase for possessing a firearm in a crime of violence or drug trafficking. It also dropped the Senate bill's provision that would revoke probation for anyone found in possession of a firearm. Similarly, it rejected the Senate proposal to criminalize the possession of a stolen firearm and it dropped a provision to try juveniles as adults on firearms and drug offenses.

The conference report is weak on the issue of child abuse. It fails to adopt doubled penalties for repeat sex offenders, as well as restitution for victims of sex offenders. It drops a proposed enhanced penalty for offenders who know they are HIV positive and engage in criminal conduct creating a risk of transmission of the virus to the victim.

The conference report does not do enough to protect victims of crime. While it permits victims the right of allocation to the courts at the time of sentencing, the conference report struck a House provision that would have allowed the court, after a hearing, to suspend the defendant's Federal benefits if the defendant was delinquent in making restitution to his victim.

Finally, the conference report contains an objectionable sports lottery

provision. It will prohibit all but a few States to have sports lotteries. Why this is in a crime bill I do not know. But it is a terrible piece of legislation.

It grandfathers States that already engage in millions of dollars of legal sports gambling. It violates States rights to enact whatever lotteries they choose. And it comes at a terrible time. States are faced with massive federally mandated spending. They face recession and severe fiscal problems. This bill would interfere with a State's choice as to how it chooses to raise its income.

The one regret I have, Mr. President, is that this bill includes the Antiterrorism Act, which would create civil remedies for American victims of terrorism.

I have been working on this bill for 3 years now, and the Senate has passed it twice. The House included the ATA in their version of the crime bill, and it is included in the conference report. I urge the House to pass the ATA as a separate bill so that the President can sign it into law. It won't become law as part of this so-called crime bill.

In conclusion, Mr. President, this conference report does not offer us a real opportunity to enact a truly tough and effective anticrime package. If anything, it is an anti-anticrime package.

This report is a hollow bill. I urge the President to veto this bill. He should force the Congress to work with him to see to it that real anticrime legislation is enacted and signed into law.

Mr. KOHL. Mr. President, I rise today for several purposes: first, to express my disappointment with the Senate's failure to invoke cloture on the strong anticrime package worked out between the House and the Senate; second, to assure my colleagues that I will continue to work for enactment of this measure; and third, to reiterate my enthusiastic support for the conference provisions on the Brady bill. Like the Senate-passed proposal, the conference report combines the best elements of both the Brady and Staggers approaches.

It is not news to anyone that violent crime has become a fact of life in American cities. For example, last week a woman driving in the District of Columbia was ruthlessly gunned down because a young hoodlum carrying a handgun just "felt like killing someone." The sad fact is that it may be more dangerous to live in America than to serve our country in a foreign war. Less than 300 Americans died during the Persian Gulf conflict, yet 450 people have already been murdered this year in our Nation's Capital.

Mr. President, no single legislative change will make our streets safer. A comprehensive approach is needed—more police, tougher laws, more certain punishment. But while there is no panacea for our crime problem, there is a crucial step we can take today to reduce the carnage. We can enact the provisions of the Senate-passed Brady bill—a mandatory background check and a uniform waiting period of 5 business days for anyone seeking to buy a handgun. Under our proposal, the waiting period would be in effect for at least 2½ years and it could only be repealed when an accurate instant check system is in place that would apply to all firearms purchases. In addition, the measure would authorize $100 million to help States upgrade their computerized criminal records.

In the United States, firearms violence is simply out of control. Guns were responsible for more than 10,000 murders in 1991—a 20-percent increase over 1987. Guns were used in more than 600,000 violent crimes last year. No State is immune to gun-related violence. Last year Wisconsin set a record with more than 200 senseless killings, and most of those murdered were killed with guns.

Mr. President, not all of these weapons were acquired illegally. Indeed, according to the Department of Justice, more than 20 percent of all criminals—roughly 120,000 people a year—obtain their handguns through licensed dealers. That is why the Brady bill is so vital—it would help keep guns out of the hands of criminals and drug traffickers.

But don't just take my word for it; look at who else supports it. Brady has been endorsed by every living President—including former President Reagan. It is supported by every major law enforcement organization. and even the NRA believes it makes sense. Its 1976 publication entitled "On Firearms Control" says:

> A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring weapons.

The Brady approach also enjoys wide support because of what it would not do—it would not take anyone's guns away. A criminal records check guarantees that lethal weapons are not sold to individuals with track records of dangerous behavior. A waiting period ensures that we let people consumed by violent passion "cool-off." In short, Brady will create little inconvenience to law-abiding gun buyers, but it will help save lives.

The Senate passed the Mitchell-Kohl-Gore amendment to Senator METZENBAUM's Brady bill by a vote of 67–32. The provision which has come out of conference is essentially the Senate bill with technical corrections and few minor changes. It is not a perfect proposal, nor is the crime bill itself perfect—a compromise seldom is. But we do the American people a disservice when we allow the struggle for perfection to become the enemy of the good.

Mr. President, although we did not complete action on this measure today, I will continue to work for enactment of a comprehensive crime package—one that includes the Brady bill.

Mr. SIMPSON. Mr. President, this body, when we passed the Senate crime bill last July, expressed its strong bipartisan concern about the excessive deals in habeas corpus. That is the process by which convicted murderers appeal State court convictions in Federal courts.

In its vote on strong habeas corpus reform, the Senate sent a pretty strong message that truly reflected the will of the American people: That we are sick and tired of the obscene delays in implementing capital punishment.

During the debate, we heard many accounts of the most gruesome and heinous crimes. Instances where the convicted murderer has delayed his execution for many years. That is the injustice that has been forced upon the American people and which the habeas corpus title in the Senate crime bill would have corrected. Now, Mr. President, we are presented with a conference report which is a slap in the face to law-abiding citizens all across this country.

Mr. President, allow me to draw the attention of this body to another provision in this "criminal rights" crime bill: the provision overruling Arizona versus Fulminante regarding so-called coerced confessions.

The average ax murderer on death row now consumes 8 to 10 years in habeas appeals. Besides vicious murderers, there are countless violent rapists and others of that ilk lounging in our prisons thinking of new and creative ways to try and convince an appellate court that they were railroaded or that they are really innocent.

Under the provisions of title VI, each and every one of those who at one time confessed, can now go back and get a new trial. This title defines a "coerced confession" as simply one that was elicited in violation of the 5th and 14th amendments. All a criminal has to do in a habeas petition is "allege" a violation and he will get a new trial.

I urge my colleagues to stop and think of what that can mean. Imagine "Joe the Ax-Murderer" who "confessed" without an attorney present.

Under this title, that could be a coerced confession. Consider also that in Joe's case, he was convicted because there were also two eye witnesses. On his latest of a dozen or so appeals, the court ruled that admission of the confession didn't matter, because there was overwhelming additional evidence of guilt.

That's what the law is today: It's harmless error to allow a jury to hear a so-called coerced confession if there is overwhelming additional evidence of guilt. Title VI in the bill overrules that, and allows Joe the Ax-Murderer to get a new trial.

What if the evidence has been destroyed in the intervening 8 to 10

years? Or what if the witnesses have died or disappeared? If that were to happen, there's a good chance that Joe the ax-murderer will plea bargain to a lesser sentence. He could get credit for time served and even be eligible for parole. Isn't that absurd?

Just whose interests are being served by this bill? Who stands to benefit?

Not the courts: They will be flooded with new habeas petitions alleging a coerced confession!

Not the public: The public will be at risk if even one of these vicious criminals gets out even one second early!

Not the victims or the witnesses: They have to live through still another trial.

Only the criminals benefit from this title—murderers, rapists, and that sort.

And, Mr. President, that is only a single title of this 500-page monstrosity! Think about title III, regarding the exclusionary rule. This version, as I read it, is even worse than we originally thought when we voted on this in the Senate last June.

In 1984, the Supreme Court recognized that there was a good faith exception to the exclusionary rule. The court said that search warrants which later turned out to be technically defective could not be used to throw out a conviction. This exception to the exclusionary rule has been incorporated into the case law of our country.

This bill would codify that into the unchanging—and inflexible—body of our statutory law.

All this appears to take great steps in making a real difference to fight crime, but hold on!

By making this exception part of the statutory law—codified law—the real effect will be to overrule appeals court decisions which have been applying the good faith exception to the exclusionary rule for evidence that was obtained in warrantless searches.

We need to give the police a wider good faith exception to the exclusionary rule: An exception that could be used on evidence that was obtained without a warrant. Law enforcement officials say this is not only a far more common occurrence, but is more productive in waging a successful fight against crime and criminals.

The bill would restrict police discretion—we would be handcuffing the police, not the criminals.

In an attempt to appear to solidify the good faith exception, this bill actually narrows it. The bill gives with one hand, while it snatches away with the other.

The exclusionary rule, grounded in fourth amendment protections, prohibits the use of evidence obtained in "unreasonable" searches and seizures. It does not protect against the use of evidence that has been obtained as the result of a "reasonable" search and seizure.

That is what the Supreme Court has preserved with is definition of the exclusionary rule. The Court declared that evidence obtained under a technically defective warrant—during the course of a reasonable search or seizure—could be used if it was taken in good faith.

Appeals courts have permitted the use of evidence taken reasonably even without a warrant if the police acted in good faith. As the law stands now, evidence obtained in good faith on a warrant is admissible. This legislation will have the effect of prohibiting that evidence.

So again, Mr. President, I ask my colleagues to consider whose interests are being served. I can tell you it's not the interests of the police, the courts, or especially, the American public. This bill is pure and simple a criminal rights bill and I strongly urge its rejection by the Senate.

Mr. ROTH. Mr. President, I rise in opposition to the conference committee report on the crime bill. This so-called crime bill, to quote the words of the President of the National District Attorneys Association, "Does far more to advance the interests of convicted criminals than it does to protect victims and law-abiding citizens."

As the U.S. Department of Justice has pointed out, the conference committee consistently rejected the better option from either the House or Senate crime bills and invariably selected the option most likely to assist criminals and harm law enforcement.

The attorney general of my home State of Delaware, for example, has written me to urge support of the original Senate language regarding habeas corpus reform, and the original House language regarding the Federal death penalty and the exclusionary rule. Unfortunately, the conference committee has done the exact opposite in all three cases.

In short, Mr. President, if this conference committee report were a person, it would be subject to arrest for fraud or for criminal impersonation of an anticrime bill.

The legislation before this body contains habeas reform that in many ways is worse than the current abuse ridden system. The habeas provisions in this bill place new burdens on the States and fail to address the injustices that the existing system of endless litigation and repetitive review inflicts on the families of murder victims and the law-abiding public. This body approved real habeas reform but it was rejected by the conference committee.

While it is true that this legislation provides for the death penalty for a wide range of offenses—which I support—it is also true that this legislation contains provisions that gut the effectiveness of the death penalty. Moreover, this legislation contains no provisions guarding against the obstruction of the Federal death penalty through endless collateral litigation.

Concerning the exclusionary rule, this legislation does nothing to aid law enforcement in its fight against crime. In fact this legislation is more restrictive than existing law and would require the exclusion of more relevant evidence.

This bill also increases the range of cases in which criminal convictions will be reversed on the basis of harmless errors. And it does little to combat rape and child molestation, or to protect the rights of crime victims.

On top of all this, the taxpayers are asked to shell out more than $3 billion in this bill. Perhaps we should add highway robbery to the charge of fraud.

As we all know, an effective criminal justice system requires maintaining public confidence in that system. I believe that this legislation will do great harms to the already low level of public confidence in the system.

For these reasons I urge my colleagues to join me in opposing this legislation.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1991

Mr. NUNN. Mr. President, we are here today to decide how this body will address the spiraling problems of drugs, guns, and criminal activity which continue to plague this Nation. From Los Angeles, CA, to Portland, ME; from Detroit, MI, to Macon, GA; drugs and crime threaten us all, our communities, our neighborhoods, and our families.

Only yesterday, Mayor Sharon Pratt Dixon of Washington, DC described the crime problem in our Nation's Capital as a "war of values."

She is exactly right. The fundamental test of any civilized society is its ability to make law-abiding citizens secure in their persons and property, without taking measures that themselves threaten the well-being of law-abiding citizens.

Striking that balance properly is the real challenge we face in enacting any anticrime legislation. While it is hardly perfect, this bill does contribute to the safety of law-abiding citizens without endangering their rights, and merits our support.

We should not, however, mislead the American people into believing this bill will have an immediate impact on crime statistics.

The real day-to-day struggle against crime is not centered in the Federal courts, the Federal prisons, or Federal law enforcement officials, important as they all are. It is in our communities, and in the State and local law enforcement officers who are our front-line troops in the war on crime.

Our role in the war on crime is first to concentrate on those aspects of law enforcement where the Federal Government does play a unique role, such as

drug enforcement, interstate criminal investigations, organized crime, many white-collar crimes, and criminal appeals; and then to ensure that we help, not hinder, State and local officials in their particular jurisdictions as much as we can.

The massive bill before us addresses both aspects of the Federal role in law enforcement. This bill represents a tremendous effort on the part of the Judiciary Committee and I commend the members of the committee, and in particular the committee's distinguished chairman, for all of their efforts in attempting to address these often intractable problems.

Without going through the entire bill, I would just like to highlight some of its major provisions. In terms of addressing criminal behavior, this bill provides new minimum penalties for offenses committed with guns, for gun possession by felons, and for theft of guns. It imposes a 5-day waiting period for the purchase of handguns until a national instant check system is developed, and it requires police background checks of gun purchasers in order to keep guns out of the hands of criminals.

The bill includes new efforts to combat gang violence, creates new penalties for terrorist acts, and increases existing penalties for repeat drug offenses, assault, manslaughter, crimes against the elderly, and violent crimes. In addition, the bill expands the Federal death penalty to include such offenses as murder in the course of rape, murder for hire, and drive-by shootings.

In terms of aid to law enforcement, this bill would authorize $1 billion in new aid to local police departments and prosecutors for anti-drug law enforcement efforts, as well as special aid and training for rural police departments. It would create an ROTC-style program to encourage students to serve as police officers, and authorize hundreds of new FBI, DEA, Border Patrol agents, and U.S. attorneys to combat crime and drug trafficking.

In terms of reducing the ability of criminals to abuse the legal process, the bill would codify current rules as annunciated by the Supreme Court to provide for a good faith exception to the exclusionary rule in cases where a search is conducted pursuant to a warrant which later proves defective. In addition, it would limit the number of habeas corpus petitions a death row inmate could file to one, and require that such petition be filed within 1 year.

The bill has been endorsed by organization such as the Fraternal Order of Police, the International Associations of Chiefs of Police, the International Brotherhood of Police Officers, the National Organization of Black Law Enforcement Executives, and the National Association of Police Organizations. All of these groups represent those who are on the front lines of the battle against crime and violence, those whose ability to successful do their jobs is most directly affected by what we do today in this body.

While this is a good bill, it is far from perfect. In this regard I would like to take particular note of concerns expressed by the National District Attorneys Association [NDAA]. The NDAA has raised objections to certain provisions contained in those sections of the bill dealing with the exclusionary rule, habeas corpus reform, and the death penalty.

I have given serious consideration to these objections and I agree with some of their concerns. I particularly agree that the habeas corpus provisions do not sufficiently restrict the much abused process which causes so much delay in our criminal appeals. In the final analysis, however, I believe that there is too much good contained in the close to 500 pages of this bill to let it go down to defeat on the basis of disagreement over a few individual provisions.

The ability to govern is found in the art of compromise. We could reject this bill and attempt to fashion the perfect crime bill—one on which all sides could agree and one which would strike just the right balance on every issue. Yet, as we nobly set about that task, how many more lives would be touched by crime and violence, how many more neighborhood and streets would be lost to those who prey on the innocent?

Let us not delude ourselves. This bill will not end our nation's crime problem. No legislation we pass and no war on crime will ever accomplish this feat. Ultimately, the war on crime depends on the outcome of the "war of values" that Mayor Dixon spoke of so eloquently. The strength of our families, the cohesiveness of our communities, the influence of our religious institutions, and the wisdom of our leaders and educators—these factors will contribute to the war on crime more than all the legislation we could ever enact.

For those upon whom the war of values would be lost, however, we must assure that detection, pursuit and punishment is swift, certain, and severe. That is what I believe this bill accomplishes. It is for that reason that I shall support this bill, and I urge my colleagues to do likewise.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 345, 346, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 473, 475, 476, 477, 478, 479; all nominations placed on the Secretary's desk in the Air Force, Army, and Navy.

I further ask unanimous consent that the Senate proceed to the following nominations reported today by the Committee on Armed Services: Donald C. Fraser, to be Deputy Under Secretary of Defense for Acquisition,

James Roderick Lilley, to be an Assistant Secretary of Defense; and

Victor H. Reis, to be Director of Defense Research and Engineering.

Mr. President, I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Alice M. Batchelor, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

Harold R. DeMoss, Jr., of Texas, to be United States Circuit Judge for the Fifth Circuit.

DEPARTMENT OF STATE

Robert Stephen Pastorino, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominican Republic.

Curtis Warren Kamman, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

George Fleming Jones, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Co-operative Republic of Guyana.

William Edwin Ryerson, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Albania.

John R. Davis, Jr., of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Romania.

Frederick Vreeland, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

John Hubert Kelly, of Georgia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Finland.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Jose E. Martinez, of Texas, to be Director of the Trade and Development Program. (New Position)

INTER-AMERICAN FOUNDATION

William Kane Reilly, of Virginia, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 1994.

EXECUTIVE OFFICE OF THE PRESIDENT

Clair W. Burgener, of California, to be a Member of the Advisory Board for Cuba

Broadcasting for a term expiring October 27, 1994.

AIR FORCE

The following officers for appointment in the United States Air Force to the grade of brigadier general under the provisions of section 624, Title 10 of the United States Code:

To be brigadier general

Col. George P. Cole, Jr., [redacted], Regular Air Force.

Col. Eldon W. Joersz, [redacted], Regular Air Force.

PANAMA CANAL COMMISSION

William Carl, of Texas, to be a Member of the Board of the Panama Canal Commission.

John J. Danilovich, of California, to be a Member of the Board of the Panama Canal Commission.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

John W. Crawford, Jr., of Maryland, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 1996. (Reappointment)

DEPARTMENT OF ENERGY

Leo P. Duffy, of Pennsylvania, to be an Assistant Secretary of Energy (Environmental Restoration and Waste Management).

ARMY

The United States Army National Guard Officer named herein for appointment in the Reserve of the Army of the United States in the grade indicated below, under the provisions of Title 10, United States Code, sections 593(a), 3385 and 3392:

To be major general

Brig. Gen. Nathaniel H. Robb, [redacted].

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY

Air Force nominations beginning Clifton D. Daniel, and ending Jack H. Morgan, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Scotoliff Hector A. Arroyo, and ending Gunther A. Mueller, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Maj. Michael T. Allen, [redacted], and ending Maj. Earl R. Harrison, Jr., [redacted], which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Ronald M. Adams, and ending Wilbur T. Workman, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning Charles G. Abbott, and ending Donald J. Copley, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning James D. Hallums, and ending John H. Grubbs, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning Bruce A. Adams, and ending Mark E. Zirkelbach, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Navy nominations beginning Thomas H. Adair, and ending Paul A. Yetmar, which nominations were received by the Senate and appeared in the Congressional Record of October 31, 1991.

Navy nominations beginning Kevin T. Aanestad and ending Kimberly A. Zych, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

DEPARTMENT OF DEFENSE

Donald C. Fraser, to be Deputy Under Secretary of Defense for Acquisition,

James Roderick Lilley, to be an Assistant Secretary of Defense, and

Victor H. Reis, to be Director of Defense Research and Engineering.

STATEMENT ON THE NOMINATION OF LEO P. DUFFY

Mr. WALLOP. Mr. President, on November 20, 1991, the Committee on Energy and Natural Resources unanimously reported the nomination of Mr. Leo Duffy to be Assistant Secretary for Environmental Restoration and Waste Management for the Department of Energy.

Mr. Duffy has served as the Director for this office since 1989, and has extensive previous experience in the area of hazardous waste cleanup. Prior to joining the Department, he served in several senior managerial positions—vice president and project director, Roy F. Westin, Inc.; general manager, Westinghouse Waste Technology Services Division, Westinghouse Electric Corp.; and manager of EG&G Idaho, Inc. Waste Management Group. Mr. Duffy holds a B.S. degree in mechanical engineering form New York University and attended the Bettis Reactor Design School.

Mr. President, the recent battle in this body over the Federal facilities bill and the impossibility of compliance confronting the Department of Energy with respect to mixed waste underscores the significance of the responsibilities Mr. Duffy is undertaking. He is faced with the formidable task of assessing and mitigating the environmental legacies from an era that was focused almost exclusively on national security.

As our knowledge of the environmental consequences peripheral to the country's defense production has increased, we have recognized that we must make provisions for cleaning up our defense production sites. But a commitment to that endeavor is more than simply throwing a pot of money after the problem. Someone must make intelligent decisions about the extent of the problem, the methods of dealing with it, and the benefits achievable relative to the costs.

The magnitude of the job cannot be underestimated, and I admire Mr. Duffy for being willing to undertake that task. At the same time, as I indicated during the confirmation hearing, I intend to keep a close eye on the progress of this program.

Mr. President, I urge my colleagues to join me in supporting this nomination.

Mr. FORD. Mr. President, I ask unanimous consent that the following nominations be discharged from the Agriculture, Nutrition, and Forestry Committee, and that the Senate proceed to their immediate consideration: Gary C. Byrne, to be a member of the Farm Credit Administration Board, Farm Credit Administration; Charles R. Hilty, to be an Assistant Secretary, Department of Agriculture.

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF AGRICULTURE

Gary C. Byrne, to be a Member of the Farm Credit Administration Board, Farm Credit Administration; and

Charles R. Hilty, to be an Assistant Secretary, Department of Agriculture.

Mr. FORD. Mr. President, I ask unanimous consent that the following nominations be discharged from the Committee on Labor and Human Resources, and that the Senate proceed to their immediate consideration: Patrick J. Cleary, to be a member of the National Mediation Board; David Alan Heslop, Marjorie Arsht, and Kenneth H. Bastian, Jr., to be members of the National Advisory Council on Educational Research and Improvement; Barbara J.H. Taylor, and James E. Lyons, to be members of the National Commission on Libraries and Information Science; Ian M. Ross, to be a Member of the National Science Board; Eunice B. Whittlesey, Lisa A. Hembry, and Ruth K. Watanabe, to be members of the National Museum Services Board; and Anne C. Seggerman, Mary M. Raether, and Anthony H. Flack, to be members of the National Council on Disability.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

Patrick J. Cleary, to be a Member of the National Mediation Board;

David Alan Heslop, Marjorie Arsht, and Kenneth H. Bastian, Jr., to be members of the National Advisory Council on Educational Research and Improvement;

Barbara J.H. Taylor and James E. Lyons, to be members of the National Commission on Libraries and Information Science;

Ian M. Ross, to be a member of the National Science Board;

Eunice B. Whittlesey, Lisa A. Hembry, and Ruth K. Watanabe, to be members of the National Museum Services Board; and

Anne C. Seggerman, Mary M. Raether, and Anthony H. Flack, to be members of the National Council on Disability.

Mr. FORD. Mr. President, I ask unanimous consent that all nominations re-

ceived by the Senate remain in status quo, notwithstanding the provisions of rule XXXI 31, paragraph 6, with the following exceptions: James D. Watkins, Richard T. Kennedy, Jane E. Becker, Ivan Selin to be U.S. Representative and Alternate Representatives to the 35th Session of the General Conference of the International Atomic Energy Agency, Department of State; Karl C. Rove of Texas, to be a Member of the Board for International Broadcasting, for a term expiring April 28, 1991, vice Edward Noonan Ney, term expired; and that the Senate return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

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

REPORT ON REDUCTION IN TRAVEL AND TRANSPORTATION—MESSAGE FROM THE PRESIDENT—PM 98

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Appropriations:

To the Congress of the United States:

In accordance with section 523A of the Treasury, Postal Service and General Government Appropriations Act, 1992, I transmit herewith a report specifying my determination of the uniform percentage necessary to reduce outlays for travel, transportation, and subsistence by $15.7 million. As required by law, this reduction will be applied to all accounts within this appropriations act in FY 1992 with the exception of the Committee for Purchase from the Blind and Other Severely Handicapped. Federal agencies covered by this appropriations act have been instructed to make the required reductions.

GEORGE BUSH.

THE WHITE HOUSE, *November 27, 1991.*

MESSAGES FROM THE HOUSE

At 9 a.m., a message from the House of Representatives, delivered by Mr. Jenkins, one of its clerks, announced that the House agrees to the report of the committee of conference of the Senate to the joint resolution (H.J. Res. 157) making technical corrections and correcting enrollment errors in certain acts making appropriations for the fiscal year ending September 30, 1991, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2950) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, or highway safety programs, and for mass transit programs, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 1532) to revise and extend the programs under the Abandoned Infants Assistance Act of 1988, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3049) to amend the Immigration and Nationality Act to restore certain exclusive authority in courts to administer oaths of allegiance or naturalization.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3595) to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the Medicaid Program and to maintain the treatment of intergovernmental transfers as such a source; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, and Mr. LENT as managers of the conference on the part of the House.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 3807) to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with implementation of the Treaty on Conventional Armed Forces in Europe; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, without amendment:

S. 867. An act to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes; and

S. 2098. An act to authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3638. An act making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge; and

H.R. 3909. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 272. An act to provide for a coordinated Federal program to ensure continued United States leadership in high-performance computing;

S. 1284. An act to make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts;

H.R. 1988. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes;

H.R. 3370. An act to direct the Secretary of the Interior to carry out a study and make recommedations to the Congress regarding the feasibility of establishing a Native American cultural center in Oklahoma City, Oklahoma;

S.J. Res. 187. Joint resolution to make a technical correction in Public Law 101-549; and

H.J. Res. 346. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

At 3:10 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3435. An act to provide funding for the resolution of failed savings associations and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 260. Concurrent resolution providing for an adjournment of the Congress to a date certain.

The message further announced that pursuant to the provisions of section 168(b) of Public Law 102-138, the Speaker appoints Mr. HAMILTON to the Brit-

ish-American Interparliamentary Group on the part of the House.

The message also announced that pursuant to the provisions of section 2702 of 44 United States Code, as amended by Public Law 101-509, the Speaker appoints Mr. Richard F. Fenno, Jr., of Rochester, NY, as a member from private life of the Advisory Committee on the Records of Congress on the part of the House.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 3:47 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 794. An act to establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes;

H.R. 848. An act entitled the "Little Bighorn Battlefield National Monument";

H.J. Res. 201. Joint resolution designating the week beginning December 1, 1991, and the week beginning November 15, 1992, each as "Geography Awareness Week"; and

H.J. Res. 300. Joint resolution designating the month of May 1992 as "National Trauma Awareness Month."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

At 9:38 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 198. Joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

At 12:00, a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3371) to control and prevent violent crime.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (H.R. 543) to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulation of insured depository institutions, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3919. An act to temporarily extend the Defense Production Act of 1950.

At 5:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3595) to delay until September 30, 1992, the issuance of regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the Medicaid Program and to maintain the treatment of intergovernmental transfers as such a source.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 261. A concurrent resolution correcting technical errors in the enrollment of the bill S. 543.

At 7:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution; without amendment:

S. Con. Res. 83. A concurrent resolution to authorize a correction in the enrollment to S. 543.

The message also announced that the House agrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 260) providing for an adjournment of the Congress to a date certain.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent and referred as indicated:

H.R. 1104. An act to declare certain portions of Pelican Island, TX, nonnavigable; to the Committee on Commerce, Science, and Transportation.

H.R. 1592. An act to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; to the Committee on Energy and Natural Resources.

H.R. 1688. An act entitled the "Omnibus Insular Areas Act of 1991"; to the Committee on Energy and Natural Resources.

H.R. 2141. An act to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2263. An act to amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, and for other purposes; to the Committee on Governmental Affairs.

H.R. 2450. An act to amend title 28, United States Code, to provide for Federal jurisdiction of certain multiparty, multiforum civil actions; to the Committee on the Judiciary.

H.R. 2502. An act to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2732. To amend title 17, United States Code, with respect to copyright renewal, to reauthorize the National Film Preservation Board, and for other purposes; to the Committee on the Judiciary.

H.R. 2929. An act to designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks and the Mojave National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2977. An act to authorize appropriations for public broadcasting, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3048. An act to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants; to the Committee on the Judiciary.

H.R. 3237. An act to extend the terms of office of members of the Foreign Claims Settlement Commission from 3 to 6 years; to the Committee on the Judiciary.

H.R. 3638. An act making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge; to the Committee on Energy and Natural Resources.

H.R. 3359. An act to amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1027), and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3666. An act to amend title 28, United States Code, to provide for an additional place for holding court for the Eastern District of Texas; to the Committee on the Judiciary.

H.R. 3670. An act to make certain technical corrections relating to the immigration laws; to the Committee on the Judiciary.

H.R. 3686. An act to amend title 28, United States Code, to make changes in the places of holding court in the Eastern District of North Carolina; to the Committee on the Judiciary.

H.J. Res. 372. Joint resolution designating December 1, 1991, as "World AIDS Day"; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3341. An act to amend the Ethics in Government Act of 1978 with respect to honoraria, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, November 27, 1991, he had presented to the President of the United States the following enrolled bills and joint resolution:

S. 272. An act to provide for a coordinated Federal program to ensure continued United States leadership in high-performance computing;

S. 1284. An act to make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts; and

S.J. Res. 187. Joint resolution to make a technical correction in Public Law 101-549.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 353. A bill to require the Director of the National Institute for Occupational Safety and Health to conduct a study of the prevalence and issues related to contamination of workers' homes with hazardous chemicals and substances transported from their workplace and to issue or report on regulations to prevent or mitigate the future contamination of workers' homes, and for other purposes (Rept. No. 102-253).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 1581. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 to enhance technology transfer for works prepared under certain cooperative research and development (Rept. No. 102-254).

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

Donald C. Fraser, of Massachusetts, to be Deputy Under Secretary for Acquisition;

James Roderick Lilley, of Maryland, to be an Assistant Secretary of Defense; and

Victor H. Reis, of the District of Columbia, to be Director of Defense Research and Engineering.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PACKWOOD:

S. 2120. A bill to amend the Internal Revenue Code of 1986 to stimulate economic growth in the United States, and for other purposes; to the Committee on Finance.

By Mr. DURENBERGER:

S. 2121. A bill to establish a policy with respect to corrective action and financial assurance for certain class of facilities under subtitle C of the Solid Waste Disposal Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BENTSEN:

S. 2122. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Finance.

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

S. 2123. A bill to provide for enhanced reporting to the public of release of toxic chemicals, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUMPERS:

S. 2124. A bill entitled the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991"; to the Committee on Foreign Relations.

By Mr. MCCONNELL:

S. 2125. A bill to lift the trade embargo against Vietnam if certain conditions are met; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SPECTER:

S. 2126. A bill to extend the temporary suspension of duties on L-alanyl-L-proline, also known as Ala Pro; to the Committee on Finance.

S. 2127. A bill to suspend temporarily the duty on {3R-{3-alpha(R),4-beta}}-4(acetyioxy)-3-{{(1,1-dimethyl ethyi) dimethyi-siyl}oxy}ethyi}-2-azetidinone; to the Committee on Finance.

S. 2128. A bill to suspend temporarily the duty on 3-chloro peroxybenzoic acid; to the Committee on Finance.

S. 2129. A bill to suspend temporarily the duty on composite vials of timolol maleate/pilocarpine solutions and diluents; to the Committee on Finance.

By Mr. DECONCINI (for himself and Mr. HATCH):

S. 2130. A bill to amend title 35, United States Code, to permit separate patent extensions for each product under a patent which is subject to full regulatory review and approval; to the Committee on the Judiciary.

By Mr. RIEGLE:

S. 2131. A bill to repeal section 618 of the Resolution Trust Corporation, Refinancing, Restructuring and Improvement Act of 1991; read the first time.

By Mr. MOYNIHAN:

S. 2132. A bill to require the Administrator of the Environmental Protection Agency to seek ongoing advice from independent experts in ranking relative environmental risks; to conduct the research and monitoring necessary to insure a sound scientific basis for decisionmaking; and to use such information in managing available resources to protect society from the greatest risks to human health, welfare, and ecological resources; to the Committee on Environment and Public Works.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 2133. A bill to provide for the economic conversion and diversification of industries in the defense base of the United States that are adversely affected by significant reductions in spending for national defense; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. NUNN (for himself and Mr. FOWLER):

S. 2134. A bill to provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 2135. A bill to amend the Federal Food, Drug, and Cosmetic Act to enhance the enforcement authority of the Food and Drug Administration, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CONRAD:

S. 2136. A bill to authorize construction of the northwest area water supply/Fort Berthoid integrated water supply project, hereinafter referred to as the "Na ohiin Huun-Dakota Project," and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. SPECTER:

S. Res. 238. A resolution for Rules Committee report on plan to deal with Senate perquisites; to the Committee on Rules and Administration.

By Mr. CHAFEE (for Mr. HATFIELD):

S. Res. 239. A resolution reauthorizing the Albert Einstein Congressional Fellowship Program; considered and agreed to.

By Mr. FORD (for Mr. BYRD):

S. Res. 240. A resolution to temporarily suspend for the sole and specific purpose of permitting the United States Capitol Preservation Commission and its designated agents to conduct activities in accordance with the purposes of the Commission on such dates and times, and in such manner as determined by the Senate Co-chair of the Commission or his designee; considered and agreed to.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 241. A resolution to authorize testimony by and representation of former employee of the Senate in United States v. Peter MacDonald, Jr., et al.; considered and agreed to.

By Mr. GARN:

S. Con. Res. 83. A concurrent resolution to authorize a correction in the enrollment of S. 543; considered and agreed to.

By Mr. RIEGLE:

S. Con. Res. 84. A concurrent resolution to correct the enrollment of H.R. 3435, the R.T.C. Funding Bill; considered and agreed to.

By Mr. FORD (for Mr. DECONCINI):

S. Con. Res. 85. A concurrent resolution to correct a technical error in the enrollment of the bill (H.R. 3531), and for other purpose; considered and agreed to.

By Mr. CHAFEE (for Mr. DOLE):

S. Con. Res. 86. A concurrent resolution to correct the enrollment of H.R. 2950; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PACKWOOD:

S. 2120. A bill to amend the Internal Revenue Code of 1986 to stimulate economic growth in the United States, and for other purposes; to the Committee on Finance.

GREATER RECOVERY OPPORTUNITY FOR WORKERS ACT OF 1991

• Mr. PACKWOOD. Mr. President, today I am introducing legislation to help hard-working Americans weather these tough economic times. The sad fact is that the recession is lasting much longer than anyone anticipated.

Americans have had to tighten their belts and dip into savings to get by. Others less fortunate have been laid off

and are having difficulty finding work. I am glad we were able to enact legislation this year to extend unemployment benefits for these workers. But more needs to be done.

When Congress returns in January, I believe we should act quickly to enact measures to help our economic recovery. That's why I'm introducing this legislation, the Greater Recovery Opportunities for Workers Act of 1991—known as GrowAmerica.

It seems like everyone in Washington is talking about some kind of tax cut. I think it's time to put some money back into the pockets of hard-working Americans so they can recover from the recession. There are lots of meritorious proposals in the hopper. My bill takes a slightly different approach by giving a 2-year across-the-board 10-percent tax cut for middle-income Americans.

And there a few other things we can do that make sense right now.

First, we should make it easier for small businesses to offer a retirement savings plan to their workers. Today, one of the largest gaps in retirement savings is that of small employees. Less than 20 percent of these workers are covered by an employer-sponsored savings plan. This is because the current pension rules are overly complex. My bill would make it easier for small businesses to offer a retirement savings plan by establishing a new, simplified pension plan, called the PRIME Retirement Account.

Second, Americans should not be penalized for saving. My bill allows people to withdraw money penalty-free from individual retirement accounts and 401k retirement plans for the purchase of a first home, to cover expenses during long periods of unemployment, and to pay for college education and large medical bills.

Third, we should give smaller businesses a little help in modernizing their businesses. My bill doubles the amount of equipment purchases that small businesses can deduct from their taxes and indexes this for inflation.

Finally, I think the time has come to rework the passive-loss rules to make them more equitable for the real estate industry. I am convinced that the passive-loss rules hit the real estate industry too hard and we need to act now to correct this so that the industry can pull out of the tailspin it has been in. When we drafted the passive-loss rules in 1986, we were trying to eliminate tax shelters and we did. We did not intend to hit bona fide losses of someone actively running a business. Unfortunately, that was the effect of the passive-loss rules on the real estate industry. My bill corrects this inequity by allowing those whose primary business is real estate to prove they materially participate in rental real estate activities.

No doubt about it—these ideas cost money. But I think we can afford them through cuts in spending. Changes in Eastern Europe and the Soviet Union make defense cuts feasible in the future. And, if additional revenue is needed, wealthy Americans should be asked to pay a little more in income taxes. Although no one is exempt from a recession, wealthy individuals tend to weather hard economic times better than others.

It's time to put politics and partisan differences aside and work together on responsible tax relief legislation to give hard-working Americans a break.

Mr. President, I ask unanimous consent that a detailed description of my GrowAmerica proposal and the bill be printed in the RECORD.

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

DESCRIPTION OF PACKWOOD GROWAMERICA PROPOSAL

1. Middle-income tax cuts. For 1992 and 1993, the income taxes of middle-income Americans will be cut by 10 percent.

Married couples—filing a joint tax return—will receive a 10-percent tax cut if their taxable income is $40,000 or less. Married couples with taxable incomes between $40,000 and $50,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $40,000.

Single heads of households will receive a 10-percent tax cut if their taxable income is under $30,000. Single heads of households having taxable income between $30,000 and $40,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $30,000.

Anyone else will receive a 10-percent tax cut if their taxable income is under $20,000. Those having taxable income between $20,000 and $30,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $20,000.

2. The PRIME Retirement Account. Beginning in 1992, a new simplified, easy to administer retirement plan—known as the PRIME Retirement Account—will be available for workers employed by small businesses.

Employers with under 100 employees will be able to offer a PRIME Retirement Account to full-time employees—those expected to work at least 1,000 hours a year.

Employees who choose to have a PRIME Retirement Account can make pretax contributions to the PRIME account, through payroll deductions, of up to $3,000 a year.

Employers must match each employee's contribution dollar-for-dollar up to the first 3 percent of compensation—maximum total contribution of $3,000 a year.

Once employee and employer contributions are deposited in the PRIME Retirement Account, the contributions are fully vested and the account operates very much like an individual retirement account.

The PRIME Retirement Account plan does not have the various IRS and ERISA filing requirements and recordkeeping burdens that apply to current law employer sponsored retirement plans, which discourages small businesses from offering a retirement savings plan to their workers.

3. Savings without penalties. Beginning in 1992, Americans will have the option of withdrawing funds penalty free from an individual retirement account or a 401k retirement plan for the following purposes:

Purchase of their first home, or their children's or grandchildren's first home.

College education for themselves and their spouse, children, and grandchildren.

Large medical bills.

Periods of unemployment extending longer than basic unemployment benefits.

Amounts withdrawn because of unemployment may be recontributed within 1 year of reemployment.

4. Expensing for small businesses. Beginning in 1992, the amount of equipment purchases that can be deducted by small businesses in the year of purchase is increased from $10,000—under current law—to $20,000. The $20,000 amount is also indexed for inflation occurring in the future.

5. Passive losses for real estate. Beginning in 1992, individuals whose primary business is in the real estate industry will be allowed to prove that they materially participate in rental real estate activities.

An exemption is made to the current law rule that losses from rental real estate activities are always treated as passive losses, no matter how much work someone does. To qualify for the exemption:

An individual must materially participate in one or more real property trade or business and the time spent so materially participating must be more than one-half of the total time spent working in all trade or businesses.

A closely held corporation must materially participate in one or more real property trade or businesses and more than 50 percent of the corporation's gross receipts must come from such real property trade or businesses.

Those qualifying for the exemption must prove that they materially participate in the rental real estate activity in order to deduct losses from such activities. At the election of the taxpayer, all rental real estate activities of the taxpayer may be aggregated for this determination.

S. 2120

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

SECTION 1. SHORT TITLE; AMENDMENTS OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Greater Recovery Opportunity for

Workers Act of 1991", to be known as the "GrowAmerica Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—REDUCTION IN INDIVIDUAL INCOME TAXES

SEC. 101. REDUCTION IN TAX RATES FOR LOW AND MIDDLE INCOME TAXPAYERS FOR 1992 AND 1993.

(a) IN GENERAL.—Part I of subchapter A of chapter 1 (relating to tax on individuals) is amended by inserting after section 3 the following new section:

"SEC. 4. REDUCTION IN INDIVIDUAL INCOME TAXES FOR 1992 AND 1993.

"(a) GENERAL RULE.—In the case of an individual, the tax imposed under section 1 (or any tax imposed in lieu thereof) for any taxable year beginning in 1992 or 1993 (determined without regard to this section) shall be reduced by an amount equal to the applicable percentage of such tax.

"(b) APPLICABLE PERCENTAGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable percentage' means 10 percent, reduced by 1 percentage point for each $1,000 (or any fraction thereof) by which the taxable income of the taxpayer exceeds the applicable limit.

"(2) APPLICABLE LIMIT.—For purposes of paragraph (1), the term 'applicable limit' means—

"(A) $40,000 in the case of a taxpayer to whom section 1(a) applies,

"(B) $30,000 in the case of a taxpayer to whom section 1(b) applies, and

"(C) $20,000 in the case of any other taxpayer.

"(c) SPECIAL RULES.—

"(1) SECTION NOT TO APPLY TO ESTATES AND TRUSTS.—For purposes of this section, the term 'individual' shall not include any estate or trust taxable under section 1.

"(2) COORDINATION WITH OTHER PROVISIONS.—The provisions of this section—

"(A) shall be applied after the application of section 1(h), but

"(B) before the application of any other provision of this title which refers to the amount of the tax imposed by section 1.

"(3) TABLES.—In order to reflect the amount of the reduction in tax under this section for different levels of taxable income, the Secretary may—

"(A) modify the tables under sections 1, 3, and 3402, or

"(B) prescribe such other tables as the Secretary determines necessary."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter A of chapter 1 is amended by inserting after the item relating to section 3 the following new item:

"Sec. 4. Reduction in individual income taxes for 1992 and 1993."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) SECTION 15 NOT TO APPLY.—The amendments made by this section shall not be treated as a change in rates of tax to which section 15 applies.

TITLE II—SAVINGS INCENTIVES

Subtitle A—Private Retirement Savings

SEC. 201. ESTABLISHMENT OF PRIME RETIREMENT ACCOUNTS FOR EMPLOYEES OF SMALL EMPLOYERS.

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) PRIME ACCOUNTS.—

"(1) IN GENERAL.—For purposes of this title, the term 'prime account' means an individual retirement plan—

"(A) with respect to which the requirements of paragraphs (3), (4), (5), and (6) are met; and

"(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

"(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified salary reduction arrangement' means a written arrangement of an eligible employer under which—

"(i) an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the prime account on behalf of the employee, or

"(II) to the employee directly in cash,

"(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of $3,000 for any year, and

"(iii) the employer—

"(I) is required to make a matching contribution to the prime account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed 3 percent of compensation, and

"(II) may make no other matching contribution.

"(B) ELIGIBLE EMPLOYER.—For purposes of this subsection, the term 'eligible employer' means an employer who normally employs fewer than 100 employees on any day during the year.

"(C) ARRANGEMENT MAY BE ONLY PLAN OF EMPLOYER.—

"(i) IN GENERAL.—An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or amounts were accrued, for any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made.

"(ii) SERVICE CREDIT.—A qualified plan maintained by an employer shall provide that, in computing the accrued benefit of any employee, no credit shall be given for service during a year for which such employee was eligible to participate in a qualified salary reduction arrangement of such employer.

"(iii) QUALIFIED PLAN.—For purposes of this subparagraph, the term 'qualified plan' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

"(D) NO FEE OR PENALTY ON EMPLOYEE'S INITIAL INVESTMENT DETERMINATION.—An arrangement shall not be treated as a qualified salary reduction arrangement unless it provides that no fee or penalty will be imposed on an employee's initial determination with respect to the investment of any contribution.

"(3) VESTING REQUIREMENTS.—The requirements of this paragraph are met with respect to a prime account if the employee's rights to any contribution to the prime account are nonforfeitable. For purposes of this paragraph, the rules of subsection (k)(4) shall apply.

"(4) PARTICIPATION REQUIREMENTS.—The requirements of this paragraph are met with respect to any prime account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who are reasonably expected to work at least 1,000 hours during such year are eligible to make the election under paragraph (2)(A)(i).

"(5) ADMINISTRATIVE REQUIREMENTS.—The requirements of this paragraph are met with respect to any prime account if, under the qualified salary reduction arrangement—

"(A) an employer must make the elective employer contributions under paragraph (2)(A)(i) and the employer matching contributions under paragraph (2)(A)(iii) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made,

"(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so elects, the employee may not elect to resume participation until the beginning of the next year, and

"(C) each employee eligible to participate—

"(i) may elect, during the 60-day period before the beginning of any year, to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year, and

"(ii) may elect, within 30 days of commencing employment during any year, to participate in the arrangement.

"(6) SPOUSAL CONSENT.—The requirements of this paragraph are met if requirements similar to the requirements of section 401(a)(11) are met. For purposes of applying section 401(a)(11)(B)(iii), the arrangement shall be treated in the same manner as a defined contribution plan.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE.—The term 'employee' includes an employee as defined in section 401(c)(1).

"(B) YEAR.—The term 'year' means the calendar year."

(b) PRIME ACCOUNTS NOT TREATED AS PENSION PLANS.—Notwithstanding any other provision of law, a prime account or qualified salary reduction arrangement under section 408(p) of the Internal Revenue Code of 1986 shall not be treated as an employee benefit plan or pension plan for purposes of the Employee Retirement Income Security Act of 1974.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1991.

SEC. 202. TAX TREATMENT OF PRIME ACCOUNTS.

(a) DEDUCTIBILITY OF CONTRIBUTIONS.—

(1) Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR PRIME ACCOUNTS.—This section shall not apply with respect to any amount contributed to a prime account established under section 408(p)."

(2) Section 219(g)(5)(A) (defining active participant) is amended by striking "or" at the end of clause (iv) and by adding at the end thereof the following new clause:

"(vi) any prime account (within the meaning of section 408(p)), or".

(b) CONTRIBUTIONS AND DISTRIBUTIONS.—

(1) Section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF PRIME ACCOUNTS.—The rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a prime account under section 408(p)."

(2) Section 408(d)(3) is amended by adding at the end thereof the following new subparagraph:

"(G) PRIME ACCOUNTS.—This paragraph shall not apply to any amount paid or distributed out of a prime account (as defined in section 408(p)) unless it is paid into another prime account."

(3) Clause (i) of section 457(c)(2)(B) is amended by striking "section 402(h)(1)(B)" and inserting "section 402(h)(1)(B) or (k)".

(c) PENALTIES.—

(1) EARLY WITHDRAWALS.—Section 72(t) (relating to additional tax in early distributions) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULES FOR PRIME ACCOUNTS.—In the case of any amount received from a prime account (within the meaning of section 408(p)) during the 3-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting '25 percent' for '10 percent'."

(2) FAILURES TO REPORT.—Section 6693 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) PENALTIES RELATING TO PRIME ACCOUNTS.—

"(1) EMPLOYER PENALTIES.—An employer who fails to provide 1 or more notices required by section 408(l)(2)(C) shall pay a penalty of $100 for each day on which such failures continue.

"(2) TRUSTEE PENALTIES.—A trustee who fails—

"(A) to provide 1 or more statements required by the last sentence of section 408(i) shall pay a penalty of $100 for each day on which such failures continue, or

"(B) to provide 1 or more summary descriptions required by section 408(l)(2)(B) shall pay a penalty of $100 for each day on which such failures continue."

(d) REPORTING REQUIREMENTS.—

(1)(A) Section 408(l) is amended by adding at the end thereof the following new paragraph:

"(2) PRIME ACCOUNTS.—

"(A) NO EMPLOYER REPORTS.—Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

"(B) SUMMARY DESCRIPTION.—The trustee of any prime account established pursuant to a qualified salary reduction arrangement under subsection (p) shall prepare, and provide to the employer maintaining the arrangement, each year a description containing the following information:

"(i) The name and address of the employer and the trustee.

"(ii) The requirements for eligibility for participation.

"(iii) The benefits provided with respect to the arrangement.

"(iv) The time and method of making elections with respect to the arrangement.

"(v) The procedures for, and effects of, withdrawals from the arrangement.

"(C) EMPLOYEE NOTIFICATION.—The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B)."

(B) Section 408(l) is amended by striking "An employer" and inserting—

"(1) IN GENERAL.—An employer".

(2) Section 408(l) is amended by adding at the end the following new flush sentence:

"In the case of a prime account under subsection (p), only one report under this subsection shall be required to be submitted to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar quarter, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar quarter."

(e) CONFORMING AMENDMENTS.—

(1) Section 230G(b)(6) is amended by striking the "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or" and by adding after subparagraph (C) the following new subparagraph:

"(D) a prime account described in section 408(p)."

(2) Section 402(g)(3) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any employer contribution under section 408(p)(2)(A)."

(3) Subsections (b) and (c) of section 414 are each amended by inserting "408(p)," after "408(k),".

(4)(A) Section 415(a)(2) is amended by striking "or" at the end of subparagraph (B), by inserting "or" at the end of subparagraph (C), and by adding after subparagraph (C) the following new subparagraph:

"(D) a prime account described in section 408(p),"

(B) Section 415(a)(2) is amended—

(i) by striking "or pension" and inserting "pension, or account", and

(ii) by striking "or 408(k)" and inserting "408(k), or 408(p)".

(C) The second last sentence of section 415(c)(2) is amended—

(i) by inserting a comma after "408(d)(3))", and

(ii) by inserting ", and without regard to contributions to a prime account which are excludable from gross income under section 408(p)" after "408(k)(6)".

(D) Section 415(e)(5) is amended by inserting "or prime account" after "simplified employee pension".

(E) Section 415(k)(1) is amended by striking "or" at the end of subparagraph (E), by striking the period at the end of subparagraph (F) and inserting ", or", and by inserting after subparagraph (F) the following new subparagraph:

"(G) a prime account described in section 408(p)."

(5) Section 4972(d)(1)(A) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding after clause (iii) the following new clause:

"(iv) any prime account (within the meaning of section 408(p))."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

Subtitle B—Savings Without Penalties

SEC. 211. PENALTY-FREE DISTRIBUTIONS FROM CERTAIN RETIREMENT PLANS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES OR DURING PERIODS OF UNEMPLOYMENT.—

"(i) IN GENERAL.—Distributions to an individual from an eligible individual retirement arrangement—

"(I) which are qualified first-time homebuyer distributions (as defined in paragraph (7)),

"(II) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year, or

"(III) which are made during a period of involuntary unemployment described in paragraph (9).

"(ii) DISTRIBUTIONS MAY BE INCREASED TO REFLECT TAX LIABILITY.—The amount of distributions to which subclause (I) or (II) of clause (i) apply for any taxable year shall be increased by other distributions to the extent that the amount of such other distributions does not exceed the product of—

"(I) the amount determined under subclause (I) or (II) of clause (i) (without regard to this clause), multiplied by

"(II) the highest rate of tax applicable to the taxpayer under section 1.

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) TECHNICAL AMENDMENT.—Section 72(t)(2)(B) is amended by inserting "and without regard to any amounts includible in gross income for such taxable year by reason of such distributions" after "taxable year".

(c) DEFINITIONS.—Section 72(t), as amended by section 202, is amended by adding at the end thereof the following new paragraphs:

"(7) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)(I)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the child or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—

"(I) IN GENERAL.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

"(II) ROLLOVER CASES EXCLUDED.—An individual shall not be treated as a first-time homebuyer if the residence acquired is treated as a new residence for purposes of section 1034. This subclause shall not apply if the individual elects not to treat the residence as a new residence for purposes of section 1034.

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, the requirements of subparagraph (A) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(i)(II)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH OTHER PROVISIONS.—

"(i) REIMBURSED EXPENSES.—No amount shall be treated as qualified higher education expenses if a scholarship or grant is received for such expenses or such expenses are otherwise reimbursed to the taxpayer.

"(ii) SAVINGS BONDS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135.

"(9) PERIOD OF INVOLUNTARY UNEMPLOYMENT.—For purposes of paragraph (2)(D)(i)(III)—

"(A) IN GENERAL.—The term 'period of involuntary unemployment' means the consecutive period beginning on the 180th day after an individual becomes unemployed and ending with the date on which the individual begins any employment which would disqualify the individual from receiving unemployment compensation.

"(B) EMPLOYEE MAY RECONTRIBUTE AMOUNT WITHDRAWN.—For purposes of this title, if, during the 1-year period following the close of any period of involuntary unemployment, an employee makes 1 or more contributions to eligible individual retirement arrangements in amounts not greater than amounts to which paragraph (2)(D)(i)(III) applied during the period of involuntary unemployment—

"(i) the employee may elect to treat such contributions (or any portion thereof) as recontributions of the amounts withdrawn,

"(ii) such contributions shall not be taken into account in determining any excess contributions of the taxpayer, and

"(iii) in the case of any deduction or exclusion with respect to contributions for which an election is made under clause (i)—

"(I) such deduction or exclusion shall only be allowed for contributions with respect to which the amount withdrawn was included in gross income, and

"(II) any limitation on the amount of such deduction or exclusion shall be increased by the amount of contributions described in subclause (I).

The Secretary may issue such regulations as may be necessary to carry out the provisions of this subparagraph, including additional reporting requirements to ensure compliance with such provisions.

"(C) UNEMPLOYMENT COMPENSATION.—For purposes of this paragraph, the term 'unemployment compensation' has the meaning given such term by section 85(b).

"(10) ELIGIBLE INDIVIDUAL RETIREMENT ARRANGEMENT.—For purposes of this subsection, the term 'eligible individual retirement arrangement' means—

"(A) an individual retirement plan,

"(B) a qualified cash or deferred arrangement (as defined in section 401(k)),

"(C) an annuity contract described in section 403(b) purchased under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), or

"(D) an arrangement described in section 501(c)(18)(D)."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(7)), distributions for qualified higher education expenses (as defined in section 72(t)(8)), or distributions during a period of involuntary unemployment (as defined in section 72(t)(9)), are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(7)), for the payment of qualified higher education expenses (as defined in section 72(t)(8)), or for distributions during a period of involuntary unemployment (as defined in section 72(t)(9))."

(3) Section 1034(l) is amended by inserting "(1)" before "For" and by inserting at the end the following new paragraph:

"(2) For election not to have section apply, see section 72(t)(7)(C)(i)(II)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after the date of the enactment of this Act.

TITLE III—ADDITIONAL ECONOMIC GROWTH INCENTIVES

SEC. 301. INCREASE IN AMOUNT OF DEPRECIABLE ASSETS WHICH MAY BE EXPENSED.

(a) IN GENERAL.—Section 179(b)(1) (relating to dollar limitation on election to expense certain depreciable assets) is amended to read as follows:

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $20,000.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amount under subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment under section (1)(f)(3) for the calendar year in which the taxable year begins, determined by substituting '1991' for '1989' in subparagraph (B) thereof."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 1991, in taxable years ending after such date.

SEC. 302. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) RENTAL REAL ESTATE ACTIVITIES OF PERSONS IN REAL PROPERTY BUSINESS NOT AUTOMATICALLY TREATED AS PASSIVE ACTIVITIES.—Section 469(c) (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS.—

"(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity.

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates.

"(C) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

"(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee (other than as an owner-employee) shall not be treated as performed in real property trades or businesses."

(b) CONFORMING AMENDMENT.—Section 469(c)(2) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

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

S. 2123. A bill to provide for enhanced reporting to the public of releases of toxic chemicals, and for other purposes; to the Committee on Environment and Public Works.

RIGHT TO KNOW MORE ACT OF 1991

• Mr. LAUTENBERG. Mr. President, today, along with Senator DURENBERGER, I am introducing the Right to Know More Act of 1991, a bill that pro-

vides enhanced reporting to the public of releases of pollutants into the environment.

Mr. President, in 1986, I worked long and hard for the enactment of this reporting program. My goal was clear: to give the citizens of this Nation the right to know what pollutants were being released into the environment.

My goal today is just as simple: to provide a right to know more.

Representatives of industry, the environmental community, and the administration agree—the right-to-know program is moving the Nation forward in the effort to achieve a cleaner environment.

The most recent data, released earlier this year by EPA, showed decreases in reported releases and transfers of right-to-know chemicals into the environment. This is further evidence that the law can encourage voluntary emission reductions and pollution prevention.

We knew in 1986 that we could enhance the benefits of right to know by covering more facilities and more chemicals. That's why we provided EPA with the power to do so in the 1986 law. We are now in the fifth year of the right-to-know program.

But EPA has not taken steps to require additional types of facilities to report under the law. And it has required emissions data on only an additional 16 chemicals.

EPA's inaction denies industry, the public, the Government, and the Nation as a whole the greater benefits possible under right to know. For example, the recent Clean Air amendments require 189 chemicals to be regulated as air toxics; 16 of these chemicals are not covered by the current right-to-know reporting requirements.

There are additional chemicals currently regulated under other Federal and State laws which are not subject to the reporting requirements.

As a recent report by environmentalists showed, facilities that fall outside the right-to-know requirements contribute to the Nation's pollution problems.

The 1986 right-to-know law took an important first step. Congress provided EPA with initial mandates about types of facilities and specific chemicals. But recognizing that the program would require some startup time, Congress deferred to EPA to take the next steps. EPA's inaction, coupled with the clear benefits of the right-to-know program, convince us that it is time to expand the law. The public has a right to know more.

On June 6, 1991, I, along with Senator DURENBERGER, directed staff to circulate a discussion draft of legislation that would expand the emissions reporting requirements of the current law. The thrust of this draft was to require reporting on more chemicals and by other types of facilities. The additional chemicals the discussion draft included were primarily substances listed under other environmental programs.

The discussion draft was circulated to various interested parties—representatives from industry, environmentalists, the administration, States, and others. On June 27, 1991, the Subcommittee on Superfund, Ocean and Water Protection, which I chair, held a hearing on the discussion draft and the expansion of the right-to-know program. The hearing gave us an opportunity to hear the views of some of these parties about right-to-know expansion and the discussion draft. In addition, at the hearing I welcomed additional comments from other interested parties.

Generally speaking both GAO's June report and testimony, as well as the report by environmentalists and their testimony, lent strong support for expanding the coverage of the right-to-know program. Although comments from industry as well as EPA raised questions about the specific proposals in the discussion draft, what was generally lacking in the criticism of the draft was concrete alternative proposals aimed at achieving the same goals of more comprehensive reporting. Although EPA indicated it would be completing analyses of factors relevant to the expansion of right to know, as of this date we have not received any such analyses.

In some of the comments, however, a strong case was made for providing a mechanism for giving industry an incentive to reduce emissions of chemicals that presented higher relative risks than other alternative substances. The bill therefore in addition to the current reporting requirements imposed on EPA under the current law and the other additional requirements of the legislation, adds a provision requiring EPA to the extent practicable, to categorize chemicals by relative hazard or to rank chemicals by hazard within a category of chemicals. This provision is based on section 112(g) of the Clean Air Act as revised in 1990. This section requires EPA to rank hazards of air toxics. EPA would exclude increases in emissions of an air toxic from being classified as a "modification" if it is offset by an equal or greater decrease of emissions of another air toxic which is ranked by EPA as being more hazardous.

This idea is incorporated into the bill to differentiate between hazards posed by the expanded list of chemicals which would be subject to reporting. The right-to-know and pollution prevention programs are designed to encourage decreases in the emissions and generation of toxic chemicals. But to the degree that different chemicals present different relative risks, and a manufacturer can choose between using a lower-risk substance, we should not discourage the more environmentally sound choice. This is not to say that the release of any substance covered by this law would be welcomed. But where the manufacturer can legally emit a substance, and where reporting requirements can be designed to encourage emissions that are more protective of the health and environment, we are attempting to accomplish this goal.

In addition, the bill addresses mass accounting. Mass accounting involves data about the use of toxic chemicals in industrial facilities and the generation of pollution to determine the efficiencies of use of toxic chemicals. Mass accounting can enhance pollution prevention efforts, lead to improved reporting under the right-to-know program and the Pollution Prevention Act, as well as stimulated companies to reduce their use of toxic chemicals.

Identifying the relative efficiency of the use of toxic chemicals by an industrial operation is valuable for pollution prevention efforts. It identifies less efficient operations that may need additional pollution prevention efforts. This will allow pollution prevention officials to identify priorities for pollution prevention efforts.

Mass accounting allows Federal and State agencies as well as industries to make more accurate toxic chemical release and toxic pollution generation reports. Officials can relate use data to pollution generation and release information to assist in determining the accuracy of the generation and release information.

Mass accounting information also provides information about the amount of toxic chemicals stored at the facility during the year and present in the product manufactured at the facility. This may help to reduce accidents involving toxic materials, worker exposure to toxic materials, and consumer exposure to products containing toxics.

I first authored provisions on mass accounting in the original right-to-know measures passed in the Senate in 1985. That provision was based on the New Jersey program, which has required facilities to report on their use of toxic chemicals as part of its right-to-know program, enacted in 1983. Although the Senate passed my mass accounting provision as part of the overall right to know and emergency planning legislation I authorized, due to pressure from the House, the mass accounting requirement was dropped in conference. Instead, the National Academy of Sciences was required to prepare a report on the utility of mass accounting.

That report, which was released earlier this year, concluded that mass accounting relies on information which is routinely collected. Moreover the report concluded that mass accounting can help identify waste reduction progress at individual facilities, can

help guide additional reduction techniques, and could be useful for assessing the reasonableness of reported released estimates. The report cited the New Jersey experience as a basis for its conclusions.

A few months ago, New Jersey passed the Pollution Prevention Act, which expanded the original New Jersey requirement by mandating that facilities report on their use of chemicals and generation of toxic pollutants not only at a facility-wide level, but also on a targeted production process level. This requires the New Jersey Department of Environmental Protection and Energy to develop criteria for determining which production processes should report mass accounting information. Having use and generation data at each targeted production level will provide a better level of precision than reporting on a facility-wide basis for facilities with numerous production processes.

The discussion draft of the Federal Right To Know More Act included a facility-wide mass accounting provision taken from the 1985 Senate passed measure to which I have referred. In light of the New Jersey experience, I decided to expand this provision along the lines of the New Jersey approach.

The mass accounting provisions in the bill are based on the new New Jersey Pollution Prevention Act. This State law was widely hailed by both environmentalists and industry as an effective mechanism of reducing toxic pollution. It also included provisions to require industry to prepare pollution prevention plans. I have consponsored S. 716, which was introduced by Senator LIEBERMAN, and which contains a pollution planning requirement. I look forward to working with Senator LIEBERMAN in moving this measure forward.

Testimony in the hearing raised some concerns from industry, which we heard during the 1985-86 drafting of the original right-to-know program, about the impact of mass accounting on the confidentiality of business information. This concern is addressed in two ways. First, the bill makes the trade secrets provisions from the right-to-know law applicable to information reported under the legislation. Second, as was the case with the New Jersey law, to protect confidential business information, the bill requires use information at the targeted production process level to be reported on a per unit of production basis. This masks the total amount of toxic chemicals and the level of production at the production line.

Another modification that I made to the discussion draft relates to the newly created release-transfer threshold for reporting. In addition to the thresholds currently in the law, the discussion draft proposed a threshold based on the release of chemicals to the environment or to an offsite facility. The discussion draft sought comments on the actual numerical threshold. Staff discussions with representatives from the environmental community showed some interest in pursuing the levels of 100 pounds per year for metals and metal compounds, and 2,000 pounds per year for the other chemicals subject to reporting under the bill. These were the thresholds used in the House bill H.R. 2880, the right-to-know expansion provisions of which were modeled on our discussion draft.

Seeing some value in developing additional information on the thresholds as well as the need to make sure thresholds are promptly in place, I modified the discussion draft based on the approach we took in section 302 of the Emergency Planning and Community Right to Know Act. The net result is that the bill requires facilities to report if they discharge into the environment or transfer to offsite facilities amounts of the expanded list of chemicals—that is the current section 313 chemicals and those chemicals added by this act—greater than a threshold set by EPA within 90 days of enactment. EPA would be required to use the criteria currently in section 313(d)(2) for listing and delisting chemicals to set such new thresholds, and could set such thresholds based on classes of chemicals or categories of facilities. Failure to publish an interim final rule within 90 days setting such thresholds would result in the immediate application of the previously noted legislatively mandated thresholds—100 pounds per year for metals or metal compounds; 2,000 pounds per year for other chemicals.

Another modification to the discussion draft responds to the concern about how quickly the new reporting requirements would take effect, a concern that was voiced by both EPA and industry. The discussion draft was generally effective upon enactment. But the bill as modified will not become generally effective until the submission of forms for calender year 1993, which is required on or before July 1, 1994. This will allow one complete reporting cycle to pass before the new measures take effect. In the case of the requirements relating to targeted production process reporting, these will not take effect until the July 1, 1995 submission of forms, following the requirement for EPA to develop the regulation on targeting criteria. In the case of the chemicals listed pursuant to section 3(a)(3)(F) and (H), subject to the conditions articulate in section 3(a)(4), these would not be subject to reporting requirements until calender year 1994, with the submission of forms required on or before July 1, 1995, unless such chemicals are delisted prior to the application of the reporting requirements.

A final issue raised in the discussion draft was the notion of some kind of national security waiver potentially applicable to Federal facilities, all of which are explicitly subjected to right to know reporting requirements under this bill. Although we received no specific comment on what was essentially just a section heading raising this issue in the discussion draft, I added language to allow the President to waive compliance with reporting requirements only if the President determines the waiver is necessary in the paramount interest of the United States. This provision, which is modeled on section 6001 of the Solid Waste Disposal Act, is meant to create an extremely heavy burden to achieve such a waiver. The provision makes such waivers expire after each reporting period, and requires the President to make new determinations each time such a waiver is sought. In addition, the provision requires Federal Register notice each time a waiver is granted. It also allows any person to petition for review of a waiver decision, and requires the President to act on such a petition within 45 days, including publishing such action, along with reasons for such action, in the Federal Register.

Federal facilities should be treated essentially the same as private facilities under the right-to-know program, and with the very narrow paramount interest waiver I have drafted, I believe this goal will be achieved by the bill.

Finally, I would like to note section 5 of the bill, which requires EPA to establish and implement a grants program, aimed at assisting States, and particularly local entities, in implementing the requirements of the Emergency Planning and Community Right to Know Act, as well as the bill itself. This grants provision is modeled on a similar provision I authored in the fiscal year 1988 Senate appropriations bill for the Department of Housing and Urban Development—Independent Agencies, H.R. 2763. This provision, which was adopted in committee, and passed by the Senate, was aimed at helping our States and localities get the job done on emergency planning and right to know. Unfortunately, during conference the House succeeded in deleting this provision. But I am hopeful that we can successfully pursue such a program in this new legislation.

Mr. President, in putting together this bill we have tried to take account of the concerns that were raised by the interested parties from all sides. As is often the case in drafting legislation, it is difficult to accomodate fully all the positions that are advocated. When and if EPA finishes the promised analysis to which I previously referred, we will certainly want to examine it. In addition, should the introduction of this bill prompt more in industry to develop concrete alternative proposals to the bill's provisions, we will take a close look at them. And should the environmentalists and others have additional

ideas on ways to improve the measure, our minds and doors are open to all good ideas.

Mr. President, as the Senate author of the original right-to-know law, I am eager now to advance improvements to that program. I look forward to working with Senator DURENBERGER, as well as the other Members of the Committee on Environment and Public Works to move the measure forward. In addition, I look forward to continued collaboration with Congressman SIKORSKI, who as previously noted, has modeled the right-to-know provisions of H.R. 2880, on the discussion draft we used to develop the bill today.

As the Committee on Environment and Public Works considers the reauthorization of the Resource Conservation and Recovery Act, I look forward to working with Senator BAUCUS and others on the committee to incorporate the bill in that vehicle, and to reviewing carefully any additional ideas on how to improve the measure.

Mr. President, I ask unanimous consent that a section-by-section analysis, and the text of the bill be printed in the RECORD.

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

S. 2123

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Right to Know More Act of 1991".

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "byproduct" means all chemicals that are subject to the reporting requirements under this Act, and that enter any waste stream (or are otherwise released into the environment) prior to recycling, treatment, or disposal.

(3) The term "environment" has the meaning given such term under section 329(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(2)).

(4) The term "facility" means all buildings, equipment, structures, and other items which are located on a single site or contiguous or adjacent sites and which are owned or operated by the same person (or by a person which controls, is controlled by, or under common control with, such person). For the purposes of this Act, the term includes any Federal facility and any facility used in the transportation of chemicals and storage incident to such transportation, including any facility used in the transportation of natural gas.

(5) The term "Federal facility" means any facility owned or operated by a department, agency, or instrumentality of the United States.

(6) The term "offsite waste management facility" shall include any facility that recycles waste chemicals or burns such chemicals as a fuel.

(7) The term "release" has the meaning given such term under section 329(8) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(8)).

(8) The term "toxic chemical" means a substance on the list described in section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(c)).

(9) The term "person" has the meaning given such term under section 329(7) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(7)).

(10) the term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

SEC. 3. RIGHT TO KNOW MORE.

(a) SUPPLEMENTAL REPORT TO TOXIC RELEASE INVENTORY.—

(1) IN GENERAL.—(A) Subject to subsection (e) of this section, and except as provided in subsection (a)(4) and subsection (d)(4), notwithstanding any other provision of law, each owner or operator of a facility subject to the requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) that meets the applicable requirements of paragraph (2) of this subsection shall include, with each such filing (beginning with the submission of forms for calendar year 1993 that is required on or before July 1, 1994), comparable supplemental information.

(B) The comparable supplemental information described in subparagraph (A) shall be submitted in the same manner and in a format substantially similar to the format of the form required under such section 313 (as determined by the Administrator) with respect to releases and transfers from such facility of any chemical—

(i) described in paragraph (3) of this subsection if such chemical is not otherwise listed pursuant to such section 313; or

(ii) listed pursuant to such section 313 with respect to which—

(I) an owner or operator of a facility does not use, manufacture, or process (as described in such section 313) at a level that meets the applicable threshold requirement for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); but

(II) releases to the environment or transfers to an offsite facility in an amount described in paragraph (2)(B).

(2) CHEMICALS SUBJECT TO REPORTING.—(A) Notwithstanding any other provision of law, with respect to any chemical described in paragraph (3), any facility that—

(i) uses, manufactures, or processes (as described in such section 313) the chemical at a level that meets the applicable threshold requirement for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); or

(ii) releases to the environment or transfers to an offsite facility any such chemical in an amount described in subparagraph (B), shall be required to submit a supplemental report under this subsection.

(B)(i) Within 90 days after the date of the enactment of this Act, the Administrator shall—

(I) publish an interim final regulation that establishes a threshold quantity for releases to the environment or transfers to an offsite facility for each chemical subject to reporting requirements under this Act, taking into account the criteria described in section 313(d)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)(2)); and

(II) initiate a rulemaking in order to publish final regulations that establish such a threshold quantity for each such chemical.

(ii) At the Administrator's discretion, such threshold quantities may be based on classes of chemicals or categories of facilities.

(iii) If the Administrator fails to publish an interim final regulation that establishes such a threshold quantity for a chemical subject to reporting under this Act within 90 days after the date of the enactment of this Act, in the case of a metal or metal compound, the threshold quantity for the chemical shall be 100 pounds per year, and in the case of any other chemical, such threshold quantity shall be equal to 2,000 pounds per year.

(iv) The Administrator may revise such threshold quantities under this subparagraph from time to time. Any such revision shall take into account the criteria of section 313(d)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)(2)).

(3) DESCRIPTION OF CHEMICALS.—The chemicals described in this paragraph are the following:

(A) Priority pollutants listed under regulations relating to steam electric power point source pollutants under the Federal Water Pollution Control Act (33 U.S.C. 1311 et seq.) (as listed in Appendix A of section 423 of title 40, Code of Federal Regulations, as in effect on the day before the date of the enactment of this Act, subject to any subsequent modifications of the list).

(B) Certain hazardous wastes identified and listed under regulations promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) (as listed in sections 261.33(e), 261.33(f), and Appendix VIII of part 261 of title 40, Code of Regulations, as in effect on the date of the enactment of this Act, subject to any subsequent modifications of the lists).

(C) Any chemical listed under section 112(b)(1), 112(r)(3), 602(a), or 602(b) of the Clean Air Act (42 U.S.C. 7412(b)(1), 42 U.S.C. 7412(r)(3), 42 U.S.C. 7671a(a), and 42 U.S.C. 7671(b), respectively).

(D) A pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 (u))—

(i) with respect to which the registration has been denied, cancelled (including voluntary cancellation following the Special Review process, as described in part 154 of title 40, Code of Federal Regulations, as in effect on the day before the date of the enactment of this Act), or is under suspension;

(ii) that is undergoing Special Review (as described in clause (i)) or is undergoing other administrative review (including for cancellation of use pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d)); or

(iii) that is classified as a restricted use pesticide under section 3(d)(1) of such Act (7 U.S.C. 136a(d)(1)).

(E) Chemicals listed under certain regulations and proposed regulations under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) for which maximum contaminant levels have been proposed or promulgated, as listed—

(i) under section 141.11, 141.12, 141.51, or 141.61 of title 40, Code of Federal Regulations, (as in effect on the day before the date of the enactment of this Act, subject to any subsequent modifications); or

(ii) in the proposed regulations relating to national primary drinking water regulations published at 55 Federal Register 30370 on July 25, 1990, and at 54 Federal Register 22062 on May 22, 1989.

(F) Subject to paragraph (4) of this subsection, chemicals identified by the Carcino-

gen Assessment Group of the Environmental Protection Agency, the International Agency for Research on Cancer, or the National Toxicology Program as a known or probable human carcinogen.

(G) Extremely hazardous substances listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11002(a)(2)).

(H) Subject to paragraph (4) of this subsection, chemicals listed in 90 California Regulatory Notice Register 990 (July 1990) as reproductive toxins.

(4) CONDITIONS FOR SPECIFIED LISTS.—Any chemical described in subparagraph (F) or (H) of paragraph (3) of this subsection that is not otherwise listed pursuant to such paragraph (3) or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023), shall be subject to the reporting requirements under this Act beginning with the submission of forms for calender year 1994 that is required on or before July 1, 1995, unless, in accordance with the list revision procedures and criteria described in subsection (d) or (e) of section 313 of the Emergency Planning and Community Right-to-Know Act, the Administrator, by rule, deletes any such chemical from the lists of chemicals for which reporting is required under this Act.

(b) PARALLEL REPORT FOR CERTAIN FACILITIES NOT COVERED UNDER THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986.—Notwithstanding any other provision of law, any facility that employs 10 or more full-time employees that is not described in the Standard Industrial Codes listed in section 313(b) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 1023(b)), or that is otherwise exempt under section 313 of such Act from the reporting requirements of such section—

(1)(A) that meets the threshold requirements for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); or

(B) that releases to the environment or transfers to an offsite facility any chemical listed pursuant to section 313 in an amount greater than or equal to the applicable threshold quantity specified in subsection (a)(2)(B) of this section; or

(2)(A) that uses, manufactures, or processes (as described in such section 313) a chemical described in subsection (a)(3) of this section that is not listed pursuant to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 at a level equivalent to the applicable threshold requirement described in such section 313; or

(B) releases to the environment or transfers to an offsite facility any chemical described in subparagraph (A) of this paragraph in an amount greater than or equal to the applicable threshold quantity specified in subsection (a)(2)(B) of this section,

shall be required under this section to submit a report to the Administrator of releases to the environment of the chemicals listed under such section 313 in the same manner and in a format substantially similar to the format of the form required under such section (except that such report shall incorporate the additional reporting requirements described in this section).

(c) EXTENSION OF REPORTING REQUIREMENTS WITH RESPECT TO TRANSFERS TO OFFSITE WASTE MANAGEMENT FACILITIES.—Notwithstanding any other provision of law, any facility subject to the reporting requirements under this section or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) shall be required to report all transfers of chemicals listed under this section or such section 313 to offsite waste management facilities.

(d) ADDITIONAL INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any facility subject to the reporting requirements under this section or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) shall provide, at the time of reporting, the following additional information:

(A) The maximum hourly rate of release of emissions to the air or discharges into the water or discharges on the land of each chemical subject to reporting requirements during the reporting period.

(B) The cause, source, and frequency of releases that result in such maximum hourly rate being achieved.

(C) A compilation of annual input, accumulation, and output quantities of each chemical subject to reporting requirements under this Act at the facility, including the quantities produced, used, generated as byproduct, consumed, recycled onsite but out-of-process, transferred as product, or transferred as a constituent in products.

(D) For each targeted production process of the facility—

(i) the amount of each chemical used per unit of product and generated as byproduct per unit of product;

(ii) the amount present in the product per unit of product;

(iii) a description of the production unit, including the production process, product, and unit of product; and

(iv) the amounts manufactured (or otherwise created) and used, expressed as a range.

(E) Two-year and five-year goals for reduction in—

(i) each amount reported under clause (i) of subparagraph (D); and

(ii) the amounts manufactured, processed, otherwise used, and generated as byproduct at a facility.

(F) Identification of the type of toxics use reduction technique, or other factor, that reduced by 10 percent or more from the previous year any amount reported under clause (i) or (ii) of subparagraph (D).

(2) ADDITIONAL REPORTING REQUIREMENT.—In any case in which the owner or operator of a facility submits a report under this subsection for a calendar year which omits a chemical (subject to the reporting requirements under this Act) contained in a report for such facility for the calendar year preceding the calendar year being reported on, the owner or operator, for purposes of allowing the Administrator to track the availability or risks of alternative chemicals, shall—

(A) identify in the report any substance which is a replacement for the omitted chemical; and

(B) state whether the substance is a chemical subject to reporting requirements under this Act.

(3) CERTIFICATION.—Each report submitted under this subsection shall contain a certification signed by a senior management official of the facility with direct operating responsibility. The certification shall state that, subject to a penalty of perjury, the official has read the reports and such reports are, to the official's best knowledge and belief, true, complete, accurate, and prepared under a proper data accounting and planning system.

(4) DEADLINE FOR FIRST REPORTS.—The owner or operator of a facility with a targeted production process shall submit the information required under paragraph (1)(D) and paragraph I(E)(i) at the time of submission of any form required to be submitted for calendar year 1994 pursuant to this Act, on or before July 1, 1995.

(5) CRITERIA FOR TARGETED PRODUCTION PROCESSES.—Within 18 months after the date of enactment of this Act, the Administrator shall establish, by regulation, criteria pursuant to which an owner or operator of a facility shall identify targeted production processes for the purpose of focusing pollution prevention strategies on such targeted production processes. The criteria for the identification of targeted production processes shall be based on a consideration of the toxicity of specific chemicals used, generated, or released at the targeted production process, and shall require that a targeted production process be a production process that makes a significant contribution to the use, generation, and release of chemicals.

(e) MODIFICATION OF REPORTING FORM.—The Administrator shall modify the form required for purposes of reporting information under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) to the extent that he or she considers such modification necessary to include the additional information required. In addition, the Administrator shall, after notice and opportunity for comment, and not later than 18 months after the date of enactment of this Act, publish an identification, to the extent practicable, of the relative hazard to human health and the environment resulting from chemicals subject to reporting requirements under this Act, by or within category of the level of the hazard. In publishing data on amounts of such chemicals, the Administrator shall also report the data with respect to each chemical by or within category of hazard.

(f) REPORTING PROVISIONS.—The provisions of sections 322, 325(c), and 326 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11042, 11045(c), and 11046, respectively) shall apply to the reporting requirements under this section in the same manner as for the reports required under section 313 of such Act (42 U.S.C. 11023).

(g) AVAILABILITY OF DATA.—Subject to the requirements relating to trade secrets described in section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11042), the Administrator shall make data collected under this section publicly available in the same manner as for the data collected under section 313 of such Act (42 U.S.C. 11023).

(h) PROVISION OF INFORMATION TO HEALTH PROFESSIONALS.—

(1) IN GENERAL.—The supplying of information to health professionals under this section shall be carried out in the same manner as required with respect to health professionals under section 313 of such Act (42 U.S.C. 11023).

(2) SPECIAL ENFORCEMENT PROCEDURES.—Special enforcement procedures relating to a violation of requirements related to the provision of information to health professionals described in section 325(e) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(e)) shall apply to any such violation under this section in same manner as required under such section

(i) FRIVOLOUS CLAIMS.—Civil and administrative penalties assessed for frivolous claims under this section shall be assessed in the same manner as for assessments of such penalties under section 325(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(d)).

(j) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—The procedures for administrative penalties described in section 325(f) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(f)) for violations under such Act, shall apply in the same manner to administrative penalties under this section.

(k) STUDY OF ELECTRONIC METHODS TO IMPROVE REPORTING.—

(1) IN GENERAL.—The Administrator shall conduct a study of methods of encouraging the reporting of information under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023)) and this Act through the use of computer telecommunication and other means. Such study shall identify methods to—

(A) increase the rate at which such information is made available to the public;

(B) improve the accuracy of such information;

(C) improve public accessibility to such information; and

(D) enhance the overall efficiency of the information reporting and collection process.

(2) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Administrator shall submit a report of the findings of the study described in paragraph (1) and plans for implementing methods to improve reporting to the appropriate committees of the Congress.

(l) EXEMPTION FOR FEDERAL FACILITIES BASED ON PARAMOUNT INTEREST.—

(1) IN GENERAL.—The President may waive compliance with the reporting requirements of this Act if the President determines that the waiver is necessary in the paramount interest of the United States. Any such waiver shall be for a period of not more than one annual reporting period under this Act, except that additional waivers may be granted upon new determinations by the President.

(2) NOTICE.—Upon issuance of such waiver, the President shall publish in the Federal Register a notice of the granting of the waiver and an explanation of the reasons for granting the waiver, unless the President determines that such publication would be contrary to the paramount interest of the United States. If the President makes such determination, the President shall provide notice to the Congress of such determination.

(3) PETITION.—Any person may petition the President to rescind any waiver granted under this subsection. The President shall, within 45 days after receipt of the petition, accept or deny the petition, and publish in the Federal Register notice of the decision to accept or deny the petition. Such notice shall include the reasons for the decision.

SEC. 4. *TOXIC RELEASE INFORMATION STUDY.*

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Director of the Office of Technology Assessment (hereafter in this section referred to as the "Director") shall, in consultation with the Administrator, conduct and complete a study of all matters relating to the provision to the public of toxic release inventory information described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023), and reports required under this Act (hereafter in this section referred to as "toxic release information").

(b) CRITERIA OF STUDY.—The study conducted by the Director shall include the following:

(1) A review of the methods by which toxic release information is made available to the public, with a concentrated emphasis on the computer data base described in section 313(j) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(j)).

(2) A review of the efficacy and cost-effectiveness of each method described in paragraph (1).

(3) The development of recommendations for more effective means to disseminate toxic release information, and to promote ease of public access to such information.

(4) The development of recommendations for alternatives to basing the publicly accessible data base in the T.O.X.N.E.T. system of the National Library of Medicine.

(c) REPORT.—Upon completion of the study described in subsection (a) of this section, the Director shall submit to the Administrator and to the appropriate committees of the Congress a report containing a detailed statement of the findings and conclusions of the study, together with such recommendations for such regulations and administrative actions as the Director, in consultation with the Administrator, considers appropriate to make improvements in the provision of toxic release information to the public.

SEC. 5. GRANT PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—(A) The Administrator shall establish a grant program to assist States, local governments, local emergency planning committees and State emergency response commissions (as described in section 301 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001)) in carrying out the provisions of subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively) and this Act.

(B) The Administrator shall implement the grant program under this section in coordination with the various offices of the Environmental Protection Agency having responsibilities for the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 and this Act (including the Office of Pesticides and Toxic Substances and the Office for Solid Waste and Emergency Response), and the Administrator shall ensure that the grant program established under this section shall be implemented in coordination with State emergency response commissions.

(2) APPLICATIONS.—(A) Not later than 2 months after the date of the enactment of this Act, the Administrator shall accept applications for grants under this section.

(B) The Administrator shall make a determination on a grant application not later than 45 days after the Administrator receives the application.

(b) GRANT REQUIREMENTS.—

(1) DISTRIBUTION.—The Administrator shall ensure that States shall make available to local governments or local emergency planning committees (as described subsection (a)) an amount equal to 75 percent of the amount of the grant to the State under this section for the purposes of assisting local governments and local emergency planning committees in carrying out the provisions of subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively).

(2) MATCHING.—(A) The amount of any grant awarded under this Act shall not exceed an amount equal to 80 percent of the cost of carrying out the activities authorized under the grant program.

(B) The remaining percentage of such costs shall be funded from non-Federal sources. Such sources may include amounts appropriated by the State for State activities or to finance activities of local governments or local emergency planning committees in carrying out subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively).

(3) CRITERIA.—The Administrator shall award grants under this section in proportion to State and local needs, as measured by such factors as the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State, the extent of potential exposure in a State of human beings and the environment to chemical substances and mixtures, and the population density of a State. The Administrator shall assure that State awards to localities or local emergency planning committees are in proportion to local needs as measured by factors similar to those described in the preceding sentence, including such factors as presence of substances, extent of potential exposure, and population density.

(c) STATUTORY CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this section shall be construed so as to preempt the ability of any State government or the government of a political subdivision of a State from funding activities conducted under subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively) by other and additional means.

(2) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to any Federal agency for any programs conducted by such agencies other than to the Environmental Protection Agency for the grant program described in subsection (a).

SEC. 6. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 7. *EXTENSION OF POLLUTION PREVENTION REQUIREMENTS.*

Notwithstanding any other provision of law, in addition to those owners or operators subject to requirements of section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. 13106), any owner or operator of a facility subject to any reporting requirement under this Act shall be subject the requirements of such section 6607. For the purposes of this section, in addition to the chemicals subject to the requirements of such section 6607, any chemical described in section 3(a)(3) of this Act shall be deemed a chemical subject to the reporting requirements of such section 6607.

SEC. 8. STATUTORY CONSTRUCTION.

Nothing in this Act shall be construed or interpreted—

(1) as preempting in any State or political subdivision of a State from imposing any additional liability or requirements; or

(2) to displace or diminish the responsibilities and liabilities under any other Federal law (whether statutory or common).

SECTION-BY-SECTION ANALYSIS OF RIGHT TO KNOW MORE ACT OF 1991

Section 1. Short Title: Right to Know More Act of 1991.

Section 2. Definitions.

Section 3—Subsections (a) and (b). Subsections (a) and (b) of section 3 are the core of the bill. These subsections impose require-

ments that supplement those already imposed by section 313 of Title III of SARA. These supplemental requirements would become generally effective beginning with the submission of forms for calendar year 1993 that is required on July 1, 1994 and would apply to facilities currently covered and to facilities outside the current SIC Codes of 20–39, including facilities currently exempt pursuant to the transportation exemption of section 327 (see section 2 definition of "facility"). These subsections apply these supplemental requirements in the following ways:

A. Impose New Requirements for Facilities Already Covered. Those facilities currently subject to Right to Know (e.g. those with 10 or more employees, that fall in the Manufacturing SIC Codes 20–39, and use/manufacture/process specified amounts of the currently listed chemicals), would also be required to do the following:

1. New Substances. These facilities would be required to report on their emissions of an additional list of chemicals of which they manufacture/process more than 25,000 pounds annually, or use 10,000 pounds annually. The additional list of chemicals consists of those chemicals currently not listed under section 313 but listed under the following environmental programs:

a. Priority Pollutants listed pursuant to the Federal Water Pollution Control Act.

b. Certain hazardous wastes identified and listed under specified regulations promulgated under the Solid Waste Disposal Act.

c. Chemicals listed under specified sections of the Clean Air Act.

d. A pesticide 1) with respect to which the registration has been denied, cancelled (including voluntarily following Special Review), or is under suspension; 2) that is undergoing Special Review (as described in 40 CFR Part 154) or undergoing other administrative review pursuant to FIFRA section 6; or 3) that is classified as a restricted use pesticide under section 3(d)(1) of FIFRA.

e. Chemicals listed under specified regulations of the Safe Drinking Water Act.

f. Effective for calendar year 1994 and required for the submission of forms due on or before July 1, 1995, chemicals identified as a known or probable human carcinogens by the Carcinogen Assessment Group of EPA the International Agency for Research on Cancer, or the National Toxicology Program, unless in accordance with the list revision procedures and criteria of section 313(d) or section 313(e) of SARA Title III, unless the Administrator by rule deletes any such carcinogen (not otherwise listed) from the list of chemicals for which reporting is required under this Act.

g. Extremely Hazardous Substances listed under section 302 of Title III of SARA.

h. Effective for calendar year 1994 and required for the submission of forms due on or before July 1, 1995, chemicals listed as reproductive toxins by the California Safe Drinking Water and Toxic Enforcement Act of 1986, unless in accordance with the list revision procedures and criteria of section 313(d) or section 313(e) of SARA Title III, unless the Administrator by rule deletes any such reproduction toxins (not otherwise listed) from the list of chemicals for which reporting is required under this Act.

2. New and Additional Threshold for Reporting. Currently covered facilities would also be subject to a new threshold for reporting. In addition to the current threshold, facilities would be required to report if they discharge into the environment or transfer to offsite facilities amounts of the expanded list of chemicals (i.e. the current section 313 chemicals and those chemicals added by this Act) greater than a threshold set by EPA within 90 days of enactment. EPA would be required to use the criteria currently in section 313(d)(2) for listing and delisting chemicals to set such new thresholds, and could set such thresholds based on classes of chemicals or categories of facilities. Failure to publish an interim final rule within 90 days setting such thresholds would result in the immediate application of legislatively mandated thresholds (100 pounds per year for metals or metal compounds; 2000 pounds per year for other chemicals).

B. Bring in a New Universe of Facilities. Section 3 would also require an additional universe of facilities, including Federal facilities (see definitions section of bill), regardless of which SIC Codes they fall under, to report the same information under the same conditions (e.g. minimum 10 employees, same chemical thresholds) as those manufacturing facilities reporting under Right to Know, including the new transfer-release threshold discussed above.

Section 3—Subsections (c)–(k). Subsections (c) through (k) of section 3 make a number of other modifications to the reporting requirements, the primary ones being the following:

A. Transfer Offsite. Closing the so-called recycling loopholes, subsection (c) would require reporting of transfers to all offsite waste management facilities.

B. Additional Information. Subsection (d) would require reports of peak air, water and land releases—i.e. the maximum hourly rate of such releases—and the cause, source, and frequency of such releases. Subsection (d) also requires reporting the compilation of annual input, accumulation, and output quantities of each chemical subject to reporting requirements at the facility, including the quantities produced, used, generated as byproduct, consumed, recycled onsite but out-of-process, transferred as product, or transferred as a constituent in products. This subsection also requires that for each targeted production process of the facility that additional specified information be reported for calendar year 1994 with the submission of forms required on or before July 1, 1995.

Section 4. This section requires the Director of the Office of Technology Assessment [OTA], in consultation with EPA to conduct a study of ways to enhance the provision to the public of the national emissions data.

Section 5. This section requires and authorizes EPA to make grants for each of the years FY 1992–96 to assist States, local governments, local emergency planning committees, and State emergency responses commissions in carrying out all subtitles of the Emergency Planning and Community Right to Know Act, as well as the requirements of the bill. Such grants must be awarded in a manner that assures that States make 75 percent of all such grant receipts available to local governments or local emergency planning committees.

Section 6. This section authorizes such sums as be necessary to carry out this Act.

Section 7. This section specifies that the reporting requirements under the Pollution Prevention Act of 1990, in addition to their current application to the current section 313 universe of owners, operators, and chemicals, will also be applicable to all owners or operators as well as chemicals subject to the expanded reporting requirements under the Right to Know More legislation.

Section 8. This section makes clear that the bill is not preemptive of State law, and that it does not diminish or displace requirements under other Federal law.●

By Mr. BUMPERS:

S. 2124. A bill entitled the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991"; to the Committee on Foreign Relations.

BALLISTIC MISSILE, NUCLEAR, CHEMICAL, AND BIOLOGICAL WEAPONS NONPROLIFERATION SUPPORT ACT OF 1991

● Mr. BUMPERS. Mr. President, today I am introducing the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991." I ask unanimous consent that the bill and some explanatory language be printed in the RECORD at the conclusion of my remarks.

This bill is a modification of the amendment that I offered to the Defense appropriations bill in September and which was accepted. Sadly, that amendment was dropped for jurisdictional reasons in conference, though the conferees made it quite clear that they supported the intent of the amendment. I ask unanimous consent that the text of the fiscal year 1992 Defense appropriations conference report dealing with this subject be printed in the RECORD at this point.

Mr. President, I have expanded the scope of my earlier amendment in two ways. First, I include ballistic missile technology as well as nuclear, chemical, and biological weapons. While not weapons of mass destruction themselves, ballistic missiles are a force multiplier for other weapons of mass destruction. Had Saddam Hussein's Scuds carried nuclear warheads, no one would be talking about the great success of the Patriot missile.

Second, I am including North Korea as well as Iraq. Recent press reports about North Korea's nuclear potential have been very disturbing. These nuclear developments have led Defense Secretary Cheney to delay the implementation of phase II of United States troop withdrawals from South Korea. Even more disturbing have been reports that German companies are assisting North Korea's nuclear weapons program. We were fortunate in stopping Iraq. We may not be so lucky with North Korea.

My bill would bar imports from those companies that have knowingly provided assistance or support to the missile or nuclear/chemical/biological weapons programs of Iraq or North Korea. It also urges the President to get other countries to adopt a similar restriction, and to halt the actions of companies within their borders that are providing such assistance.

It is my hope that the Senate will act on this bill early in 1992 and give the President this powerful new weapon to fight one of the most important security threats of this post-cold war era. My bill will not solve the whole problem, but it will make an important start. I urge my colleagues to join me in this effort.

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

S. 2124

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991."

SEC. 2. LIMITATION.

Notwithstanding any other provision of law, no goods or services shall be imported into the United States or its territories or possessions that are produced or provided by companies that the President certifies to the Congress pursuant to the passage of this bill as having knowingly participated in the Iraqi or North Korean programs to develop ballistic missiles or nuclear, chemical, or biological weapons.

SEC. 3. INTERNATIONAL COOPERATION.

The President should request that other countries enact similar restrictions and take other appropriate steps, and strongly encourage the governments of those countries in which companies have provided such assistance to Iraq or North Korea to halt further such assistance.

SEC. 4. DURATION OF THE ACT.

This limitation shall remain in force for a period of 10 years after the date of enactment of this Act.

REPORT ON ASSISTANCE TO IRAQ

Amendment No. 192. Deletes Senate provision prohibiting certain imports to the United States. The conferees are concerned over reports that Western companies provided assistance to Iraq in its nuclear, biological, chemical (NBC), and ballistic missile programs. The Senate bill contained language giving the President the authority to bar for a period of 10 years the imports of companies that knowingly assisted Iraq in its programs for the development of weapons of mass destruction. The conferees reluctantly decided to drop this language for jurisdictional reasons only. The conferees wish to express their strong support for the intent of this provision and hope that it will be adopted on a suitable vehicle.

To further underscore their concern, the conferees request that the President provide, in both classified and unclassified versions, a report to the Appropriations Committees of the House and the Senate based on recent information, that includes an assessment of the contribution that these companies made to Iran's NBC and ballistic missile capabilities and a listing of these companies. The companies should include those that provided financial services, transportation, and other essential services as well as hardware and software support.●

By Mr. MCCONNELL:

S. 2125. A bill to lift the trade embargo against Vietnam if certain conditions are met; to the Committee on Banking, Housing, and Urban Affairs.

UNITED STATES-VIETNAM TRADE RELATIONS ACT

● Mr. MCCONNELL. Mr. President, although I hardly expect the Senate to take up this legislation now that we have come to the end of the session, I hope it offers a beginning point for discussion between the administration, the business community, and Members of Congress interested in Indochina and particularly Vietnam.

The bill I am introducing attempts to bridge the differences between those members of the business community who would like to see the trade embargo lifted tomorrow to further American commercial interests in an emerging market and those in the administration and Congress who would like to continue to use the embargo and normalization of relations as leverage in encouraging the Vietnamese on important policy priorities.

My legislation explicitly defines the expectations we have of the Vietnamese Government and requires the President report that these conditions have been met prior to lifting the embargo. However, my bill injects certainty into the process by establishing a date when the embargo will be lifted if the conditions are met.

There are three principle conditions which I have asked the President to report on. The first issue bears on the status of American POW's and MIA's. I cannot think of any issue which evokes a stronger and more emotional response than the question of our POW-MIA's. I was glad to see the select committee established to pursue the matter and believe the Members are off to a strong start in their inquiry. I am also committed to guaranteeing that the Vietnamese fully cooperate in resolving all outstanding cases and returning recovered and recoverable remains.

I also think progress on identifying and releasing those people held in political reeducation camps must be addressed. While we are no longer looking at the thousands of victims we were a matter of years ago, every person who is being detained because of an association with or loyalty to the United States must be released.

Finally, the Vietnamese must continue to actively support the U.N. peace agreement and transition to democracy in Cambodia. Their role and responsibility to see the process through to successful elections should be a factor in any changes in their political or economic relationship with the United States.

Having laid out the conditions, I also must add that I think the business community has legitimate concern about being shut out of an important emerging Asian market. Without some confidence that they will be given an opportunity to act on contracts—to really close deals—they are at a distinct disadvantage compared with many of America's trade competitors. The Japanese, French, Canadians, the British to name just a few do not observe a trade embargo with Vietnam. In fact, foreign investment in Vietnam is estimated to be as high as $5 billion.

Mr. President, offering a date when business will be allowed to move into Vietnam does not compromise our short- or long-term leverage. There are other important international lending and trading privileges such as most-favored-nation status which might be extended at some point in the future. We will continue to have options and opportunities available to offer Vietnam an incentive to make serious progress on the agenda of concern to this country.

However, given our major trade deficit, I think we should do what we can to assure American companies have access to a market where they have obvious strengths. Vietnam needs what American companies are good at—telecommunications, energy exploration and development, banking and infrastructure, and construction projects. American companies simply are not players in this important trade game—they are benched as they watch time and opportunity slip by.

I am hopeful that this legislation will guarantee the Vietnamese stay engaged in the peace process as they fulfill their absolute obligations to resolve POW-MIA cases and release political detainees. Should these conditions be met, it would seem reasonable to offer the American business community the assurance that they will have an opportunity on a specific date to close negotiations and begin to trade with Vietnam.●

By Mr. SPECTER:

S. 2126. A bill to extend the temporary suspension of duties on L-alanyl-L-proline, also known as Ala Pro; to the Committee on Finance.

S. 2127. A bill to suspend temporarily the duty on {3R-{3-alpha(R); 4-beta}}-4(acetyloxy)-3-{{(1,1-dimethyl ethyl) dimethyl-siyl}oxy}ethyl}-2-azetidinone; to the Committee on Finance.

S. 2128. A bill to suspend temporarily the duty on 3-chloro peroxybenzoic acid; to the Committee on Finance.

S. 2129. A bill to suspend temporarily the duty on composite vials of timolol maleate/pilocarpine solutions and diluents; to the Committee on Finance.

SUSPENSION DUTY ON CERTAIN CHEMICALS

Mr. SPECTER. Mr. President, today I am introducing legislation that will suspend temporarily the respective duty on the following chemicals or materials: L-alanyl-L-proline, also known as Ala Pro; acetoxy azetidinone; 3-chloro peroxybenzoic acid, also known as MCPBA; and composite vials of timolol maleate/pilocarpine hydrochloric solution. Merck & Co., Inc. is seeking these duty suspensions for its operations in West Point, PA, and Danville, PA in order to allow it to remain competitive in the world marketplace with its respective products, namely Vasotec, PRIMAXIN/TIENAM, Prilosec, and Timpilo.

With regard to these products Mr. President, I am informed that Vasotec is one of the world's leading medicines for the treatment of hypertension. For

many patients, Vasotec is also highly effective adjuntive therapy in management of heart failure.

Merck represents that its PRIMAXIN/TIENAM formulations have a broad spectrum of activity against gram-positive and gram-negative aerobic and anaerobic bacteria including strains resistant to penicillin, cephalosporins, and aminoglycosides.

As for Prilosec, I am informed that it is for a new class of gastrointestinal drug called acid pump inhibitors. It is approved for use in treating poorly responsive gastroesophageal reflux disease [GERD], severe erosive esophagitis, and conditions such as Zollinger-Ellison syndrome.

I am also informed that Timpilo is a combination formulation not manufactured by anyone in the U.S. and is used to lower intraocular pressure in the treatment of glaucoma.

As you are aware, Mr. President, duty suspension legislation is routinely adopted by Congress where no unfair competitive advantage, vis-a-vis other U.S. companies or industries, is gained by the beneficiary of such legislation. In this regard, I am informed that Merck & Co., will not gain any such advantage by any of the bills that I am introducing today. My staff has consulted with the Commerce Department's Office of Industrial Trade, the House of Representatives' Ways and Means Subcommittee on Trade, which has jurisdiction over the respective companion bills, H.R. 1857, H.R. 1942, H.R. 1935, and H.R. 3719, and with the offices of Representative LARRY COUGHLIN, the sponsor of H.R. 1857 and H.R. 3719, Representative GEORGE GEKAS, the sponsor of H.R. 1935, and Representative PAUL KANJORSKI, the sponsor of H.R. 1942. Each such office has informed my staff that there is no domestic opposition to Merck & Co.'s duty suspension requests.

Mr. President, Merck & Co. represents that without the requested duty suspensions, it is faced with operating at an economic disadvantage vis-a-vis its respective European and Japanese competitors because none of the chemicals or materials for which it seeks duty suspensions are manufactured here in the United States. For instance, Merck represents that it must pay a duty on Ala Pro that it imports from French and Japanese manufacturers. Similarly, acetoxy azetidinone is imported from Japan; MCPBA is imported from Belgium; and the composite vials of timolol maleate/pilocarpine hydrochloric solution and diluent are imported from France. Each of these, I am told, are also subject to import duty.

In sum, Mr. President, without these duty suspensions, the ability of Merck & Co., Inc. to preserve its integrity and continue to compete in the world marketplace while maintaining its facilities in West Point and Danville, Pennsylvania is made more difficult.

For the foregoing reasons, Mr. President, I, therefore, urge my colleagues to join me in supporting this legislation.

By Mr. DECONCINI (for himself and Mr. HATCH):

S. 2130. A bill to amend title 35, United States Code, to permit separate patent extensions for each product under a patent which is subject to full regulatory review and approval; to the Committee on the Judiciary.

PATENT REVIEW AND APPROVAL

• Mr. DECONCINI. Mr. President, I rise today to introduce with my distinguished colleague from Utah, Senator HATCH, a narrow but important amendment to one of the most significant pieces of legislation enacted by Congress in many years—the Drug Price Competition and Patent Restoration Act of 1984. That legislation will ultimately save American consumers billions of dollars. Besides providing massive savings to our citizens, especially elderly citizens, who must of necessity consume an inordinate share of prescription drugs, the act increases incentives to the innovative, research-based pharmaceutical community to develop new drugs that would not otherwise become available.

It has been almost 7 years since the act's passage and there have been no amendments to it. The bill we offer today in no way modifies or disturbs that most delicate balance between research-based pharmaceuticals, generic products, and the public. We believe that it rectifies a narrow consequence of the act that was unintended in that it was unanticipated.

At the heart of the 1984 act lies an elegantly simple quid pro quo. In return for additional years of patent life to compensate for the difficult, expensive, and time-consuming FDA drug-approval process, the pharmaceutical industry agreed to support wholesale changes in both the law and the rules surrounding the approval by FDA of generic versions of off-patent drugs.

Surrounding that seemingly simple core stands an extremely complex legislative edifice. While making patent extensions available to offset legitimate delays and loss of patent life, Congress also wanted to ensure that companies would not be able to use the law to extend a patent forever and thus unnecessarily prolong their market position on pharmaceuticals covered by these patents.

Toward this end, the act provides that any patent can receive only one extension. This was done to avoid the possibility of old patents being kept alive by claiming new uses for the same drug. This, of course, is only one of the elements in the 1984 act designed to prevent evergreening. However, it is the focus of the legislation that Senator HATCH and I are introducing, today.

In crafting the 1984 act, it was assumed that any particular patent would cover only one drug. It was certainly not anticipated that one patent would actually encompass two or more separate new drugs that is, new chemical entities each requiring a full, separate and independent review by the FDA. Indeed, such situations rarely occur.

Mostly, they arise within university research departments where the researchers are conducting seminal research leading to broad, landmark inventions. These researchers are more interested in pursuing their basic conceptual research and publishing their results for the benefit of the scientific community than they are in pursuing the various potential commercial applications. Because of this, they must file patent applications promptly to protect rights that would be lost or forfeited by publication.

Rarely do these researchers direct their work to identifying particular commercial embodiments that enable them to file separate patent applications on the various commercial embodiments of their broad invention.

Thus, university researchers tend, therefore, to patent these fundamental discoveries early, too early to appreciate the full commercial implications of their discoveries. These pioneer patents will contain broad claims that will cover many potential commercial embodiments. When the university later tries to find companies willing to commit the millions required to take additional embodiments of the broad invention through the process of becoming a drug, these efforts are stymied by the 1984 act preventing any patent—regardless of the fact that it may encompass more than one drug—from having more than one extension.

One of the first questions a company will ask is whether the drug will ultimately qualify for patent extension. Given the high risks, long lead times and large sums of money involved, the few years of patent extension created by the 1984 act often spell the difference between financial success and failure. If, for example, a university has a patent encompassing two separate drugs, only the one that is first granted patent extension can be extended. The other is out of luck. As a practical matter, this means simply that the university will not find a company willing to risk the sums required to bring the second drug to market. The university loses and thus the public loses.

This measure seeks to correct this anomaly by allowing a university held patent to be extended for more than one new drug if the new drug otherwise qualifies for patent extension. It should be well understood that we are not talking about extensions on top of extensions. If a patent, for example, expires in 1994 nothing in this bill can ex-

tend it beyond 1999 since the 1984 act allows a maximum of 5 years extension. The only difference my amendment would make is that more than one separate drug under that patent could receive an extension.

My objective, as well as that of Senator HATCH, is to see as many promising new drugs come to the American people as possible. And since this particular provision of the 1984 act hinders rather than promotes that process, we seek to change it.

Mr. President, our constitutionally mandated patent system provides for a 17-year life for a patent. It is rigid but predictable. Indeed, with the exception of the terms of the 1984 act, the patent system provides no flexibility with regard to the 17-year period.

Earlier this year, the Judiciary Subcommittee on Patents, Copyrights and Trademarks of which I am chairman, held a hearing on the issue of private patent extension requests. Unlike those measures, which require compelling circumstances and strict scrutiny, this legislation provides uniform and limited protection to a particular but important inventive sector—universities.

It is for that reason that I believe this legislative measure is reasonable. Most importantly, it promotes the objectives of the 1984 act without disrupting its delicate balance. It will promote the development of new drugs to benefit the American people and the world. Let me add that this measure will gain support throughout the university community in this country. I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the legislation be printed at this point in the RECORD.

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

S. 2130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 156 of title 35 is amended—

(1) in subsection (a):

(A) in paragraph (2), by inserting ", except as otherwise provided in subsection (i)" after "extended"; and

(B) in the second sentence, by inserting ", and in subsection (i)", after "and (5)"; and

(2) by adding at the end the following new subsection:

"(i)(1) Notwithstanding the provisions of subsection (a)(2), if a claim or claim of any patent on an invention that was conceived or reduced to practice substantially in the performance of work at a qualified nonprofit organization cover more than one drug product, each of which is subject to a regulatory review period before its commercial marketing or use, the term of such patent may be separately extended for each such drug product.

"(2) For each extension obtained under this subsection (i), the rights derived from any patent the term of which is extended shall be limited to the drug product for which extension is sought.

"(3) As used in this subsection, the term "qualified nonprofit organization" means a university or other nonprofit institution of higher education incorporated or formed under the laws of a State, territory or possession of the United States".●

By Mr. MOYNIHAN:

S. 2132. A bill to require the Administrator of the Environmental Protection Agency to seek ongoing advice from independent experts in ranking relative environmental risks; to conduct the research and monitoring necessary to insure a sound scientific basis for decisionmaking; and to use such information in managing available resources to protect society from the greatest risks to human health, welfare, and ecological resources; to the Committee on Environment and Public Works.

ENVIRONMENTAL RISK REDUCTION ACT

● Mr. MOYNIHAN. Mr. President, on January 25 of this year I presided over a rather extraordinary hearing before the Committee on Environment and Public Works. Before us were Mr. Reilly, the capable Administrator of the U.S. Environmental Protection Agency, and Prof. Raymond C. Loehr, the Chairman of EPA's Science Advisory Board. Mr. Reilly and Professor Loehr told us of the results of months of study by three blue ribbon panels of scientific experts on environmental risk. The fruits of their efforts was a three-volume report entitled "Reduction Risk."

This report told us that our perception of risks, and our emphasis on reducing it, did not necessarily accord with the professional judgement of the experts. This is important, if true. We now believe, although it is difficult to calculate exactly, that we spend considerably more than $115 billion each year to protect the environment, and to clean it up where we failed to protect it in the past. If we are not spending this considerable sum on the most egregious risks, protecting the largest number of people, we need to consider soon how to do better.

To do this, we need to do two things. First, we need to consult the scientists to get the facts about how pollutants in the environment create risk and, not incidentally, which cause the greatest risk. Second, we need to have environmental statistics to tell us how the concentrations of pollutants in the environment are changing, and where, and what impact this is actually having on human health and natural resources.

We took an important step toward this goal last month when we passed S. 533, the Department of the Environment Act. In that bill, we created a Bureau of Environmental Statistics to be housed in a new Department of the Environment. Unfortunately, the measure was deficient, in that it failed to provide adequately for data collection, and I rose on that occasion to say that I would remedy that deficiency.

Today I am offering a bill, the Environmental Risk Reduction Act of 1991, that directs the Administrator of the Environmental Protection Agency to continue the process begun by Professor Loehr's panel, to constitute expert panels to advise the Administrator and Congress periodically on the best scientific assessment of relative risks, and the potential benefits of alternative ways of reducing such risks. The bill also creates an Environmental Monitoring and Assessment Program to be conducted by the EPA and coordinated with the activities of other Federal agencies with health and natural resource management responsibilities. This program would collect data on the exposure of humans, plants, and animals to pollutants and the resulting health of people and natural resources.

I look forward to working with my colleagues in the Senate to make sure that we are using our environmental protection resources wisely, and that we are getting what we pay for.

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

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

S. 2132

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Risk Reduction Act".

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the cost of protecting the quality of the environment currently exceeds $115 billion per year;

(2) protecting society from global climate change, stratospheric ozone depletion, loss of biological diversity, and waste products from an ever-increasing population will cause these costs to increase in the future;

(3) although these costs are not necessarily excessive, they are too high to be used ineffectively or inefficiently;

(4) funds can only be used most effectively when they protect the largest number of people from the most egregious harm;

(5) ecological resources are extraordinarily valuable, and risks to them either directly or indirectly degrade human health and the economy;

(6) ranking of relative risks to human health, welfare, and ecological resources is a complex task, and is best performed by technical experts free from interests that could bias their objective judgment;

(7) applying technology and resources at the highest ranked risks within the intent of existing environmental statutes and identifying highly ranked risks not addressed by current statutes can significantly reduce risks to human health, welfare, and ecological resources;

(8) better risk assessment methodologies and a long-term commitment to collecting monitoring data on the condition of ecological resources and exposure of humans and ecosystems to pollutants are necessary to insure that the greatest risks can be identified, and that environmental statutes are accomplishing their intended results;

(9) ranking risks must be an ongoing process and reflect improvements in environmental data and scientific understanding; and

(10) effective and efficient strategies to reduce risks must quantify significant costs and benefits to the greatest extent possible.

(b) POLICY.—It is the policy of the United States that—

(1) Federal environmental protection activities administered by the Environmental Protection Agency shall attain the greatest risk reduction possible with the resources available; and

(2) the ability to reduce risks requires—

(A) accurate, quantitative estimates of the exposure of humans and ecosystems to all important risk factors;

(B) accurate techniques for predicting the effects of such exposures;

(C) an adequate understanding of technical, economic, social, and legal alternatives to reduce exposure to risk factors; and

(D) accurate estimates of the costs and benefits of alternatives for reducing risks.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Agency" means the Environmental Protection Agency;

(2) "Administrator" means the Administrator of the Environmental Protection Agency;

(3) "risk" means the probability of the occurrence of an event;

(4) "stressor" means a physical, chemical, or biological factor resulting from human activity and capable of causing an effect on human health, welfare, or ecological resources;

(5) "exposure" means the juxtaposition in time and space of some stressor with a human or other living thing or a non-living thing important to human welfare, such that an effect could result;

(6) "effect" or "response" mean a deleterious change in the condition of a human or other living thing, including but not limited to death, cancer or other chronic illness, decreased reproductive capacity, or disfigurement, or in the condition of a non-living thing important to human welfare, including but not limited to, destruction, degeneration, loss of intended function, and increased costs for maintenance;

(7) "ecological resources" means nonhuman living things and their interactions, including, but not limited to, lakes, streams, forests, wetlands, deserts, tundra, oceans, estuaries, beaches, grassland, agricultural areas, and vegetated urban and suburban areas;

(8) "sustainable" means the ability of ecological resources to maintain diverse, self-reproducing biological communities, capable of meeting current needs of mankind without compromising the ability of future generations to meet their own needs, including natural resources such as food, fiber, lumber, fish, and game; environmental services such as flood mitigation, water storage, and regulation of the chemistry of the atmosphere, oceans, and inland waters, and opportunities for recreation, scientific study; and appreciation of the beauty and diversity of nature;

(9) "likelihood" means the estimated probability that an effect will occur;

(10) "seriousness" means the intensity of effect, independent of the magnitude;

(11) "magnitude" means the number of people or the amount of ecological resources or other resources contributing to human welfare affected by exposure to a stressor;

(12) "irreversibility" means the extent to which a return to conditions prior to the occurrence of an effect are either very slow or will never occur;

(13) "uncertainty" means the quantifiable and unquantifiable potential error in the estimation of risk which is caused by the quality of data, or the assumptions used in risk estimation;

(14) "environmental statutes" means the environmental laws administered by the Agency which include within their intent protection of the environment, including but not limited to—

(A) title XIV of the Public Service Health Act (the Safe Drinking Water Act),

(B) the Clean Water Act,

(C) the Clean Air Act,

(D) the Federal Insecticide, Fungicide, and Rodenticide Act,

(E) the Toxic Substances Control Act,

(F) the Solid Waste Disposal Act,

(G) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986,

(H) the Marine Protection, Research, and Sanctuaries Act of 1972, and

(I) laws dealing with protection from sources of radiation.

SEC. 4. EXPERT ADVISORY COMMITTEES.

(a) IN GENERAL.—The Administrator shall act to use available resources under all environmental laws to reduce the most likely, most serious, most irreversible, highest magnitude risks to human health, welfare, and ecological resources through the careful assessment and ranking of relative risks and options for their management. In order to insure that such action is based on the best available scientific understanding, the Administrator shall establish and seek advice from two expert advisory committees to be established within the Science Advisory Board.

(b) COMMITTEE ON RELATIVE RISKS.—

(1) The Administrator shall establish a standing Committee on Relative Risks within the Science Advisory Board to provide expert advice on ranking the relative risks of different stressors to human health, welfare, and ecological resources.

(2) The Committee on Relative Risks shall consist of 15 experts selected by the executive committee of the Science Advisory Board. In the case of the initial selections, 5 shall be selected for a term of 2 years, 5 for a term of 4 years, and 5 for a term of 6 years. Thereafter, each individual selected shall serve for a term of 6 years.

(3) Such experts shall be chosen to represent a broad and balanced spectrum of experience in the areas of human health effects, ecological effects, and welfare effects.

(4) Members of the Committee on Relative Risks shall elect a chairperson who shall serve for a term of 24 months.

(5) After establishing appropriate criteria and guidelines, the Committee on Relative Risks shall—

(A) identify and rank the greatest environmental risks to human health, welfare, and ecological resources; incorporating the overall likelihood, seriousness, magnitude, and irreversibility of each risk;

(B) identify a common list of the greatest risks to human health, welfare, and ecological resources;

(C) assess the state of pertinent scientific understanding and other factors contributing to uncertainty in the ranking of relative risk.

(6) Risks shall be identified by the Committee on Relative Risks in such a way that the need for new laws, and priorities within the intent of existing laws, can be identified.

(7) As a Federal advisory committee, the Committee on Relative Risks shall hold open public meetings to solicit input from the public and other sources in accordance with the Federal Advisory Committee Act.

(c) COMMITTEE ON ENVIRONMENTAL BENEFITS.—

(1) The Administrator shall establish a standing Committee on Environmental Benefits within the Science Advisory Board to provide expert advice on estimating quantitative benefits of reducing risks.

(2) The Committee on Environmental Benefits shall consist of 15 experts selected by the executive committee of the Science Advisory Board. In the case of the initial selections, 5 shall be selected for a term of 2 years, 5 for a term of 4 years, and 5 for a term of 6 years. Thereafter, each individual selected shall serve for a term of 6 years.

(3) Experts shall be chosen to represent a broad and balanced spectrum of experience in areas including but not limited to economics, engineering, public administration, and health care.

(4) Members shall elect a chairperson initially, and at 24-month intervals after each major change in the Committee membership.

(5) After establishing appropriate guidelines and criteria, the Committee on Environmental Benefits shall estimate the value of—

(A) avoiding premature mortality;

(B) avoiding cancer, diseases, birth defects, and other health effects that reduce the quality of life;

(C) preserving biological diversity and sustainable ecological resources;

(D) an aesthetic environment;

(E) services performed by ecosystems (such as flood mitigation, provision of food or materials, or regulating the chemistry of the air or water) that, if lost or degraded, would have to be replaced by technology; and

(F) avoiding other risks identified by the Committee on Relative Risks.

(6) As a Federal advisory committee, the Committee on Environmental Benefits shall hold public meetings to solicit input from the public and other sources in accordance with the Federal Advisory Committee Act.

(7) The Committee on Relative Risks and the Committee on Costs and Benefits shall report their findings to the Administrator and to the appropriate committees of Congress on or before August 1, 1992, and prior to the expiration of each 24-month period thereafter.

(d) REIMBURSEMENT.—Members of the committees established under this section shall be reimbursed for travel, as authorized by section 5703 of title 5, United States Code, subsistence, and other necessary expenses incurred in the performance of the duties of the committees.

(e) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated $3,000,000 for fiscal year 1992, and each of the next following 6 fiscal years.

SEC. 5. RISK ASSESSMENT GUIDELINES.

(a) IN GENERAL.—The Administrator shall act to protect human health and the environment on the basis of careful assessments of risk and evaluation of options for reducing risks. In making decisions about the conduct of risk assessments, the Administrator shall balance the costs of such assessments and of damage to human health or the environment that might be caused by such delays against the savings to society expected to result from more cost-effective risk reduction options identified through the risk assessment process.

(b) RISK ASSESSMENT GUIDELINES.—The Administrator shall develop, and revise as appropriate, guidelines to ensure consistency and technical quality in risk assessments by specifying minimum standards for different

risk assessment approaches, depending on the scale of the problem, the level of scientific understanding, and the available data.

(c) INITIAL GUIDELINES.—The initial set of guidelines shall include risk assessments involving—

(1) human mutagenicity;
(2) human carcinogenicity;
(3) human developmental toxicants;
(4) human reproductive effects;
(5) human systemic toxicants;
(6) ecological effects of sources of pollutants from single sites;
(7) ecological effects of pollutants that originate from many sites;
(8) ecological effects from physical alteration of the environment;
(9) ecological effects of introducing non-native or genetically engineered organisms;
(10) pollutants affecting man-made materials; and
(11) pollutants affecting the productivity of soils.

(d) ADDITIONAL GUIDELINES.—The Administrator shall develop additional risk assessment guidelines as warranted by the state of pertinent scientific understanding and the need for sound decisions to protect human health, welfare, and the environment.

(e) MINIMUM REQUIREMENTS.—Risk assessment guidelines developed under this section shall include the following components:

(1) a hazard identification which demonstrates whether exposure to a stressor is or is not causally linked to an effect;

(2) an assessment that measures or estimates the exposure of well-defined individuals, populations, or materials to a stressor;

(3) an assessment which determines or estimates the magnitude of response of affected individuals, populations, or materials associated with different levels of exposure to a stressor under representative environmental conditions; and

(4) a risk characterization which provides an overall description of the nature and magnitude of probable effects resulting from alternative risk management options (including no action), together with a quantitative estimate of the attendant uncertainties.

(f) PUBLICATION IN THE FEDERAL REGISTER AND REPORTS TO CONGRESS.—The Administrator shall—

(1) publish all initial risk assessment guidelines in subsection (c) in the Federal Register within 60 months following the date of the enactment of this Act, and shall report annually to Congress on progress toward this goal; and

(2) publish new and revised guidelines in the Federal Register as necessitated by subsection (d).

SEC. 6. RISK ASSESSMENT RESEARCH.

(a) IN GENERAL.—The Administrator shall conduct a long-term core research program in environmental risk assessment research in order to insure that the risk assessment process is based on adequate environmental data and scientific understanding, in order to provide the most cost-effective use of environmental protection resources.

(b) ENVIRONMENTAL MONITORING AND ASSESSMENT PROGRAM.—The Administrator shall conduct a research program to—

(1) design and evaluate methods and networks to collect monitoring data on the current and changing condition of the environment (including, but not limited to, human health, ecological resources, materials, and exposure to environmental stressors relevant to making decisions at the Federal level about alternative risk assessment and risk reduction options;

(2) implement such monitoring programs, in cooperation with relevant programs in other Federal agencies;

(3) manage data from such monitoring programs in forms and formats readily accessible to the scientific community and the public; and

(4) provide annual statistical reports and periodic interpretive reports of the results of such monitoring programs to Congress and the public.

(c) ENVIRONMENTAL RISK ASSESSMENT RESEARCH PROGRAM.—The Administrator will conduct a long-term core program to establish a firm scientific basis for initial and subsequent risk assessment guidelines, including methods for—

(1) assessing exposure of humans, ecological resources, and materials to stressors, including methods for determining the environmentally effective level of the stressor that actually initiates the effect;

(2) accurately predicting the effects of exposure to stressors on human health, ecological resources, and materials;

(3) quantifying statistical uncertainty in exposure and stress-response estimates; and

(4) quantifying the social and economic values of effects on human health, welfare, and ecological resources.

(d) LONG-TERM RESEARCH PLANNING.—At least one-half of the research conducted under this Act shall be under contracts or assistance agreements with universities and other nonprofit or not-for-profit organizations awarded under full and open competition, under which full funding for at least 3 years of the contract will be obligated at the beginning of the contract or agreement.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the sum of $80,000,000 for fiscal year 1992, $130,000,000 for fiscal year 1993, and $200,000,000 for each of the fiscal years 1994 through 1998, to carry out the provisions of this section.

SEC. 7. INTERAGENCY PANEL ON RISK ASSESSMENT AND REDUCTION.

(a) ESTABLISHMENT.—There is established an Inter-agency Panel on Risk Assessment and Reduction (hereafter in this Act referred to as "Interagency Panel") for the purpose of coordinating Federal research, data gathering, and implementation of environmental risk assessment and risk reduction activities.

(b) MEMBERSHIP.—The Interagency Panel shall consist of one representative each from—

(1) the Environmental Protection Agency;
(2) the Department of the Interior;
(3) the Department of Health and Human Services;
(4) the Department of Energy;
(5) the Department of Commerce;
(6) the Department of Agriculture;
(7) the Corps of Engineers;
(8) the Council on Environmental Quality; and
(9) any other Federal department or agency that the President, or the Chairman of the Interagency Committee, considers appropriate.

Each such representative shall be designated by the head of the entity named.

(c) CHAIRMAN.—The member of the Interagency Panel representing the Environmental Protection Agency shall serve as the Chairperson of the Interagency Panel.

SEC. 8. REPORTS TO CONGRESS.

(a) ASSESSMENT OF ENVIRONMENTAL RISK REDUCTION OPTIONS.—Within 24 months following the date of enactment of this Act, the Administrator shall prepare and submit a report to the Congress which identifies—

(1) a prioritized list of the human health, welfare, and ecological resource risks considered by the Committee on Relative Risks;

(2) public awareness of the likelihood, seriousness, magnitude, and irreversibility of each risk;

(3) alternative options for reducing risks and corresponding estimated costs and benefits to society, including costs to Federal agencies and the private sector, and any adverse effects that cannot yet be quantified in monetary terms;

(4) the time required for reducing risks through each option;

(5) evaluation of the uncertainty associated with relevant aspects of the assessment process; and

(6) research or data collection that would significantly reduce the uncertainty in any assessment within 24 months of the submission of the report to Congress.

(b) INTENT OF CONGRESS.—It is the intent of Congress that the information contained in the annual report be used to assist in directing the activities of the Agency so as to result in reducing the most serious and probable risks to the greatest number of people and sustainable ecological resources. The Administrator shall carry out this Act in a reasonable and prudent manner so as to insure the protection of public health and the environment, and in a manner open to public inspection, but he shall not be delayed in carrying out his responsibilities under other environmental laws by his responsibilities under this Act.

(c) ONGOING ASSESSMENT.—The Administrator shall revise and update the report submitted under this section at least every 24 months to reflect new data or scientific understanding.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in sections 4 and 6, nothing in this Act shall constitute a new authorization for the appropriation of funds.●

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

S. 2133. A bill to provide for the economic conversion and diversification of industries in the defense industrial base of the United States that are adversely affected by significant reductions in spending; to the Committee on Banking, Housing, and Urban Affairs.

DEFENSE INDUSTRIAL STABILIZATION AND COMMUNITY TRANSITION ACT OF 1991

● Mr. DODD. Mr. President, I rise today to introduce the Defense Industrial Stabilization and Community Transition Act of 1991, a bill to provide economic adjustment assistance to industries, communities and dislocated workers impacted by cuts in defense spending.

There can be no doubt, Mr. President, that the past few years have brought sweeping changes across the globe. In the Soviet Union, communism has collapsed. In Eastern Europe, democracy and free market ideology have taken root. In Angola, Cambodia, and other tortured regions around the world, the end of the cold war has given people an opportunity to lift themselves from war and build for themselves a better life.

We would be fooling ourselves, however, if we believed that there are no