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# House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, September 4, 2002, at 2 p.m.

# Senate

THURSDAY, AUGUST 1, 2002

## TRADE ACT OF 2002

Mr. BAUCUS. Mr. President, before we conclude today, I would be remiss if I did not thank a number of people.

First, in the House, I want to thank Chairman BILL THOMAS. He and I disagree on some things—that's for sure. But we share a common goal of both expanding trade and helping workers left behind by trade. And we share the goal of getting this to the President's desk as soon as possible so that we can help jump-start this economy. We worked together to craft a strong trade bill—and I thank him for his efforts.

Second—I want to thank Congressmen CAL DOOLEY, JOHN TANNER, and BILL JEFFERSON, who helped craft the House fast track legislation, and also ANNA ESHOO and KEN BENTSEN, who provided so much help on TAA.

In the Senate, I first want to thank Senator DASCHLE, who has helped this trade bill move through every step of the process. I also want to thank two Senators who played a key role during the committee process—Senator BINGAMAN for his efforts on TAA and Senator BOB GRAHAM on ATPA. And I appreciate Senator BREAUX's work both during the Senate negotiations and during the conference.

I also want to give credit to a number of Senators whose efforts made this legislation much better. Senators DAYTON and CRAIG on trade laws; Senator EDWARDS on the textile negotiating objectives and also on TAA; Senator KENNEDY on access to medicines; Senator HARKIN on child labor; Senator INOUYE on some of the tuna provisions in ATPA, and Senators ROCKEFELLER, MURKOWSKI, and WELLSTONE on benefits for steel retirees.

Finally, I, of course want to thank my partner on the Finance Committee, Senator CHUCK GRASSLEY for being helpful throughout this process.

Of course, to actually complete work on a major bill like this requires the efforts of many others. For more than 18 months, many staff members have made incalculable efforts to prepare this legislation and move it to passage.

John Angell and Mike Evans oversaw the efforts of the Finance Committee staff on this legislation and all other activities of the Committee.

Greg Mastel led the effort on the Democratic staff to prepare this legislation from the first round of hearings to the final Senate vote. He was ably assisted by a tremendously skilled and energetic staff, including Tim Punke, Ted Posner, Angela Marshall, Shara Aranoff, and Andy Harig.

The Finance Committee health and tax staffs also played an important role, especially Liz Fowler, Kate Kirchgraber, Liz Liebschutz, Mitchell Kent, and Mike Mongan.

The Finance Committee also benefited from the able efforts of the leading Republican staff members, Everett Eissenstat and Richard Chriss.

In the House, the staff of the Ways and Means Committee and the New Democrats who supported this bill deserve similar credit.

This legislation also literally would not have been possible without the help of our skilled legislative counsel, Polly Craighill, Stephanie Easley, and Ruth Ernst, and Mark Mathiesen.

Finally, I would say a word of thanks to the many members of the Administration who staffed and supported this legislative effort, including Grant Aldonas, Faryar Shirzad, Peter Davidson, John Veroneau, Heather Wingate, Brenda Becker, Penny Naas, and many others.

I—as well as the Senate and the country—owe you all a debt of gratitude.

I also rise today to thank one additional person who played an enormous role in the passing of this trade bill—Howard Rosen.

I do not believe there is a person in this country who feels more passionately about the TAA legislation than Howard Rosen. He helped write this bill, he worked hard to encourage Members of the Senate and Members of the House to support this bill, and he is a big reason that we now have such a good TAA program.

And I know Howard's efforts will not end here. I know he will keep working to make TAA an even better program. We all owe him a great deal of thanks.

### ANTICIRCUMVENTION

Mr. BREAUX. Mr. President, I want to bring to the Senate's attention a section of the conference agreement that is extremely important to the future of the U.S. sugar program and to the workers and companies in the domestic sugar industry. As the gentleman from Montana knows very well, I am talking about Section 5203 of the Trade Act of 2002, regarding sugar tariff-rate quota circumvention. The policy established in Section 5203 on sugar tariff rate quota circumvention is very

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



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important to the future of the sugar industry in Louisiana and the United States.

Mr. BAUCUS. I am very familiar with Section 5203 and its importance to the future of the domestic sugar industry, including the sugarbeet growers and processors in Montana. I would like to take this opportunity to commend Senator BREAUX, Senator CRAIG, and Senator THOMAS for the work they have been doing to address the problem of circumvention of the tariff-rate quotas on sugar and sugar-containing products.

Mr. BREAUX. I accept those kind words on behalf of all of the Senators who are working on this issue. Let me explain the problem briefly. The price of sugar on world markets is almost always very low and is often below the cost of producing sugar even in the most efficient sugar industries. This phenomenon is caused by subsidization of sugar exports by the European Union and other governments, and by dumping by companies that must export their sugar at any price to avoid harming their domestic markets.

The U.S. sugar program is intended to keep the price of sugar in the U.S. market at a level that assures a reasonable return to U.S. growers, processors and refiners of cane and beet sugar. A primary component of the program is WTO-legal tariff-rate quotas on imported sugar and sugar-containing products under Chapters 17, 18, 19 and 21 of the Harmonized Tariff Schedule of the United States. These quotas keep world price sugar from disrupting the U.S. sweeteners market and assure countries that are historical suppliers of the U.S. market that they will benefit from U.S. prices.

If the tariff-rate quotas do not keep dumped world price sugar off the U.S. market, the sugar program will be severely damaged. Therefore, it is essential that attempts to circumvent the tariff-rate quotas be identified and stopped promptly.

Mr. BAUCUS. I agree. Circumvention definitely has been a problem for the sugar industry. Do you have some examples of such practices?

Mr. BREAUX. There are many different kinds of circumvention. For example, designing and importing nonquota sugar-containing products that have no commercial use or using processing technologies that make commercial extraction of sugar from historically traded nonquota products an economically viable source of sugar. A specific example of one kind of circumvention is stuffed molasses, in which sugar is added to molasses outside the United States and removed from the molasses after importation in the United States. Another example is a product that is created by interrupting the normal refining process of raw cane sugar after the first removal of sugar, or first ''strike,'' outside the United States, addition of that product to raw cane sugar while it is being refined in the United States. These are not the only methods used for circumvention. Importers will try variations of circumventing products that were imported in the past, and they will try to devise new methods for circumvention.

Section 5203 directs the Secretary of Agriculture and Commissioner of Customs to monitor continuously imports of products provided for under Chapter 17, 18, 19 and 21 of the HTS for indications that products are being used for circumvention. It is my understanding that ''continuously'' means looking at import statistics for each month. If they see anything suspicious, such as significant increases in imports over historic levels or a change in the ports of entry from the historic pattern, they will look into the transactions to assure themselves there is no circumvention or to determine precisely how the circumvention is being carried out. The Secretary and the Commissioner shall report their findings and make recommendations for action to Congress and the President every six months in a public report.

Mr. BAUCUS. As Chairman of the Senate Finance Committee and Co-Chair of the Conference Committee, I agree that you have accurately described this important section and its intent.

Mr. BREAUX. Thank you, Chairman BAUCUS for clarifying this issue. You clearly understand the importance we attach to this monitoring, reporting, and recommendation program. I also want to emphasize that we expect the Secretary of Agriculture and Commissioner of Customs to move quickly as soon as H.R. 3009 is signed into public law to establish an effective monitoring, reporting and recommendation program under section 5203.

AGOA

Mr. GRASSLEY. I would like to ask the chairman of the Finance Committee to engage in a colloquy for the purposes of clarifying several provisions in this conference report as they relate to the African Growth and Opportunity Act, known as AGOA.

Mr. BAUCUS. I would be pleased to engage in a colloquy on that subject.

Mr. GRASSLEY. Section 3108(a)(3) of the conference report amends section 112(b)(3) of AGOA, which provides for duty-free access for apparel made from regional fabrics, subject to a quantitative cap.

Mr. BAUCUS. That is correct.

Mr. GRASSLEY. As I understand it, section 112(b)(3) of AGOA, as amended by the conference report, would also cover garments made from regional fabrics that also incorporate U.S. formed fabrics made from U.S. yarns, U.S. formed yarns, or U.S. formed fabrics not made from yarns that are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States. An example of this might be a tailored coat made from African wool, that incorporates U.S. fabrics, linings, interlinings, or pocketing material. As you understand it, would such a garment be eligible for benefits under this provision?

Mr. BAUCUS. I believe that such a garment would be eligible for benefits under that provision. A garment entered under the regional fabric provision of AGOA is not ineligible for benefits simply because it happens to incorporate U.S. yarns, fabrics, or components.

Mr. GRASSLEY. A related question concerns the increase in the quantitative cap, provided for in Section 3108(b) of the conference report. As I understand it, the cap increases represent an approximate doubling of the percentages used in setting the caps under current law, except the increase can only be used for garments containing regional or a mixture of regional and U.S. inputs.

Mr. BAUCUS. That is correct. The cap is set as a percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Under current law, the applicable percentage for the 1-year period beginning October 1, 2000 was 1.5 percent. The applicable percentage increases by equal annual increments, so that for the period beginning October 1, 2007, the applicable percentage does not exceed 3.5 percent. Under that formula, the applicable percentage for the 1-year period beginning October 1, 2002 will be approximately 2.072 percent. Under section 3108(b)(1) of the conference report, that percentage will be increased by 2.17 percent. In other words, the new applicable percentage for the year beginning October 1, 2002 will be 4.242 percent. However, with respect to the increase over current law, *i.e.*, the additional 2.17 percent in the year beginning October 1, 2002, garments must be made from regional or a mixture of regional and U.S. inputs.

The conference report further provides that in future years, the applicable percentage will increase by equal increments, such that the applicable percentage for the 1-year period beginning October 1, 2007 will be not greater than 7 percent. For each year, the increase over the applicable percentage under current law pertains only to garments made from regional or a mixture of regional and U.S. inputs.

Mr. GRASSLEY. I appreciate the clarification.

TUNA CERTIFICATION OF ORIGIN IN THE ANDEAN TRADE PREFERENCE ACT

Mrs. BOXER. Mr. President, I have long been involved in dolphin conservation efforts. In the past, tuna boats were one of the leading causes of dolphin mortality. As a result of legislation that I and others worked on, tuna fishing practices have been modified and dolphin deaths have dropped dramatically.

In part, that success has come from clear regulations regarding dolphin-safe fishing practices and requirements that must be met before tuna can receive the ''dolphin-safe'' label. The

United States tracks foreign tuna and determines whether it is dolphin-safe by requiring foreign parties to supply a Certificate of Origin for imported tuna. Specifically, I am referring to the National Oceanic and Atmospheric Administration's Form 370, which is required under the Marine Mammal Protection Act of 1972.

I am concerned that the reference to a Certificate of Origin in Section 3103(b)(5) of H.R. 3009 may inadvertently create some confusion regarding existing tuna certificate requirements. It is my understanding that the Chairman of the Finance Committee did not intend for this section to affect existing requirements that imported tuna be accompanied by a Certificate of Origin (i.e. NOAA Form 370) as required under the Marine Mammal Protection Act.

Mr. BAUCUS. It is my understanding that nothing in the conference report supercedes or repeals the provisions of law to which the Senator from California refers.

Mr. BREAUX. Mr. President, it is also my intent that the Andean Trade Preference Act not pertain to existing requirements that foreign parties provide a Certificate of Origin for tuna imported into the United States. This certificate, or Form 370, is necessary to verify whether imported tuna qualifies for the ''dolphin-safe'' label. This bill should not affect that process.

Mrs. BOXER. I thank my colleagues.

TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Mr. KERRY. Mr. President, I want to take this opportunity to engage in a colloquy with the Senator from Montana, Senator BAUCUS and the Senator from Louisiana, Senator BREAUX.

I would like to congratulate you both on your work in the Finance Committee and particularly thank you for your dedication to passing a strong Trade Adjustment Assistance bill. This is a strong step forward for U.S. workers indeed; however, I would like to seek your clarification as to whether fishermen are eligible for the program.

Mr. BAUCUS. Thank you, Senator KERRY. I would also like to thank you for all of your efforts in helping both in the Committee and on the floor to draft a strong bill that addresses the needs of America's businesses, farmers, and workers.

It was certainly my intent as Chairman of the Finance Committee and the lead conferee on the part of the Senate to make fishermen eligible for the Trade Adjustment Assistance for Farmers program. It is my understanding that Trade Adjustment Assistance for Farmers covers all commodities (including livestock) in the raw or natural state. The Trade Act of 1978, defines the term ''livestock'' to cover not only cattle, sheep, goats, swine, poultry (including egg-producing poultry), and equine animals used for food or in the production of food, but also ''fish used for food.'' Also, the Food for Peace program, otherwise known as P.L. 480, includes ''fish'' under its definition of ''agricultural commodity.''

Mr. BREAUX. Senator BAUCUS, I was a member of the conference committee as well and it was my understanding that fish would be a qualifying agricultural commodity for the purpose of this act. Is that correct?

Mr. BAUCUS. Yes, my intent is that fish—wild, farm-grown, or shellfish—and inherently fishermen, be considered for the purpose of the Trade Adjustment Assistance Program for farmers. Also, fishermen can apply and should be eligible for the regular TAA for workers provisions.

Further, there is also a study added to the conference report on the topic of fishermen and TAA. It is my hope that this study will address the recent controversy about the application of the TAA for firms to fishermen as well as provide direction on future approaches to ensuring that fishermen are treated equitably under TAA, including whether a separate TAA for Fishermen program should be created.

Mr. KERRY. Thank you for that clarification, Senator BAUCUS. It is important that we make these programs work for all of America's workers, and I look forward to working with you to make that happen. It is my understanding that the Administration is preparing letters specifically outlining TAA eligibility for fishermen, and I look forward to receiving those very soon.

Mr. GRASSLEY. Mr. President, I rise in strong support of the conference report to accompany H.R. 3009, the Trade Act of 2002 and urge my colleagues to support cloture and final passage of the bill.

This bill is the product of over a year and a half of intense negotiations, discussion, and debate among Republican and Democrats in both Houses of Congress. Because of these efforts, the Trade Act strikes a solid and balanced compromise among a number of key issues and competing priorities. It is a product which should receive broad support here in the Senate today.

The Trade Act of 2002 renews Trade Promotion Authority for the President for the first time in almost a decade. Through a spirit of compromise, Democrats and Republicans were able to break the deadlock of TPA and reach a balanced compromise on a number of key issues.

For example, for the first time TPA contains a negotiating objective on labor and the environment. Negotiators are directed to seek provisions in trade agreements requiring countries to enforce their own labor and environmental laws. These negotiating objectives also recognize a country's right to exercise discretion and establish its own labor and environmental standards without being subject to retaliation.

The bipartisan TPA provisions also contain carefully balanced provisions on investment, which preserve the fundamental purpose of the investor-state dispute settlement procedures while ensuring that they are not subject to abuse. The TPA provisions preserve the ability of the United States to enforce our trade remedy laws which help combat unfair trade practices.

Finally, they contain unprecedented consultation procedures which ensure meaningful and timely consultations with Congress every step of the way, without curtailing the President's ability to negotiate good agreements.

In short, the Bipartisan TPA bill provides the President with the flexibility he needs to negotiate strong international trade agreements while maintaining Congress' constitutional role over U.S. trade policy. It represents a thoughtful approach to addressing the complex relationship between international trade, worker rights, and the environment. And it does so without undermining the fundamental purpose and proven effectiveness of Trade Promotion Authority procedures. It is an extremely solid bill which I am proud to support.

I would like to include some material for the RECORD which provides some background on how we got to where we are today.

Today we are on the verge of passing this critical bill and sending it to the President's desk for his signature. I want to recognize Chairman BAUCUS' strong efforts during the recent House-Senate conference on the Trade Act. I think they were key to our success.

I would now like to briefly outline two other provisions in the bill—Trade Adjustment Assistance and the Andean Trade Promotion Act.

First on TAA. The Trade Act reauthorizes and improves Trade Adjustment Assistance for America's workers whose jobs may be displaced by trade. I think the TAA provisions in the Trade Act are a vast improvement over the legislation that passed the Senate. The Senate TAA bill would have entirely rewritten existing law. In doing so, the Senate bill added a number of new, costly definitions, time-lines and ambiguous administrative obligations. The Trade Act removes these burdensome and ill-advised changes.

Unlike the Senate bill, the Conference Report simply amends and builds upon existing law. It adds new provisions which help to actually improve the TAA program while maintaining its linkage to trade. The TAA provisions in the Trade Act consolidate the TAA and NAFTA–TAA programs, thereby establishing a uniform set of requirements. It triggers immediate provisions of rapid response and basic adjustment services and streamlines the petition approval process.

The act also reduces by one-third the time period in which the Secretary must review a petition. At the same time, the TAA provisions drastically scale back the number of workers who can be eligible for TAA, thereby ensuring that only those workers who are truly impacted by trade and in need of

retraining are eligible for assistance. The Trade Act includes a 65 percent health insurance tax credit, and presents a firm, clear alternative to expanding Medicaid and over government run health insurance coverage.

In short, the Trade Act improves the Senate passed TAA bill and represents a more balanced approach to ensuring that workers displaced by trade get the assistance and training they need to quickly re-enter the workforce and compete in the international environment.

There is another extremely important provision in the Trade Act that I would like to briefly mention, and that is the Andean Trade Promotion and Drug Eradication Act. This provision will help eradicate drug trafficking in the Andean nations by helping to create new employment opportunities for the citizens of Bolivia, Ecuador, Colombia and Peru. It is a vital piece of legislation for our Andean neighbors and a critical tool in our effort to fight drug trafficking.

The intent of the Andean Trade Preference Act, from the beginning, was to advance our efforts to combat illegal drug production and trafficking. It was then and is now not so much a trade initiative as it is an effort to assist important allies in a critical fight. The nations of Latin America expect us to continue to stand by their side as we fight the scourge of drugs. They have paid a high price to aid us in this effort. It is a battle we cannot afford to lose. So we cannot fail to do our duties as legislators and provide them with the support they need with this important legislation.

Before I conclude, I want us to step back and take a look at the big picture.

I will be the first to admit that this bill is not perfect. There are provisions in this bill which I do not support and there are many items I wish were in the bill that are not. But all in all it is a good, fair, and balanced package. It deserves our strong support, especially in this changing international environment.

International trade has long been one of the most important foreign policy and economic tools in our arsenal. It was a key component of our post-World War II international economic strategy. For over fifty years international trade contributed to stability and economic growth throughout the world. It helped to lift the nations of Europe and Asia out of the ashes of World War II. And it helped America experience unprecedented prosperity here at home. International trade can play a similar role at the beginning of the twenty-first century. But our nation must have the tools to lead. This bill will make a difference. Nations around the world are waiting for our call and our leadership.

Today, the eyes of the world are on the Senate. We cannot let them down. I urge my colleagues to support the conference report, vote for cloture and final passage of the bill.

I ask unanimous consent to print the information I earlier referenced in the RECORD.

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

TRANSCRIPT EXCERPT FROM THE MARK-UP OF THE TRADE ADJUSTMENT ASSISTANCE BILL S. 1209—DECEMBER 4, 2001

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Thank you, Mr. Chairman.

Obviously, I will repeat some of the things that I said the other day.

The CHAIRMAN. It does not have to be obvious. You can change.

Senator GRASSLEY. Well, these are things that I think we need to remind ourselves of, particularly the bipartisanship of this committee.

When this mark-up began last week, I stated that I support Trade Adjustment Assistance. I do not support it, though, in the partisan way that this legislation has been advanced.

Now, you took time during your statement to show how there had been cooperation among Republicans and Democrats to deal with some things that ought to be in Trade Adjustment Assistance.

So, my remarks in regard to the partisan way are related to the bill containing provisions from the Democratically-passed stimulus package that makes sweeping and permanent changes to our health care system. Just as my colleagues on the other side failed to work in a bipartisan fashion on economic stimulus, they have followed the same course again on these health provisions for Trade Adjustment Assistance.

These things should be taken up as part of our consideration of health programs and not be mixed with, or at least on the stimulus package, Trade Adjustment Assistance.

I think we have a situation here, as I said a week ago, where we have got two very good bills. I think when we finally get a Trade Adjustment Assistance bill, unless, for instance, it were to have these health care provisions in it, you have got a bill that will pass the Senate almost unanimously.

I think that we would have a situation, if we got trade promotion authority out of here, and one that I think would be very much a bipartisan bill, would pass the Senate overwhelmingly, not unanimously or near-unanimously like Trade Adjustment Assistance might.

But when you are going to bring these bills to the floor of the Senate where there is not an arrangement for both to go, whether they go together or go separately, we have a situation where there are two very popular public policy decisions that could be on the Senate floor that could pass by big margins. But one will not pass without the other. That is not a whole lot different than when Trade Adjustment Assistance first came in to public policy 40 years ago. They kind of came in together.

So I want to say, again, that we must not lose sight of the importance then of renewing the President's trade promotion authority this year. I know that some members of this committee believe that we should act only after the House has acted on this very important piece of legislation.

But it appears to me that this is a criteria that is selectively applied. All you have to do is look at what we are doing this morning, marking up Trade Adjustment Assistance legislation before the House has acted. We also marked up fast track legislation in 1997 before the House acted, and it was strongly bipartisan, that the committee approved, with only one dissenting vote.

So making a committee vote on renewing the President's trade negotiating authority contingent with House action is not in accord with recent action of this committee, including what we are doing here today.

In addition, Mr. Chairman, I believe, and many members of this committee believe, that Trade Adjustment Assistance ought to be considered in tandem with legislation to renew the President's trade negotiating authority.

This is not a new idea. When President Kennedy first designed the Trade Adjustment Assistance program in the 1960s, he specifically stated that adjustment assistance was integrally linked to the Kennedy Administration's overall efforts to reduce barriers to foreign trade.

That linkage was explicitly stated in President Kennedy's message to Congress when he announced that the first Trade Adjustment Assistance program was to be part of the Trade Expansion Act of 1962.

Here is what he said in 1962: ''I am also recommending as an essential part of the new trade program that companies, farmers, workers who suffer damage from increased foreign import competition be assisted in their efforts to adjust to that competition.''

Ever since President Kennedy created the linkage between trade expansion and Trade Adjustment Assistance, that linkage has been maintained, both by Democrat and Republican administrations.

The linkage between Trade Adjustment Assistance makes sense. It made sense when President Kennedy designed the Trade Adjustment Assistance program in 1962, so consequently it makes sense today. It ought to be preserved. I will oppose any efforts to sever the historic linkage between trade expansion and Trade Adjustment Assistance.

Finally, Mr. Chairman, I again regret that we cannot get to a vote by a date certain on the President's most important trade policy initiative. As I said last week, we should not call it trade promotion authority for the President because, quite frankly, we are talking about trade promotion authority for America.

That is because America will win if we can realize the promise of opening new markets for our farmers, ranchers, and workers. But America will also lose, our farmers, ranchers, and workers will lose, if our effort to renew the President's trade negotiating authority gets bogged down in partisan bickering.

I urge my colleagues, Democrats and Republicans alike, to work with me on trade promotion authority for America. We can do this. We must do it. We must do it in a bipartisan way, in the great and enduring tradition of this committee.

I also might add that today is the day in which we are going to start applying tariffs and other trade provisions to the Andean Pact nations, because the Andean Pact lapses today. I think that that is an example of our committee being a little late from time to time on very important pieces of trade policy that we should really push.

I think we ought to take into consideration that nations that this committee expressed last week need our help, almost unanimously—in fact, it was probably a unanimous vote—that we move ahead with the Andean Pact.

It is too bad that we have not moved quickly enough so that these nations continue to be helped, as they have been helped under the Andean Pact, and as we would expand the Andean Pact legislation to do even greater good for those nations to help themselves.

Quite frankly, it is only trade and it is not going to be aid that moves the economies of these nations along. It is really a missed opportunity now that, after all these years of

having the preferential treatment of imports from the Andean Pact nations because we felt that it was very necessary to help them to help themselves, which is what trade does, that now there is going to be a greater cost, consequently less trade. Obviously, the economies of these countries are going to be hurt.

These are the very same countries that we feel we ought to be helping, because that's where we need to strengthen their economy so that they are not so dependent upon the drugs that they produce that are coming to our country, and a lot of other reasons as well, but that is a very important one for our country.

So, I hope we have a very aggressive trade agenda, we move forward. The most important one is trade promotion authority for the President, regardless of what happens in the House of Representatives, because I do not think that the Senate is irrelevant on this issue of trade promotion authority.

I yield the floor.

The CHAIRMAN. Thank you very much, Senator. I agree with you on the Andean Trade Preferences Act which has passed this committee, and hopefully can be brought up and passed on the floor this year.

The bill is now open for amendment.

Senator Hatch?

Senator HATCH. Mr. Chairman, is it appropriate for me to offer my amendment?

The CHAIRMAN. Absolutely.

Senator HATCH. All right. I will offer on amendment that will add trade promotion authority language to the Chairman's mark. In addition, my amendment would substitute the Chairman's mark's TAA language with the administration's Trade Adjustment Assistance proposal.

Traditionally, the Finance Committee has played a leadership role in forging major bipartisan consensus legislation in the areas of importance to the American public. Mr. Chairman, you and Senator GRASSLEY both rose to that occasion in the tax bill earlier this year. Time and time again, this committee stepped up to the plate in difficult areas.

For example, we took the lead in 1997 in the Balanced Budget bill and even found a way to weave the Children's Health Insurance program into that critical legislation.

I take exception to the view that the prudent course is for this committee to wait and see what the House does on TPA. With all due respect, I simply do not agree with what the Chairman said last week, that it would be a waste of time of this committee and the whole Senate if we were to take up fast track legislation prior to the House action.

Frankly, I am not sure that there is any better use of time of this committee and the Senate than in trying to reach a compromise on trade legislation that can help jump-start our stagnating economy.

America is fighting a war against terrorism, and we are fighting this war in the midst of a deepening economic recession. As the unemployment statistics climb, it would seem wise to aggressively pursue trade policies that help to create new jobs for Americans.

We know that over the last decade, exports have accounted for between one-quarter and one-third of U.S. economic growth. We know that these export-related jobs pay about 13 to 18 percent higher than the average U.S. wage.

Mr. Chairman, I do not know about the farmers in Montana, but in the Utah Agricultural Committee they have told me that, in no uncertain terms, that community wants to see TPA pass, because one in three farm acres go for exports. They want to ship even more of their products overseas.

In my view, it was unfortunate that we let Ambassador Zoellick go to Doha last month without the mandate that TPA would have given the U.S. delegation. Economists estimate that the next WTO trade round could bring an additional $177 billion in benefits to the United States. So, it is in our national interests for U.S. negotiators to be leaders in bilateral and multilateral trade initiatives.

Now, given these facts and circumstances, many of us just do not understand how timely consideration of TPA legislation continues to elude the committee's attention.

My amendment is simple. It has two features. First, my amendment would have the committee adopt the same TPA language that the committee reported to the Senate floor back in 1997. Second, I would amend the amendment I filed last week to replace the Chairman's mark on TAA with the administration's Trade Adjustment Assistance proposal.

Now, with respect to trade promotion authority, I think that my colleagues who served on the committee will recall the provisions of old S. 1269 of the 105th Congress. There was broad bipartisan support for this measure. It was adopted by the Finance Committee on a voice vote.

Now, this amendment consists of carefully constructed language. Twice, it has survived cloture votes on the Senate floor, by a 69 to 31 vote on November 4, 1997, and by a 68 to 31 vote a day later.

Why do we not simply adopt this non-controversial support of 1997 language again today? For example, we have heard all year about the importance of labor and environment provisions.

Here is what the 1997 bill and my amendment says on that score. My amendment says, ''It is the policy of the United States to reinforce the trade agreements process by promoting respect for ''workers'' rights by seeking to establish in the International Labor Organization a mechanism for the systematic examination of, and reporting on, the extent to which ILO members promote and enforce the freedom of association, the right to organize and bargain collectively, a prohibition on the use of forced labor, a prohibition on exploitative child labor, and a prohibition on discrimination in employment.'' What is wrong with that language?

With respect to the environment, my amendment calls for ''expanding the production of goods and trade and goods and services to ensure the optimal use of the world's resources, while seeking to protect and preserve the environment and to enhance the international means for doing so.'' So, this amendment addresses both labor and the environment, and it is no wonder why it was so broadly supported back in 1997.

Now, I have been around here long enough not to be totally shocked if my amendment is not adopted today. But I do want to leave my colleagues across the aisle with the message that I am prepared to listen to your concerns and work with you in good faith across the aisle to fashion compromise bipartisan TPA legislation that will get the job done.

I think that the bipartisan legislation put forward by Senators Gramm and Murkowski might also serve as a good vehicle to get us off the dime. Instead of sitting around waiting for the House to act, why do we not send the House and the American public a strong message that the Senate intends to pass both trade promotion authority and Trade Adjustment Assistance as soon as possible?

The political reality may be that both of these measures may have to pass, or both may fail. We can accept failure for either of these measures. While I do not believe that it should be necessary to tie these two pieces together in one bill, there are certain advantages of doing so. The suspension of production by Geneva Steel in Utah last month, the largest steel mill west of the Mississippi, has underscored to me the importance of Trade Adjustment Assistance, among other things.

For over 1,400 steelworkers and their families, the future is not clear. Unfortunately, they can benefit from some help. I want to commend Senator Rockefeller for his efforts on behalf of the steel industry at the ITC.

With respect to Trade Adjustment Assistance, I am offering the administration's proposal. We have with us at the table Mr. Chris Spear, Assistant Secretary for Policy at the Department of Labor, to discuss the details of the proposal. But I want to make a few points about this part of my amendment.

The administration's TAA proposal is a focused, balanced, and revenue-neutral approach. It expands eligibility for shifts in production benefits to workers displaced by shifts in production to countries in which the U.S. enters into a new trade agreement, thereby preserving the nexus between trade and assistance.

Recognizing that it makes no sense to maintain two similar, yet separate, TAA programs, the administration's proposal consolidates administration of the TAA program and the NAFTA TAA program. It modifies current requirements for training waivers, specifying five conditions under which training requirements may be waived.

Finally, perhaps the most innovative feature of the administration's proposal is the creation of a trade adjustment account option pilot program to offer the option of a limp sum payment in lieu of traditional TAA benefits.

The bottom line for American workers and their families has to be for Congress to successfully open up new markets for U.S. goods for the new trade agreements that TPA legislation will help spawn, and to help displaced workers through TAA.

The American people want us to work together to help solve our Nation's problems. That is what we did with the counter-terrorism legislation. That is what we will do with the bioterrorism legislation that Senators Frist, Kennedy, Gregg, and many of the others of us are developing. I hope that this committee can meet the challenge we face in fashioning both TAA and TPA legislation, and that is what this amendment attempts.

So, I want to thank you, Mr. Chairman, for making this rather lengthy statement, but I sure hope we can pass this amendment.

The CHAIRMAN. Thank you, Senator. Any comments?

Senator GRASSLEY. Mr. Chairman, I strongly support this amendment to renew the President's trade promotion authority. Senator Moynihan said, when this bill was approved three or four years ago, that it was, in his words, ''an extraordinary agreement.''

Many of my colleagues who were on the committee four years ago will recall that the 1997 bill was passed by the committee before the House acted, with broad bipartisan support. There was just one dissenting vote, as I recall.

It enjoyed equally strong bipartisan support on the floor. The motion to invoke cloture on the motion to proceed was approved by a vote of 69 to 31. This model of bipartisan trade legislation should serve as our model today.

Because it was passed by such a wide and convincing bipartisan margin just four years ago is not enough to dismiss this bill by saying that times have changed. Trade negotiating authority for the President was as controversial then as it is now. The choices in front of us in 1997 were as tough and as challenging then as they are now. The importance of the United States' leadership in trade policy was as important in 1997 as it is now.

Let us again reaffirm what Senator Moynihan said in 1997. This is an extraordinary

agreement and it is worthy of continuation of this committee's historic heritage of bipartisanship in U.S. trade policy. I urge my colleagues to again vote in favor of this legislation by adopting this amendment.

In regard to the amendment that Senator Hatch has of connecting Trade Adjustment Assistance to it, as I stated in my opening comments, this is also in regard to a tradition that was started with trade promotion authority during the Kennedy Administration.

So I would like to say a word on the administration's TAA proposal because I think the administration has been unfairly criticized in the last few days in the press about its proposal and I would set the record straight.

A tremendous amount of effort has gone into developing the administration's proposal. The administration put together a working group consisting of four cabinet-ranked officials, Secretaries Chao, Evans, and O'Neill, as well as Ambassador Zoellick. They developed this proposal.

Countless hours were spent drafting and refining a proposal that makes some very positive changes in our Trade Adjustment Assistance laws. They also did this in a very responsible way, from a budget point of view, that is. Rather than throw money at the program, they came up with a revenue-neutral approach that represents a serious and very reasonable compromise.

So, I commend the administration this morning for their outstanding work that has gone not their Trade Adjustment Assistance proposal. That is part of Senator Hatch's amendment. It is an excellent proposal and I think it deserves the consideration of this committee and the support of this committee.

The CHAIRMAN. Any further discussion?

Senator BREAUX. Mr. Chairman?

The CHAIRMAN. Senator Breaux?

Senator BREAUX. Thank you very much, Mr. Chairman. Once again, I think we have proved that we all can play great defense, but the problem is, how do you get an offense together? You cannot win unless you can score.

I think that we are in a situation now where our Republican colleagues can prevent us from passing the Trade Adjustment Assistance Act, and we can prevent them from passing fast track.

But I really question whether that is what we should be doing. We should be passing things and getting things done instead of just playing defense and blocking each other.

The House, I take it, is going to take up fast track on Thursday and there is a real question of whether they are going to pass it or not. It is very controversial over her. The Chairman has made a decision that, let us wait to see what our colleagues are going to do over in the other body.

If they pass the bill over there—which is questionable, but I think they will probably put it together and get it done—I think the Chairman has indicated that he is willing to move forward on fast track over here and do both together.

Now, here it is, 11:00. We know that we are, I think, not going to get anything done all day long in our committee. That it unfortunate. It would seem that we could get some kind of an agreement to see what the House is going to do, take both of them up, and pass both of them. I mean, that is what I would like to see done.

I am for fast track authority for this President, the last President, and the next President. I think they ought to have it. I think it is absolutely needed. I think the Trade Adjustment Assistance bill is also very important. We have got a situation where people need help, and this is a proper, appropriate federal response.

So, it is unfortunate that the defense is going to win. Defense is going to win this game today. That is pretty clear. But I just suggest that there ought to be a way to bring these concepts together and get both of them done. I think that after Thursday when the House does it, is the appropriate and proper time to do it. I am for fast track. But I think I am certainly going to follow the leadership of the Chair and say, let us wait and see what the House does. That is just a practical way to handle it.

Thank you.

The CHAIRMAN. I might say also to my good friend from Utah that it is my intention to bring up fast track before the committee if, and when, the House passes the bill. Now, the vote is scheduled for Thursday over in the House. I, frankly, question the advisability of pressing for a fast track vote here at this time in this amendment. This bill is going to lose. That might have some adverse effect on the House vote, I do not know. But I would just urge, therefore, the Senators to withdraw the amendment because our goal here is to pass both fast track and Trade Adjustment Assistance.

Now, the Chair will schedule a fast track mark-up next week. Not the end of next week. It is in good faith, next week, so that we could consider this bill. I think it is unlikely that fast track will reach the floor of the Senate this session. Highly unlikely. But, as I have said time and time again, if the House dose pass fast track, I will move it.

Senator BREAUX. Yes, certainly.

Senator BREAUX. I think the Chairman makes a good point. I would say to our Republican colleagues, to Senator Hatch in particular, we know what is going to happen with this vote. I think, if we have a fast track vote in this committee today, with the very fragile coalition we have in the House, this could be a signal to the House members that the Finance Committee killed it. I think that would be terrible for those who wanted to get it passed. We all know what is happening. I think it is a major point that it should be done.

But the House is on a string about whether they have enough votes to pass this. Those who are opposed to it over there, and some of them are Democrats, will use this vote in this committee to help get the bill killed in the House, and therefore prevent it ever coming up in the Senate. You have made your point. Do not push it to a vote because it sends a terrible signal. I think the Chairman is right on target on that point.

Senator KYL. Mr. Chairman?

The CHAIRMAN. Senator Kyl?

Senator KYL. If I could, just in response to that. I do not understand something here. I guess I have not been on the committee long enough. But if we are all for fast track, why is the vote going to lose?

The CHAIRMAN. Because this is a vote for another fast track bill. It is not even on the fast track that is before the House. It is totally different.

Senator KYL. If one ways it is totally different, then nobody in the House should take anything from a vote on this particular provision.

The CHAIRMAN. Well, but we all know that sometimes the way results are written up by the press and around, and different people interpret things different ways, I just think it is inadvisable for us to do this.

Senator KYL. I cannot believe the press would not write this—

The CHAIRMAN. I cannot either, but sometimes it happens.

I might say, too, the House has twice defeated fast track and it was withdrawn a third time. So, that is a very legitimate question of whether the House is going to pass fast track.

Senator HATCH. But would it not be comfortable if we did?

The CHAIRMAN. If I might continue.

Senator HATCH. I am sorry. I apologize.

The CHAIRMAN. I do not think we should waste our time here. That is, if the House does not vote fast track this week, then I think it is inadvisable for us to act this week, and with so few days remaining.

Senator GRASSLEY. Did you say in your previous statement, the one befoe now, that you would have a mark-up next week on fast track?

The CHAIRMAN. If the House passes fast track. Yes. If the House passes fast track, I will have a mark-up next week on fast track.

Senator BINGAMAN. Mr. Chairman?

The CHAIRMAN. Senator Bingaman?

Senator BINGAMAN. I wanted to also just say a word about the other aspect of Senator Hatch's amendment. As I understand it, is to adopt the Trade Adjustment Assistance proposal the administration has made.

Senator HATCH. Right.

Senator BINGAMAN. I think that would be a major mistake and a major disappointment for a lot of workers around the country. The truth is, it is revenue-neutral. That means that we are essentially saying that we will be spending no more on Trade Adjustment Assistance in the future than we have spent in the past.

Benefits will not be improved in any of the respects that we are intending to in the bill that we are currently trying to proceed with the mark-up on. There will be no assistance to communities.

There will be no assistance to secondary workers. There will be no extension of benefits from 52 to 78 weeks for those who are trying to get training to go into other lines of work. I think that would be a major disappointment for a lot of people. So, I hope very much that, on that ground alone, we would turn down the amendment that the Senator from Utah has offered.

Senator GRASSLEY. I do not know exactly what the author of the amendment will do. But I would hope that, with the statement by the Chairman that he will mark up next week if the House passes a bill, conversely, that this will give some encouragement to the House of Representatives to move forward and pass it because we have a commitment then that this is not going to be bottled up in this committee. That does not mean what is going to happen on the floor of the Senate, but at least it will not be bottled up here by the Chairman. That might encourage the House to move forward with it.

I yield.

Senator HATCH. If I could just ask, before I make this momentous decision. I have listened to my colleagues.

The CHAIRMAN. Careful.

Senator HATCH. I am very considerate of my colleagues most of the time, I think. But could I ask Mr. Spear to tell me why Senator Bingaman is not right? I mean, I know why, but I would like to hear it from you.

Mr. SPEAR. Well, Senator, there are some significant differences.

Senator HATCH. You can be a little more diplomatic. You do not have to refer to Senator Bingaman. [Laughter].

Mr. SPEAR. There are some significant differences in the two proposals and I would be remiss if I did not say that the administration is grateful to have had the opportunity to work collaboratively with staff on both sides of the aisle for several months now.

I think since May, when we first started discussing ways to improve the program, we each had different solutions to that. I think both proposals tried to get at the same goal, just in different ways.

I think, in terms of secondary workers, COBRA care, extended income support, these

are all significant things that are items that stand out in the Chairman's mark that are not present in the administration's proposal.

The administration worked very hard, based on three GAO reports and a recent IG report in the Department of Labor to improve its program. I do not recall any income recommendations made in those reports that would justify bolstering more money in the program to enhance the performance.

I think what we tried to do is to increase performance, to get results, stress training, which is mandatory under the program, and make certain that people get placed as quickly as possible. I think that is the goal of the program. I think the administration's mark gets to that point.

Senator SNOWE. Mr. Chairman?

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Thank you. Mr. Chairman.

I hope that we could sever these issues because I do think it is extremely important to move ahead on the reauthorization of the Trade Adjustment Assistance.

But, more than reauthorization, it is an expansion on the program itself based on the need and tailored to some of the issues that have been developed as a result of so many displaced workers. The demands have been extraordinary on the program, so obviously we need to do far more in providing needs to displaced workers.

It does include health care provisions, although I do not agree with the provisions that are in this legislation, particularly. I did support the original provisions that were included in Senator Bingaman's bill. Hopefully we will get back to that, because I think 75 percent, based on this legislation, is unprecedented.

But, in any event, I do think we need to go forward with this legislation, and based on changes. I know I have worked with the administration as well and they have been commenting on a number of issues, and I have worked with the Chairman and Senator Bingaman, who have been very responsive to some of my issues as well.

I do think that we have to expand the program to include secondary workers, as well as a program for farmers and fishermen, increasing the amount of money available for retraining. In my State of Maine, we have lost thousands and thousands of manufacturing jobs. In just the last few years, there have been more than 7,000 workers in my State that have depended upon the Trade Adjustment Assistance program.

So, it is not only necessary to move forward with this program, but also to move forward in a way that reflects and accommodates the additional issues that need to be addressed through this reauthorization process that provides a far better benefit to displaced workers, reflects the realities of the workplace in making sure they have that kind of support.

In addition, I do think it is critical to provide support to communities. Obviously, when manufacturing plants or any plants are closed down in a community in small towns like in my State, clearly it has a reverberating effect throughout the community.

So, we have to identify those firms that had a direct, and in some cases indirect, relationship with the plant that closed that really does present a hardship in the particular community. I think we also have to provide additional support for retraining, as has been recommended in the legislation before us.

I would hope that we would separate these two issues. I am not sure where I am on the trade promotion authority. That is something that I am certainly going to reflect upon. I do think that we should mark up that legislation and have a date-certain commitment if the House of Representatives does move forward in this legislation this week.

I do think that that is going to be important to address in the final analysis, and I am prepared to work on that legislation this month as well, Mr. Chairman and Ranking Member Senator Grassley, who I know is a strong supporter of the trade promotion authority. Thank you.

Senator HATCH. Mr. Chairman?

The CHAIRMAN. Senator Hatch?

Senator HATCH. Mr. Chairman, I would like a vote on this. But I can see which way the vote is going to go and there is no reason to put anybody through that.

Would the Chairman commit to a good-faith effort to, if the House does not pass this or they do not act on this, to bringing this up after the first of the year?

The CHAIRMAN. Senator, I think we all favor fast track. We all want a fast track that is fair and responsible to American people. I think that a vote today reporting out TAA sends a very strong positive signal for expanding trade, and I hope we pass that bill out today.

With respect to your specific question, in the event the House does not pass fast track this session, then next year I will, at the earliest possible time, look for a time when we can take up in the committee and have a mark-up on fast track. I cannot give a specific date because next year is next year.

Senator HATCH. Sure.

The CHAIRMAN. It is just hard to tell what the timing is next year. But I do think that it is appropriate for us to try to take it up.

Now, on the other hand, if the House vote is very negative, then it might make sense for us to wait a little longer, or maybe speed it up. It is hard to tell.

Senator HATCH. Or we might have to lead on.

The CHAIRMAN. You just have my attention, that I will bring up fast track as early as practical within a reasonable way, because we all want to get fast track passed in a way that makes sense.

Senator HATCH. All right. Well, I have listened to my colleagues. It is apparent that it would be basically defeated for a variety of reasons here today, so I will withdraw the amendment and listen to my colleagues.

The CHAIRMAN. I thank the Senator.

Mr. HUTCHINSON. Mr. President, I rise in support of the Conference Agreement on Trade Promotion Authority. Since 1994, when trade promotion authority lapsed, America has been on the sidelines while other countries have negotiated free trade agreements beneficial to those countries and harmful to us. Our trading partners around the world have sealed deals on approximately 150 preferential trade compacts, many within our own hemisphere. Yet the United States is party to only three.

Encouraging trade has been an undeniable benefit for Arkansas' economy. Arkansas export sales of merchandise for the year 2000 totaled $2.07 billion, up over 13 percent from 1999 and 86 percent higher than the State's 1993 total of $1.11 billion. Arkansas exported globally to 134 foreign destinations in 2000. More than 69 percent of Arkansas's 1,456 companies that export are small- and medium-sized businesses, and 61,700 Arkansas jobs depend on manufactured exports. Wages for those jobs are 13 to 18 percent higher than the national average. For 8 years the United States has missed out on opportunities to increase trade, opportunities we frankly could not afford to miss. Today the Senate will complete our debate on granting the President trade promotion authority.

This critical legislation gives the President the authority to negotiate and bring trade agreements to Congress that will eliminate and reduce trade barriers relating to manufacturing, services, agriculture, intellectual property, investment and e-commerce. Most importantly, this legislation ensures that Congress can fulfill its constitutional role in U.S. trade policy and fight for the interests of U.S. workers as well as industry.

One area of the conference agreement that deserves special recognition is the treatment of trade remedy laws. Our Nation's trade laws are essential to U.S. manufacturers, farmers, and workers. I am strongly committed to preserving U.S. trade laws, as are many of my colleagues. Many of us have written to the President, stating our opposition to trade agreements that would weaken trade remedy laws. The Senate commitment to preservation of the U.S. trade law is unequivocal.

The conference agreement speaks very clearly to this commitment. The legislation before us upgrades, as a ''Principal Negotiating Objective,'' the preservation of the ability of the United States to vigorously enforce its trade remedy laws. This agreement officially codifies our commitment to the preservation of these laws and to avoid weakening measures. It also includes provisions directing the President to address and remedy market distortions that lead to dumping and subsidization.

Additionally, the conference agreement provides for close consultation between the administration and Congress throughout ongoing trade negotiations. It requires the President to report to Congress 180 days, before entering into a trade agreement, describing the trade law proposals that may be included in that agreement and how these proposals fulfill the principal negotiating objectives. After that report has been submitted, Congress may consider a resolution under special rules expressing disapproval of any trade law weakening provisions that may be included in a trade agreement.

As the administration moves forward with trade negotiations, I urge our negotiators to view the measures adopted today as a clear signal that Congress will take seriously any attempts to weaken our domestic trade laws in the context of these negotiations. The laws currently in place, particularly the antidumping and countervailing duty laws, ensure that free trade is also fair. These laws are of critical importance to U.S. manufacturers, farmers, and workers, and they must be preserved. I plan to follow our multilateral trade negotiations very closely with an eye toward assuring the integrity of these laws.

Mrs. MURRAY. Mr. President, I rise to indicate my support for the Andean Trade Preference Act conference report

now before the Congress. As my colleagues know, this conference report contains a number of trade provisions, including Trade Promotion Authority.

As I have said throughout my service in the Senate, Washington State is the most trade-dependent State in the country. Trade and our ability to maintain and grow international markets for our goods and services is tremendously important to my State. It is an economic issue, a family-wage jobs issue for my constituents who are accustomed to international competition. With these new trade tools, the President can give Washington State exporters new and expanded opportunities abroad. Expanded trade can play a role in job creation and economic recovery for Washington State.

The conference report, like all legislation, is a compromise. And while I would have liked to see even stronger provisions on trade adjustment assistance and worker and environmental protection, the conference report represents real progress on many issues I have worked on and supported over the years.

More workers will be eligible for trade adjustment assistance. Some workers from secondary industries will be covered for the first time under the conference report. The Senate bill provides a new health benefit to displaced workers.

The Senate bill provided a stronger health benefit for displaced workers. The conference report provides a 65-percent up-front, refundable tax credit for COBRA coverage which is slightly less than the 70-percent up-front credit provided by the Senate bill. This is a significant benefit. Congress will have to monitor closely the degree to which displaced workers are able to access the benefits. If necessary, I will not hesitate to support further modification of this program to allow displaced workers and their families to keep their health insurance. This is an issue of ongoing interest to me.

Fast track or trade promotion authority has been debated extensively now for 8 years. The President will soon have the authority that he and his Democratic predecessor sought. As the administration looks forward to difficult trade talks with Chile, Singapore, and others, I call upon the President and USTR Zoellick to be true to the debate the Congress has had on trade promotion. Many important issues have been raised. And while not all are included in the final conference report, the issues raised by the Congress will play a role in final approval of any trade agreement negotiated with TPA.

I am concerned that this administration will not be inclusive in upcoming trade negotiations. Members of Congress and outside groups have a legitimate role to play in setting national trade priorities and policy and I encourage the administration to be respectful of these roles. I have had several discussions with Ambassador Zoellick and he has demonstrated to me an awareness of important issues to my State. The administration should not misinterpret today's TPA vote. It is not a vote for a trade agreement. Congress will closely scrutinize the work of this administration as it negotiates as well as any agreement submitted for consideration under TPA's expedited procedures. I will be a very interested observer as the President and his trade team move forward.

The tremendous importance of international trade to my State, my entire State is the strongest argument for my vote in support of trade promotion authority.

I look forward to continuing to work with my colleagues, my constituents and the administration on important international trade issues. Today's vote is an important step, a complicated step but ultimately the right step for our country.

Mr. ROCKEFELLER. Mr. President, I rise in opposition to the conference agreement on the Andean Trade Preferences Act of 2002 that will grant the President authority to negotiate trade agreements and send them to Congress for a straight up or down vote on an expedited schedule. This Administration has not demonstrated that it will preserve our existing trade laws when making international agreements. That means American workers are very likely to be injured by new trade deals, and I cannot in good conscience give up my rights to protect them through the traditional legislative process. I will vote no on this conference agreement.

I remind my colleagues that within the first few months of this Administration, U.S. trade negotiators put our trade laws on the table at the urging of foreign interests, as they sought to reach an agreement for the agenda of the upcoming trade round in Doha, Qatar. That happened even though 62 Senators had written the President and told him that we did not want any weakening of our trade laws as part of those negotiations. And it happened even though personal commitments had been made to me, as a Member of the Senate Finance Committee, that such actions would not be taken. The Administration knew very well that a clear, strong bipartisan majority in the Senate believed we should fully protect our trade laws, and they made them a bargaining chip anyway.

Without the assurance that our existing unfair trade laws—including our antidumping, countervailing duty laws, will be protected and aggressively enforced in all instances, I cannot give new authority to the President to negotiate treaties that could leave American workers without needed remedies for unfair trade. West Virginia's hard experience with illegal trade shows why we must maintain the minimal protections provided by our existing trade laws.

As a member of the Senate/House conference committee that hammered out this agreement, I know that Members of good faith worked hard to produce a bill that balances trade promotion and assistance for workers displaced by trade. In my judgment, the beneficial provisions that help displaced workers in this package do not offset the damage that could be done to American workers through the virtually inevitable weakening of our trade laws.

During the Senate debate, I made it clear that I had tremendous concern about the potential for new trade agreements to weaken U.S. trade remedy laws, in particular the antidumping and countervailing duty laws. These essential laws level the playing field on which our firms and workers compete internationally, and they serve the crucial function of offsetting and deterring some harmful unfair trade practices affecting international trade today.

I know the Chairman of the Finance Committee shares my concern that we preserve these laws, but we have a disagreement over the effect that granting fast track to the President will have on our ability to do so. While I believe it would be a serious mistake for any Administration to think that a trade agreement or package of agreements can be successfully presented to Congress for any approval, fast-track or otherwise, if it includes weakening changes to our trade remedy laws, I fear that is exactly what this Administration has demonstrated, through its own actions, that it intends to do.

This trade bill will make it considerably easier for the Administration to change our trade laws in international negotiations because it deletes the Dayton-Craig amendment that I, and 60 of my Senate colleagues, voted in favor of adopting. The Dayton-Craig amendment would have ensured that the Senate could separately consider any changes to the trade laws. The final conference agreement, regrettably, diminishes congressional leverage to protect the trade laws. The conference agreement replaces Dayton-Craig with a process whereby either House can pass a nonbinding resolution expressing opposition to proposed changes to our fair trade laws. The Administration could ignore this resolution with no penalty.

Arguably, the conference report changes might make it even more difficult for Congress to withdraw fast track, because it would allow only one of either the nonbinding resolution or the more meaningful ''procedural disapproval resolution'', withdrawing fast track, on any trade agreement. Therefore, if a nonbinding resolution had already been reported out of the Senate Finance Committee or the House Ways and Means Committee, both houses would then lose the right to introduce ''procedural disapproval resolutions'' on the same. The procedural disapproval resolution was a key element of how the original Senate bill sought to protect U.S. trade laws, and losing the right to introduce it will actually

limit Congress' ability to withdraw fast track.

As a conferee on this trade bill, I entered conference negotiations understanding that many of the conferees believed we needed to make adjustments to the Dayton-Craig language. Unfortunately, the final agreement did not retain the basic underpinnings of Dayton-Craig—that we include some mechanism to allow Congress to remove any efforts to weaken our trade laws from trade agreements returned under fast track. This is a grave failure of the conference. I believe we will come to deeply regret the conference changes in this regard and that American workers will suffer for it.

For my part, I will continue to strongly oppose any weakening changes to our trade laws, whether in the WTO, as part of any deal brought back under fast track negotiating authority, or in any other form. But the final language of the conference agreement will make it harder for me to protect U.S. trade law in the future, and that is a major reason I will oppose this bill.

I am very proud that the final conference agreement retained much of the Senate's good work on expanding and improving the Trade Adjustment Assistance program. Under this bill, when workers lose their jobs due to imports, they will now, for the first time ever, have some help accessing health care coverage. That is a critical new benefit, and is one of the provisions that was fundamental to moving this legislation in the Senate. Health care coverage for displaced workers is an essential transitional benefit that American workers deserve and that is long overdue.

I believe the health credit provisions in the Senate bill were superior to the provisions of the House bill and to the final provisions of the conference report in many fundamental ways. The Senate's TAA health provisions worked better than the conference report to ensure that workers could access the health credit established by the bill and could afford the health care coverage they need. The Senate bill included necessary insurance market reforms to ensure that the new TAA health credit would be available to the workers who needed it, but the conference report unacceptably dilutes those protections. Unfortunately, in the interest of reaching a quick agreement before the House adjourned, the amount of the Senate's health subsidy was reduced from 70 percent of benefit costs to 65 percent, making it that much more difficult for unemployed workers to be able to afford the coverage. I very much regret that conferees did not retain the senate's worker provisions in whole.

However, I have to not that the final agreement includes one very important addition to the Senate bill by providing health care coverage to early retirees whose companies went bankrupt and who are receiving a check from the Pension benefit Guarantee Corporation, (PBGC). It's only a small portion of the retirees I had hoped would get some health care coverage from this trade bill, but it will make a real difference in the lives of tens of thousands of retirees. And I am extremely pleased we have set a precedent that just because people are retired, their lives are no less affected by trade.

The House had added a provision that helped PBGC beneficiaries access its health credit, as it attempted to muster the necessary votes to appoint House conferees. The last-minute House provision established a new precedent to extend TAA benefits to retirees, but also included unrealistic income limitations that would have effectively made the credit impossible to access for most early retirees, including retired steelworkers who very much need help with their health care coverage.

I am very pleased that the conference negotiations built on the House provision and improved it substantially. The conference agreement will give these workers, aged 55–65, access to a more affordable health credit. The final PBGC provision has the complete market protections of the final package, and these early retirees whose companies have shut down can access this health coverage for the duration of the TAA program as long as they meet the age criteria, are receiving a PBGC check, and do not have access to other health care coverage. There will be no unrealistically low income limitations on retiree eligibility for this program. I know that at some point, some West Virginia retirees will have to rely on this provision, and I am very glad that the final agreement does not forget them.

My hope had been to extend the health credit to all steel retirees who lose the health benefits they have earned when their companies go bankrupt, and not only to early retirees under age 65. Senators MIKULSKI and WELLSTONE introduced an amendment during the original trade bill debate in the Senate that would have done this. Fifty-seven Senators agreed that protecting steel retirees was the right thing to do, but our amendment fell just short of the procedural requirement of 60 votes, so the Senate bill did not ultimately include this protection. But the final conference agreement at least says we should help a small group of early retirees, and I am very pleased that provision will become law.

The Senate's TAA provisions on secondary workers and shift in production were far superior to the House's, and the final conference erodes some of the Senate's work, to the detriment of American workers who will need the help of TAA. Those concessions are a disappointing retrenchment from the Senate bill, and I am disappointed that we did not prevail so that all workers substantially affected by trade could access TAA benefits.

In conclusion, despite the hard work of my Chairman who worked himself to exhaustion to complete this agreement under terrible time constraints as well as the consistently excellent work of his dedicated staff, this agreement does not retain the full benefits of the senate bill, and American workers lose as a result. Fundamentally, I do not believe the assurances and trust that would need to exist between the Administration and Congress on preserving our trade laws and protecting American interests is sufficient to warrant ceding Congress' constitutional responsibility on trade.

Mr. HATCH. Mr. President, I rise today in support of the conference report to accompany the trade Promotion Authority/Trade Adjustment Assistance legislation. This landmark legislation is a careful compromise that will benefit the American public by creating new jobs and investment opportunities.

I urge all of my colleagues to support this measure.

This legislation is not only good for the citizens of Utah, it is good for all Americans and it is good for our trading partners, especially those in the developing world.

In fact, almost 10% of all U.S. jobs—an estimated 12 million workers—now depend on America's ability to export to the rest of the world. Export-related jobs typically pay 13% to 18% more than the average U.S. wage.

This legislation will help bring new jobs into Salt Lake City and across our state. Last year, Utah's manufacturers produced and exported $2.7 billion worth of manufactured items to more than 150 countries around the world. An estimated 61,400 jobs in Utah are trade-related and one in every six manufacturing jobs in Utah—approximately 20,300 jobs—are tied to exports. Trade is of great benefit to Utah's small and medium sized companies. Some 80% of Utah's 1,894 companies that export are small and medium sized businesses.

As the Ranking Republican member of the International Trade Subcommittee of the Finance Committee, I make international trade a high priority. International trade plays two important roles: it strengthens the U.S. and world economy; and it is a powerful foreign policy tool. Free trade and respect for freedom go hand in hand.

Mr. President, I believe that this measure is one of the most important pieces of legislation we will face this year. Trade promotion authority is vital to our national economy and security, benefiting American businesses and employees everywhere. Simply stated, it means more jobs, higher wages, and better products.

Passage of this legislation is a significant victory for the American people, especially our entrepreneurs. It was President Bush's leadership that propelled Congress to address this eight-year drought in trade promotion authority. I remember well the meeting that the President convened in the

Cabinet Room two weeks ago today to urge the trade bill conferees to get our work done before the August recess. Today's vote must be seen as a great vote of confidence in President Bush's leadership.

I commend conference committee Chairman BILL THOMAS and Vice Chairman MAX BAUCUS for their leadership in expeditiously putting together this bipartisan compromise. Senators BREAUX and ROCKEFELLER played key roles as did Representatives RANGEL, CRANE, DINGELL, BOEHNER, JOHNSON, MILLER, TAUZIN, BILRAKIS, BURTON, BARR, WAXMAN, SENSENBRENNER, COBIE, CONYERS, DREIER, LINDER, and HASTINGS.

A full conference agreement on three major bills—TPA, TAA, and the Andean Trade Pact completed in three days! That is exactly the way the Congress can and should act on behalf of the American people if we put partisan politics aside and roll up our sleeves and get to work. In particular, Chairman BILL THOMAS performed a legislative tour de force last week. Everyone should know about his leadership and thank him for the way he worked to resolve issues with Senator BAUCUS and the other conferees.

I am particularly pleased that we are adopting this bill in August rather than October or December. This will give the Administration's trade team led by Secretary of Commerce Don Evans, United States Trade Representative Bob Zoellick, Undersecretary of Commerce Grant Aldonis, and Deputy USTR Jon Huntsman—a Utahn I might add—an immediate opportunity to negotiate trade pacts that will bring new jobs home to America and help increases the demand for American goods abroad.

Not only will passage of this legislation expand the Administration's ability to negotiate, and for Congress to review, trade agreements, the trade adjustment assistance provisions will provide re-training and health care benefits to those workers who lose their jobs due to foreign trade. We in Utah, home of Geneva steel—where 1,600 workers and their families are struggling due to the fact that unfair dumping of foreign steel has caused the plant to cease production—known full well that, while most will gain through trade, inevitably some will lose out and need transitional assistance. This bill provides $12 billion of such assistance over 10 years.

This legislation will also reauthorize the Andean Trade Pact that expired last December. From my work on the Judiciary Committee, I can tell you that this is a vital trade pact as we help wean these nations away from economic dependence on the illicit drug trade. I want to associate myself with the remarks of Senator MCCAIN on the importance of passing the expired Andean Trade Pact before some South American economies topple.

This is a good bill. It is legislation that will have both short-term and long-term benefits. A strong vote for this bill will indicate to our trading partners that the United States intends to play the leadership role during the Doha Round of international trade talks.

This bill will boost our economy which is still struggling to regain its footing. As we face a new type of war, the war against terrorism, it is important that we strengthen our relationship with our trading partners throughout the world. From mutual economic interests that come through trade, political alliances can form. This dynamic can only help us hunt down and deny safe harbor for any terrorists. At the least, our neighbors throughout the world will get to know Americans and our values and ideals. This will only increase our stature in the world.

For all of these reasons, I strongly urge my colleagues to pass this bipartisan conference report on trade. Let's get the job done for the American public and pass this bill.

Mr. BAUCUS. Mr. President, I want to take this time to talk in some detail about the Trade Adjustment Assistance provisions in the conference report.

I am proud of the entire conference agreement—but I am particularly proud of the TAA provisions. For the first time since 1974, we are partnering a grant of Presidential authority to negotiate agreements that expand trade with a serious commitment to deal with the downside of trade expansion.

We all know that trade greatly benefits our economy as a whole. But we also know that a Government decision to pursue trade liberalization can have adverse consequences for some. As President Kennedy recognized in 1962, we, as a government, have an obligation ''to render assistance to those who suffer as a result of national trade policy.''

The trade adjustment assistance program has been around for 40 years. During that time, it has quietly helped thousands of trade-impacted workers to retrain and make a new start. But the program has also been criticized for being too complicated, underfunded, and available to too few workers.

This conference report will go a long way toward solving these problems and making TAA work better for working Americans. Does it have everything in it that I could have wished? To be honest, no. That is the nature of compromise. But overall, I think we have done very well indeed. So let me know run through some of the most important provisions in the conference report.

First, the conference report expands the number of workers eligible for TAA benefits in several ways. Like the Senate bill, the conference report covers secondary workers where the loss of business with the primary firm ''contributed importantly'' to job losses at the secondary plant. In addition, where a secondary plant supplies 20 percent of more of its sales or production to the primary plant, coverage is presumed. The conference report also provides TAA coverage to downstream workers who are impacted by trade with Mexico or Canada.

The conference report also expands coverage to workers affected by shifts in production. Workers are automatically covered if their plant moves to a country with which the United States has a free trade agreement, or to a country that is part of a preferential trade arrangement such as ATPA, CBI, or AGOA.

For workers whose plant moves to any other country, TAA benefits are available if the Secretary of Labor determines that imports have increased or are likely to increase.

While the Senate bill did not require a showing of increased imports, there are virtually no instances in which relocating production abroad would not be accompanies by, or lead to, an increase in imports of the product. Only workers at a company that produced 100 percent for export, with no domestic sales, would be excluded. And it is particularly important to note that the workers do not have to prove that the increase in imports will come from the country to which production relocated.

In addition, the conference report includes a new TAA program for farmers, ranchers, fishermen, and other agricultural producers. Past attempts to shoehorn farmers into eligibility requirements intended for manufacturing workers have left most with no access to TAA. By focusing eligibility requirements on the relationship between imports and commodity prices, the conferences bill creates a program better suited to the unique situation of trade-impacted agricultural producers.

The Senate bill actually included two separate programs—one specifically for independent fishermen and one for farmers, ranchers, and other agricultural producers. The conference report eliminates the separate program with dedicated funds for fishermen. But that does not mean fishermen are excluded from TAA. As agricultural producers, they are still able to participate in the general TAA for farmers program.

Taken together, these expansions in eligibility are likely to result in tens of thousands of additional workers receiving TAA benefits every year. Moreover, the benefits that they receive will be better than ever before in several ways.

Most importantly, the TAA provisions include health care coverage for displaced workers for the first time in the program's history. Workers eligible for TAA will receive a 65 percent advanceable, refundable tax credit that can be used to pay for COBRA coverage, or a variety of state-based group coverage options.

The credit could not be used for the purchase of individual health insurance unless the worker had a private, non-group policy prior to becoming eligible for TAA. The health care credit is available to workers for as long as they are participating in the TAA program.

The conference report also improves coverage by extending income support from 52 to 78 weeks for workers completing training. It adds a further 26 weeks of training and income supports for workers who must begin with remedial education such as English as a second language. To pay for this additional training, the annual training budget is doubled from $110 million to $220 million.

For older workers, the conference report offers wage insurance as an alternative to traditional TAA. Workers who qualify and who take lower-paying jobs can receive a wage subsidy of up to 50 percent of the difference between the old and new salary—up to $10,000 over two years. The goal is to encourage on-the-job training and faster re-employment of older workers who generally find it difficult to change careers.

The Senate bill included a two-year wage insurance pilot program. The conference report improves on the Senate bill in two ways—by making the program permanent, and by providing TAA health benefits to workers under the program if the new employer does not provide health insurance.

There are other enhancements to benefits as well. Job search and relocation allowances are increased. The authorization level for the TAA for firms program is increased from $10 million to $16 million annually. And the Conference Report improves on the Senate bill by providing TAA health care benefits for up to 2 years to workers receiving pension benefits from the Pension Benefit Guarantee Corporation.

Finally, in addition to expanding benefits and eligibility, the conference report makes a number of improvements that streamline the program. Like the Senate bill, the conference report consolidates the existing TAA and NAFTA–TAA programs. This eliminates bureaucracy and confusion and saves workers the trouble of applying to two separate programs.

The conference report also shortens the time in which the Secretary of Labor must consider petitions, extends permissible breaks in training so workers don't lose income assistance during semester breaks, and provides common-sense training waivers for all workers.

Taken together, these are extraordinary improvements in the Trade Adjustment Assistance program. They will make the program fairer, more efficient, and more user friendly. Over the past year and longer, I have worked hard—with the help of many colleagues on both sides of the aisle—to raise the profile of TAA. All along, my message has been that if we want to rebuild the center on trade, improving Trade Adjustment Assistance is the right thing to do.

I am proud of how far we have come toward that goal. I am proud of this conference report. I urge my colleagues to support the conference report and send this historic legislation to the President this week.

Mr. GRASSLEY. Mr. President, this is a historic day. I am very proud of what we have accomplished. The Trade Act of 2002 will soon be sent to the President's desk for his signature, and America will once again take a leadership role in promoting international trade in the world economy.

Let me briefly highlight the important provisions in this bill. First and most momentous, we restored the President's ability to negotiate strong trade deals, and send them back to Congress for an up or down vote. This authority has been absent for far too long, and I see this as one of the greatest successes of this Congress.

Second, we renewed and expanded preferences for our important allies in the Andean region, which will help to eradicate the drug trade that threatens their stability, and our health and safety.

Next, we reauthorized both the Generalized System of Preferences, which expired last year, and the Customs Service. And last of all, we renewed and expanded the Trade Adjustment Assistance program for workers who become displaced by trade.

Thank you to my colleagues who helped make this happen. I would like to commend my colleague and friend, Senator BAUCUS for his leadership and keeping his word that we would get this done. Thank you also to Senator HATCH who has been an instrumental ally in the Conference Committee as well as on the Finance Committee, and thank you to Senator HATCH's staff members Bruce Artim and Chris Campbell for their hard work. Senator PHIL GRAMM was also a great help in getting us to this point, along with Amy Dunathan from his trade staff. They were key in helping to negotiate a deal when this legislation was first brought to the Senate floor.

Next, I would like to thank my staff, who have been dedicated and focused on passing TPA for the past couple of years. This is a great success, and I am happy to share it with them. I would like to thank the Staff Director of my Finance Committee staff, Kolan Davis, Chief Trade Counsel Everett Eissenstat, and Trade Counsel Richard Chriss. This would not have happened if it were not for their incredible work ethic and knowledge, along with the hard work and support of trade staff members Carrie Clark and Tiffany McCullen Atwell.

My Finance Committee health and pension staff also played an important role in this process. Thank you to Ted Totman, Colin Roskey and Diann Howland for helping us navigate through the complex health and pension issues in the Trade Adjustment Assistance section of the bill.

Senator BAUCUS had a good staff helping him as well. And I would like to thank them for their hard work and long nights that went into making this happen. Senator BAUCUS' staff was led by John Angell and Mike Evans, and his trade staff was led by Greg Mastel, along with Angela Marshall Hofmann, Tim Punke, Ted Posner, Shara Aranoff and Andy Harig.

A sincere thank you also must be given to Polly Craighill from the office of the Senate Legislative Counsel, for her patience and expertise in drafting this legislation.

We can all be proud of this accomplishment, and I look forward to the President signing it into law.

Mr. BACUS. Mr. President, as we discuss the Andean Trade Preferences Act, it is important to note that for an Andean nation to qualify for trade benefits it must fulfill seven mandatory criteria. I want to focus on one of those criteria in particular. I am referring to the requirement that a country act in good faith in recognizing as binding and in enforcing arbitration awards in favor of United States citizens and companies. 19 U.S.C. 3202(c)(3). I focus on this requirement, because it has come to my attention that a number of ATPA countries may have failed to honor arbitration awards in favor of U.S. companies.

To attract foreign investment, ATPA beneficiary countries need to create a hospitable investment climate. Honoring arbitration awards is a fundamental component of this climate.

This matter is sufficiently important that the Finance Committee drew special attention to it in its report on the Andean Trade Preference Expansion Act Report Number 107–126. In that report, the Committee identified several specific cases in which we understand that Andean countries had failed to honor arbitration awards in favor of U.S. companies. Some of these cases have remained unresolved for far too long. I urge those countries seeking to qualify for enhanced benefits to resolve these situations promptly.

I urge my colleagues to join me in emphasizing the importance of ATPA beneficiary countries' honoring arbitration awards in favor of United States citizens and companies. I urge the President and the U.S. Trade Representative to examine this matter very closely in determining whether to give enhanced benefits to the ATPA countries.

I also want to address briefly a provision in the conference report concerning negotiations left over from the Uruguay Round of world trade negotiations. Specifically, section 2102(b)(13) of the conference report concerns certain ''WTO extended negotiations.'' One of these is negotiation on trade in civil aircraft. The conference report incorporates by reference the objectives set forth in section 135(c) of the Uruguay Round Agreements Act 19 U.S.C. 3355(c). When the URAA was enacted, the objective set forth at section 135(c) was elaborated on in the accompanying statement of administrative action. It is my understanding that in incorporating by reference section 135(c) of the URAA, Congress also is re-affirming the corresponding provisions from the statement of administrative action. This understanding is consistent

with the explanation in the Finance Committee's report on H.R. 3005 Report Number 107–139.

Mr. BAUCUS. I further want to address an aspect of the Andean Trade Preference Act, which forms part of the Trade Act of 2002. The Andean Trade Preference Act grants duty-free access to certain tuna products from the Andean countries. Let me first say that I support the objective of the Andean Trade Preference Act to encourage the Andean countries in promoting economic development and fighting the drug trade. I am concerned, however, that some tuna imported into the United States under this preference program may not be legally harvested.

A case was recently reported in the news in which the El Dorado, a Colombian-flagged vessel working for the Ecuadorian company Inepaca, one of the largest fish processing facilities in Latin America, was caught fishing illegally in Ecuador's Galapagos Marine Reserve. Industrial fishing in the reserve is prohibited under Ecuadorian law. The Galapagos Marine Reserve is a globally significant area that was recognized earlier this year as a UNESCO World Heritage Site.

In addition, the report stated that the vessel was illegally fishing for tuna using a method known as dolphin encirclement. This technique is permitted under international law only if its carried out in compliance with dolphin protection requirements imposed through the Agreement on the International Dolphin Conservation Program and other associated legal requirements. The El Dorado reportedly was not authorized to fish using this method. As a result, dolphins were trapped in the net, and over 60 dolphins were either killed or injured. It concerns me that some of the tuna that will be coming into the United States duty free under the Andean Trade Preference Act may be caught in the same way—illegally, and without respect for dolphins and other marine life.

I raised this issue during the conference on the trade bill. I am concerned about our environmental and trade policies being mutually supportive. As my colleagues know, the conference report also sets out the overall trade negotiating objectives of the United States. Those objectives include ensuring that trade and environmental policies are mutually supportive, and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources. Moreover, the conference report makes it a principal negotiating objective to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental laws in a manner affecting trade.

I would like to emphasize that, according to reports, the El Dorado incident was not a case where the government simply didn't know about the violation. This was a case of truly ineffective enforcement. As I understand it, the Galapagos National Park Authorities actually captured the El Dorado and took videotape of the incident. The Captain of the Port, an official of the Ecuadorian navy, fined the El Dorado's captain four cents. I think we can all agree that a fine of 4 cents does not even amount to a slap on the wrist. We are waiting to see if the Ecuadorian Government will take additional steps to further prosecute this case.

I also believe that the El Dorado incident is not an isolated case. I understand that when the Galapagos National Park authorities found the El Dorado, they were in search of another vessel that had been fishing illegally in the Galapagos Marine Reserve.

The Andean Trade Preference Act requires the U.S. Trade Representative to report to Congress biannually on beneficiary countries' compliance with the eligibility criteria under the Act. As chairman of the Finance Committee, I will be asking the U.S. Trade Representative to include in its biannual reports a discussion of the extent to which beneficiary countries are enforcing their environmental laws, including the prohibition on industrial fishing in the Galapagos Marine Reserve, and complying with their international obligations under the Agreement on the International Dolphin Conservation Program.

I also note that under section 2102(c)(4) of the conference report, the President is required to conduct environmental reviews of future trade and investment agreements and to report to the Finance Committee and the House Committee on Ways and Means. It is my expectation that these reviews will take into account the extent to which trade agreement partners are effectively enforcing their environmental laws.

Mr. DASCHLE. Mr. President: for too long, Congress has been deeply divided between those who argued that free trade has no downside, and others who said it is a complete disaster.

As a result, we did not give the President the authority to aggressively pursue new markets for American goods and services, nor did we do enough to help the workers who were being hurt by trade.

Today we stand on the verge of recognizing in law a basic truth: our economy as a whole benefits enormously from expanded global trade. But some workers, due to no fault of their own, are hurt by it.

We could not have reached this point without the leadership shown by Chairman BAUCUS. Simply put, Senator BAUCUS engineered an agreement that few thought was possible. I have no doubt our nation will be stronger because of it.

I want to thank Senator GRASSLEY, the Ranking member, and Senator HATCH on the Republican side for their work in crafting a bipartisan bill.

I want to thank Senator BREAUX, who worked so effectively to help us achieve the initial compromise that got us into the conference . . . and then helping find the compromise that got us out . . . with this agreement.

And, finally, I want to say a special word of thanks to Senator ROCKEFELLER for his work in the conference. He was an incredibly strong and passionate advocate for the health care provisions and the entire worker package. He did the workers of West Virginia, and this country, proud.

I stand in strong support for this trade legislation for three fundamental reasons:

First, in this time of economic uncertainty, it sends a strong message to the American people and to the markets of the world that nothing is going to stop us from seizing the opportunities of the global economy.

Second, it makes sure that while we advance trade, we do not trade away the values on which prosperity is built: that every American should have the opportunity to succeed.

Third, this bill sends a strong message to the nations of the world, friends and enemies alike—that the United States of America will not shrink from our responsibilities as a global economic leader.

These are uncertain economic times.

Americans have seen their confidence in corporate governance shaken. The resulting decline in the stock market has hurt pensions and savings. Families are wondering how they're going to afford a child's college tuition, or their own retirement.

This fear plays itself out against the backdrop of an economy struggling to re-emerge from recession, and a government that has seen one of the most dramatic fiscal reversals in history.

The historic accounting reform bill we passed unanimously last week—and that the President signed on Tuesday, will help restore integrity to our capital markets.

This trade bill is another important step in restoring strength to our economy.

No nation is better suited or better prepared to benefit from global trade. We have the best-educated workers and most productive workforce in the world, the most mature economy, the most developed infrastructure. We are in a position to seize the high-skill, high-wage jobs generated by open global markets, so long as we don't turn our backs on them.

Just as we can't turn our backs on trade, we can't turn our backs on the hard-working American families who have had their lives ruined by the impersonal forces of trade.

It can be devastating to a family when a parent loses his or her job because a factory closes down or moves away. That devastation can turn to real fear if losing that job means losing health insurance.

The reality is that the jobs we gain from trade do nothing to compensate the men and women who have lost their jobs because of trade.

That's why, for the first time, this legislation provides a 65 percent tax credit to help trade dislocated people keep their health coverage. This represents a significant step in providing families with a greater sense of security.

This bill also makes a number of additional improvements over our current system:

Under our current TAA program, benefits are available only to those industries that are ''directly'' affected by trade.

For example, workers at an automobile plant that closes down due to a flood of imported cars will qualify for help. But workers at a parts supplier that's right across the street, and that closes as an inevitable consequence of the auto plant's shut-down, are out of luck.

Now, for the first time, ''secondary'' workers and farmers will be eligible for training and other kinds of assistance.

This bill also includes ''wage insurance,'' a time-limited stipend that replaces some of a dislocated worker's lost income if he or she takes a lower paying job.

Instead of an unemployment check, these workers would receive a subsidy when they take a lower paying job. This new approach will encourage this group to get back into the workforce and help them try to sustain their standard of living as they approach retirement.

Last year, we passed an important education reform bill. We agreed then that we would ''leave no child behind.'' Now we need to make sure we leave no worker behind.

By strengthening the safety net for those who are hurt by trade, our Trade Adjustment Assistance proposal will help us remedy America's other trade deficit, the deficit of support for the workers here in America who have been hurt by trade.

Finally, passage of this bill will reassert American leadership in the world. We are the freest, wealthiest, and most powerful country in the world. It is in our interest and it is our responsibility to demonstrate global economic leadership, especially in these troubled times.

At a time, when many around the world are doubting our commitment to multilateral action, this legislation says that the United States will be a leader in the effort to establish stronger global trade ties.

Expanding trade is not solely about economic leadership, it also offers national security and foreign policy benefits. When it is done correctly, trade opens more than new markets; it opens the way for democratic reforms. It also increases understanding and interdependence among nations, raises the cost of conflict, and alleviates the global disparities in income and opportunity that terrorists seek to exploit in order to advance their own deadly aims.

For example, the Andean Trade Preferences Act, ATPA was designed as an effort to reduce barriers to trade between the United States and Bolivia, Colombia, Ecuador and Peru. It was first passed in 1991 as part of a comprehensive effort to defeat narco-trafficking and reduce the flow of cocaine into the United States.

The program has already established a record of success.

According to the International Trade Commission, between 1991 and 1999, tow-way trade between the U.S. and Andean nations nearly doubled, and U.S. exports to the region grew by 65 percent.

The ITC also reports that ATPA has contributed significantly to the diversification of the region's exports, which means that farmers in a region that produces 100 percent of the cocaine consumed in the U.S. now have viable economic alternatives to the production of cocoa.

That's the positive power trade can have, and that is why, as part of this bill, we renew and improve the Andean Trade Preferences Act.

The word ''trade'' has its roots in an old Middle English word meaning ''path,'' which is connected to the word ''tread'', to move forward.

This trade package will enable us to move forward in this new global economy in a way that strengthens our national security, and the economic security of American businesses and families on both sides of the trade issue.

I urge my colleagues to support it.

Mrs. BOXER. Mr. President, there is free trade, no trade, and fair trade. I am for fair trade. And I am also for respecting the role of Congress in designing public policy. The Trade Promotion Authority package we are voting on today will not result in fair trade and it cedes too much power to the President.

I do not believe in giving a President carte blanche to write trade legislation. I do not want to grant him the right to negotiate away protection for American workers and the environment.

Imagine if the President could have proposed a corporate accountability bill and the Congress would have had only an up or down vote. Would we have passed legislation as strong as the legislation the President signed? We are about to debate pension reform legislation. Should we ask the President to make a proposal and then vote up or down on that proposal? Clearly not. It is our responsibility to work with the Executive branch of government to design policies that respect our constituents.

The Trade Promotion Authority legislation fails American workers and fails to address the need for smart environmental protections. In short, TPA could result in trade agreements that are free from environmental and are in no way fair. And it would preclude us from amending future trade agreements to make them fair.

Let me be more specific.

This bill will allow a company to sue a developing nation if that country improves its environmental standards and that improvement results in some monetary loss for the foreign investor. That would discourage developing nations from improving their environmental standards out of fear of being sued. That is not fair trade, it is only trade that benefits the powerful.

This bill will push down the wages and protections of our workers by forcing them to compete with workers who go unprotected abroad. It fails to provide U.S. trade negotiators with clear instructions that the U.S. not engage in new trade agreements with countries who are unwilling to provide their workers with the following core labor standards—freedom of association and the right to bargain collectively, the elimination of forced labor, the abolition of child labor, and the elimination of discrimination in employment. Without a commitment to these standards, and this TPA has made no commitment to these standards, we will not have fair trade.

Most disturbing, the conference committee dropped the Senate-passed Dayton-Craig language on protecting U.S. trade laws. As a result, there will be no reliable mechanism to keep our domestic trade laws from being weakened or eliminated in upcoming trade negotiations. This provision passed the Senate by a wide margin and the conference committee's rejection of it is disappointing.

The Trade Adjustment Assistance (TAA) package for workers who lose work because of changing trade patterns is also inadequate. In particular, service workers were left out the TAA. And I was blocked from amending the bill to make truckers who will lost their job as a result of trade eligible for TAA.

We should have done better. This TPA bill cedes too much authority to the President and the trade agreements that will result from it will not be fair to workers and the environment.

Mr. BAUCUS. Mr. President, I rise today to discuss the trade law provisions in the conference report.

But before I begin, I first want to thank the senior Senator from Idaho, who spoke earlier today on this issue. He and I have worked very hard together over the years to defend our fair trade laws. I think every industry that faces unfair foreign trade practices owes a great deal of gratitude to Senator CRAIG for standing up for fair trade.

I want to thank both Senator CRAIG and Senator DAYTON for their tireless efforts during the Senate debate on the trade bill.

Although the Dayton-Craig amendment was modified during the conference process, I can say without hesitation that this fast track bill contains stronger protections for U.S. trade laws than any fast track bill we have ever had. And we have those strong protections in large part because of Senator CRAIG and Senator DAYTON.

Now, there have been a lot of questions about the trade law provisions

contained in this legislation, so I want to take a minute to spell them out in some detail.

The conference bill protects U.S. trade laws in two ways. First, it seeks to ensure that U.S. negotiators do not sign agreements that weaken our laws.

Second, it seeks to ensure that our trade remedy laws are not further weakened by WTO dispute panels—and it seeks to remedy some recent decisions that have undermined these laws.

Importantly, the legislation makes protecting our U.S. trade remedy laws a principal negotiating objective. The bill instructs trade negotiators to preserve the ability of the United States to enforce rigorously its trade laws, and it provides that the U.S. should not enter into agreements that weaken those laws.

I will be inserting for the record what is considered to be a weakening of the trade laws. I fully anticipate that the administration will take these concerns seriously.

In addition, the bill also contains a principal negotiating objective instructing trade negotiators to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

This bill also ensures that Congress is a full partner when it comes to the issue of U.S. trade laws. The conference bill requires the President to notify Congress of proposed changes to U.S. trade laws 6 months in advance of completing an agreement.

This will give Congress a chance to comment on proposed changes before an agreement is final—while there is still an opportunity to fix the agreement.

The President's report will trigger a process allowing a resolution on whether the proposed trade law changes are consistent with negotiating objectives.

After the President submits the report, any Member of either House may introduce a resolution stating that the proposed changes to U.S. trade laws are inconsistent with the negotiating objective that requires no weakening changes.

That resolution is referred to the House Ways & Means Committee or the Senate Finance Committee. If the committee reports the resolution, it will receive privileged consideration on the floor.

I fully expect to bring such a resolution, if introduced, to the Finance Committee for consideration. I will not bottle up a meritorious resolution in the Committee.

While committees may only report out only one resolution per agreement—either a resolution regarding U.S. trade laws or a so-called reverse fast track resolution—I would note here that fast track procedures area considered to be rules of the House and Senate.

The Constitution is quite clear that either body may change those rules at any time. And if Congress's concerns regarding trade laws are not heard, I expect Congress would quickly derail an agreement.

Second, this bill seeks to improve dispute settlement in the World Trade Organization. Our trading partners are now engaged in a systematic attempt to weaken our trade laws through harassing WTO litigation. They are seeking to achieve through dispute resolution what they could not achieve in negotiations.

The conference bill seeks to address this problem in several ways. Like the Senate bill, the conference bill includes an overall negotiating objective instructing trade negotiators to strengthen international dispute settlement.

In addition, the conference bill contains a principal negotiating objective instructing negotiators to seek adherence by dispute settlement panels to the relevant standard of review applicable under the WTO, including greater deference to the fact-finding and technical expertise of national investigating authorities.

That means that these panels should not be inappropriately second-guessing the U.S. International Trade Commission or the Department of Commerce.

In addition, the conference bill includes a finding expressing Congress's concerns about these recent bad decisions. In particular, the finding notes Congress's concern that dispute settlement panels appropriately apply the WTO standard of review.

Under the conference bill, the Secretary of Commerce must provide a report by the end of this year setting forth the administration's strategy for addressing these concerns. Fast track procedures will not apply to legislation implementing a WTO agreement if the Secretary does not provide the report in a timely manner.

I plan to submit for the record a list of WTO cases that raise particular concerns.

In closing, let met simply say this: The Senate has made its views on trade laws very clear. Last year, 62 of my colleagues joined me in sending a letter noting that the Senate would not tolerate agreements that weakened our trade laws.

And during the Senate debate, 61 Senators re-emphasized their support for trade laws by passing the Dayton-Craig amendment.

There can now be no doubt about the Senate's resolve on this issue. Agreements that weaken our trade laws—in any way—simply will not pass. And the procedures in this fast track legislation should underscore that point.

Mr. LEVIN. Mr. President, I opposed the Senate fast track bill even though it was an improvement over the House fast track bill. Unfortunately, the conference report we are considering today has gutted many of the improvements made in the Senate. I felt the Senate bill did not go far enough. The fast track conference report we are being asked to vote on today is a significant step backwards from what the Senate passed.

I did not support the Senate version of this bill because it would not allow Congress to amend a trade agreement, even to improve it to make sure it was in the best interests of U.S. workers, industry, or agriculture. It also did not go far enough to encourage the adoption of internationally accepted labor standards or protect the environment. It did not ensure that U.S. products would have fair access to foreign markets in exchange for granting access to our markets. I cannot support a bill that is significantly weaker than the Senate bill.

Granting the President broad ''fast track'' authority to negotiate trade agreements means Congress must adopt a law to implement any trade agreement on a straight up or down vote, without the ability to offer amendments. I believe in free trade. I supported the Jordan Free Trade Agreement, the Vietnam Free Trade Agreement, and granting China Permanent Normal Trade Relations, PNTR. But I am reluctant to give up the Congressional right to amend trade legislation, sight unseen. When we do that, we are throwing away one of the most effective tools in forcing fairer trade practices.

This fast track bill is significantly flawed because it does not ensure that future trade agreements will protect human rights and labor and environmental standards. Nor does it require that fair trade practices are included in future trade agreements.

I am disappointed that conferees dropped my amendment that would make it a principal negotiating objective of the United States to reduce barriers in other countries to U.S. autos and auto parts, especially in Japan and Korea where American autos and auto parts have been all but shut out for decades. Surely, one of our chief objectives should be increasing our products' access to markets which are closed or partially closed to us.

Other countries have full access to our market for their autos and auto parts. We should insist that foreign markets are equally open to our autos and auto parts. The conference report makes it a principal negotiating objective to expand trade and reduce barriers for trade in services, foreign investment, intellectual property, electronic commerce, agriculture, and other sectors. Yet the biggest portion of our trade deficit is in autos. In 2001, our automotive deficit made up over 31 percent of our total trade deficit with the world. In 2001, our automotive deficit was 59 percent of our total trade deficit with Japan and 53 percent of our total deficit with Korea. I don't believe that the Senate should approve an omnibus trade bill without addressing barriers to our products which are the largest contributors to our trade deficit. Unfortunately, this flawed bill does not meet this criterion.

Unfortunately, America's trade policy over the past 30 years has been a

one way street. The U.S. market is one of the most open in the world, yet we have failed to pry foreign markets equally open to American products. Some of the trade agreements the U.S. has entered into have fallen far short of opening foreign markets. To ensure that future trade agreements better promote free and fair trade, Congress must not give up its ability to amend the legislation implementing those agreements.

I have fought hard to strengthen U.S. trade laws to help open foreign markets to American and Michigan products such as automobiles, auto parts, communications equipment, cherries, apples, and wood products. Unfortunately, without the ability of Congress to amend and improve trade agreements we will not always get the best deal for American products, if past history is any guide.

The North American Free Trade Agreement, NAFTA, enacted January 1, 1994, is a good example of a trade agreement negotiated under ''fast track'' authority. It contained provisions allowing Mexico to protect its auto industry and discriminate against U.S. manufactured automobiles used cars and auto parts for up to 25 years. It allowed Mexico to require auto manufacturers assembling vehicles in Mexico to purchase 36 percent of their parts from Mexican parts manufacturers. It also extended for 25 more years the Mexican law against selling used American cars in Mexico, a highly discriminatory provision against U.S. autos.

When NAFTA was presented to Congress, it was an agreement which discriminated against some of the principal products that are made in Michigan. I surely could not vote for the bill the way it was written, nor could I try to amend the bill because the ''fast track'' authority the President had at that time prohibited implementing legislation from being amended. Consequently, after NAFTA was enacted, the U.S. went from a trade surplus of $1.7 billion in 1993 to a trade deficit of $25 billion with Mexico in 2000. Over the same period, our trade deficit increased from $11 billion to $44.9 billion with Canada. Since NAFTA was enacted, the automotive trade deficit with Mexico has reached $23 billion.

Moreover, between January 1994, and early May 2002, the Department of Labor certified that over 400,000 workers lost their jobs as a result of increased imports from or plant relocations to Mexico or Canada. These job losses occurred all over the county and in and around Michigan. For example, 27 employees from the Blue Water Fiber Company in Port Huron who produced pulp for paper lost their jobs as a result of NAFTA imports. One hundred and twenty-nice employees of Alcoa Fujikura Limited in Owosso who made electronic radio equipment lost their jobs to Mexico; 1,133 employees of the Copper Range Mine in the UP lost their jobs when operations were moved to Canada. Three hundred employees of Eagle Ottawa Leather in Grand Haven who made leather for automobile interiors saw their jobs moved to Mexico. The list of NAFTA-TAA certified job losses goes on and on. These job losses didn't result from a level ''playing field''. These job losses resulted from a ''playing field'' tilted against us.

We've lost too many manufacturing jobs because our trade policies have been so weak over the decades. I've always believed that when countries raise barriers to our products that we ought to treat them no better than they treat us. Fast track authority makes it more difficult for Congress to insist on fair treatment for American products and equal access to foreign markets.

Calling NAFTA a free trade agreement was an oxymoron. NAFTA protected Mexican industries and it gave special treatment to certain U.S. industries. For example, leather products and footwear got the longest U.S. tariff phase out, 15 years, and NAFTA included safeguard provisions against import surges in these sectors. Agricultural commodities and fruits and vegetables, including sugar, cotton, dairy, peanuts, oranges, also got a 15-year U.S. tariff phase out, a quota system, and the reimposition of a higher duty if imports exceed agreed-upon quota levels. It's clear that those who were represented at the negotiating table were able to strike favorable deals to protect certain industries and products. That is not free trade.

NAFTA was not the only trade agreement that included specially tailored provisions for certain products. The trade bill we are being asked to vote on contains special provisions to protect textiles, citrus, and some other specialty agriculture commodities.

I believe that writing labor and environmental standards into trade agreements is an important way to ensure that free trade is fair trade. Regrettably, this legislation does not ensure that international labor and environmental standards will be present in trade agreements. We need trade agreements with enforceable labor and environmental provisions but this bill does not provide for it.

This is particularly unfortunate given that Congress is already on record supporting strong labor and environmental standards in trade agreements. The Senate passed the Jordan Free Trade Agreement on September 21, 2001; it broke new ground in its treatment of labor and environmental standards in trade agreements. For the first time, a trade agreement required that the parties to the agreement reflect the core internationally recognized labor rights in their own domestic labor laws.

The conference report does not require countries to implement the core ILO labor standards. It only requires them to enforce their existing labor laws, however weak they may be. It also specifically states that the U.S. may not retaliate against a trading partner that lowers or weakens its labor or environmental laws.

This language undercuts our ability to negotiate strong labor and environmental standards in future trade agreements because our trading partners know we can't enforce what we negotiate through the use of sanctions and the dispute settlement process.

American workers already compete against workers from countries where wages are significantly lower than in the United States. Our workers shouldn't also have to compete against countries that gain an unfair comparative advantage because they pollute their air and water and won't allow their workers to exercise fundamental rights.

The United States enacted environmental standards that protect our air and water. We have enacted labor standards that allow for collective bargaining and the right to organize, that prohibit the use of child labor, and provide protections for workers in the work place. These are desirable standards that we worked hard to get. We should not force American workers to compete against countries with no such standards or protection for its workers.

The Senate tried to improve this fast track legislation to address some of the concerns I've outlined. I supported many of these efforts. Unfortunately, many of the strengthening provisions added in the Senate were dropped in conference. The Dayton-Craig provision was dropped. This amendment would have allowed the Senate to have a separate vote on any provision of a trade agreement that would change or weaken U.S. trade remedy laws. Instead, the conference report moves rhetoric from another section of the bill regarding Congressional intent not to weaken U.S. trade remedy laws to the principal negotiating section. This is a much weaker provision than allowing the Senate an up-or-down vote on whether to weaken our trade laws or not.

This conference report fails to address these concerns. The weak fast track bill we are voting on today is all the more reason Congress should not give up its role under the Constitution. We should keep all the tools available to fight for free and fair trade, including the Congressional right to amend and improve a trade agreement. To do less than that is not doing justice to our nations workers, manufacturers, farmers or small business.

Mr. BINGAMAN. Mr. President, I rise today to discuss the Trade bill that is being considered on the Senate floor. I will keep my comments short, as I know others wish to speak on the issue.

I want to begin by emphasizing the positive. We have come a long way to where we are today on trade adjustment assistance. The provisions in the conference report are far better than what exists in current law. I want to thank all my colleagues for their support on trade adjustment assistance,

and I want to thank the Administration for finding a path to compromise on this very important legislation.

But I also want to take this opportunity to say that this conference report does not go nearly far enough in terms of what needs to be done. In fact, on trade adjustment assistance, I would have to say that the end result in many respects misses the point of what my original bill tried to do.

In short, there were four goals to the original bill:

First, we wanted to combine existing trade adjustment assistance programs and harmonize their various requirements so they would provide more effective and efficient results for individuals and communities; second, we wanted to recognize that trade frequently has regional impacts and create a program to help communities; third, we wanted to encourage greater cooperation between Federal, regional, and local agencies that deal with individuals receiving trade adjustment assistance; and fourth, we wanted to establish accountability, reliability, speed, and consistency in the trade adjustment assistance program.

Each of these goals was created with the view that the system needed to be fair, equitable, accessible, and implemented similarly no matter where you lived in the country. From my perspective, the bill that we have before us does not do this.

Briefly, not all secondary workers, shifts in production, and contract workers are covered under this bill. There are no TAA for community provisions in this bill. The language that allowed the Senate Finance Committee to request the Department of Labor to initiate a certification is not in this bill. The language that compelled the Department of Labor to monitor the implementation of the program across states is not in this bill. The language that required the Department of Labor to submit an annual report to Congress is not in this bill. The language that encouraged greater cooperation between Federal, regional, and local agencies on Trade Adjustment Assistance is not in this bill. And the language that established accountability, reliability, and consistency in the trade adjustment assistance program is not in this bill.

I could go on, but this should give you an idea of the key components related to administration and implementation of trade adjustment assistance that were deleted in conference. I have no idea why this occurred, as it seems to me these provisions would be acceptable to Members on both sides of the aisle. But I want to emphasize here and now that these are not minor problems, as they are in fact the essence of whether trade adjustment assistance works well, or just works.

The fact of the matter is we have created a trade adjustment assistance program that serves more people and that is both appropriate and long-overdue. But the program still does not cover all the people that are negatively affected by trade, and that is, I am afraid, inappropriate and equally long-overdue. Of equal significance, it does not guarantee that the people who are covered by trade adjustment assistance get the efficient, effective, and prompt services they deserve. These assurances are nowhere to be found in the bill. This is unfortunate and unsatisfactory, as it is the fundamental reason that I wrote the trade adjustment assistance legislation in the first place.

Although we have come a long way on trade adjustment assistance, we have a longer way to go, and it is my intention to revisit this issue in the 108th Congress. I introduced this trade adjustment assistance bill, I will introduce another in the next Congress, and I hope my colleagues will support it

On the fast-track bill, let me say that here too we did not go as far as I would have liked on a range of very important issues: labor, the environment, investment, and trade remedy laws. But that said, we have come farther than we ever have before in the past, and we have signaled to the administration and the international trade community that we will not enter into agreements that do not address these issues directly.

As for the lack of ''teeth'' in the bill, I would have to agree to a certain extent. That said, there are provisions in this bill to ensure that Congress has very significant input in the trade negotiation process. Moreover, Congress has the option to withdraw fast-track authority if the administration does not consistently and honestly consult with Congress on these key trade issues. As far as I am concerned, the oversight provisions are the crux of the matter, as without them, even the strongest language on labor, or the environment, are meaningless. It is incumbent upon Congress now to analyze what occurs in trade negotiations and ensure that what is agreed to increases high-wage jobs and American competitiveness.

In sum, I think there are significant problems with the trade bill, but not enough to warrant a vote in the negative. I think we have taken a strong step forward here in that this bill provides us with the tools to increase the economic security of the United States. I don't believe we help American workers by sitting back and doing nothing on trade. Rather, I think it is important that we take an active role in defining the terms of trade, and this bill allows us to do that.

The debate on the trade bill occurred, we have found a compromise, and now it is time for the Administration and Congress to make trade work for the American people.

Mr. BIDEN. Mr. President, in recent years, I have supported fast track legislation, I voted for NAFTA, for the last round of the GATT and the creation of the WTO. I supported China's accession to the WTO.

I am convinced by the overall fundamental performance of our economy, during a period of expanded trade and the successful completion of trade deals, that expanding international trade generally and expanding markets for American products in particular is good for the United States.

With every step down the road toward a freer, more open international trading system, I believe that the risks are becoming greater and the rewards are less clear.

The risks we face—to our own workers' ability to control their destinies, to the peoples of our new trading partners, to the global environment—are growing as we expand trade deals into regions of the world that lack many of the fundamentals needed for a balanced trade relationship.

The rewards from moving deeper into those less developed economies could be substantial, for us and for them. But I am afraid that without stronger protections, and those benefits may never materialize for the vast majority of the citizens of the poorest developing nations.

At the same time, without strong protections for the men and women whose jobs—in some cases whose towns, in many cases whose whole way of life is at risk without protections for them, they, too, will see little or nothing of the benefits of freer trade.

That is why I am going to vote against the conference report before us today, not because I expect it to be defeated, but because I fully expect it to pass, and I want to make it clear that I, as one Senator, have gone about as far as I can go in my support of freer trade without some stronger assurances that the gains will outweigh the risks, and that those gains will be fairly and efficiently distributed.

I voted for many amendments to the Senate fast-track bill, amendments that would have provided some of the assurances I am seeking. I voted for stronger protections for our State and local environmental laws when they are threatened by foreign firms. I voted for stronger protections for labor and environmental standards in trade deals with developing nations.

Even though those and other amendments were not adopted, I nevertheless supported sending the bill on to a conference with the House.

Today we are voting on a bill that not only lacks those provisions, but has weakened many of the important improvements in the Trade Adjustment Assistance Program that were contained in the Senate version.

As we expand trade among the nations of the world, we are engaged in a real-life experiment in economic theory. I believe that expanding markets and opportunities are indispensable to a better life for the people of our country as well as for the citizens of other nations.

Just as indispensable are political rights, human rights, a healthy environment—things that we cannot just take for granted, things that aren't provided automatically by the invisible hand of the market.

That is particularly true as we undertake to integrate our developed economy—as well as our system of political and human rights, our strong environmental protection standards, our history and institutions of labor rights.

We do ourselves no good, and the citizens of other nations no good, if we fail to maintain those values in balance with the real, tangible benefits of free trade.

Because this new chapter in the history of expanding trade presents so many challenges, public opinion, here and abroad, shows a deep concern about the ultimate costs of global economic integration.

Of course, there are still those who believe trade itself is the cause of most of the world's problems, and on the other side, there are those who blithely assume that expanded trade itself is the highest goal.

I think we should listen to the common sense of the average citizen, both here and abroad. They understand the benefits that can come from free markets, but they hold other values, too.

They want to maintain control over their own fates, and the fates of their families, their towns, their countries. They want to treat the environment responsibly.

They want, to maintain some balance among the values they hold.

So I will vote no today, in the knowledge that we will be granting this administration and the next one the authority to negotiate and bring home important new trade deals, in a new round of WTO talks, and in other key areas.

I hope they use this authority wisely, and that they treat the negotiating objectives we are giving them today as a floor and not a ceiling on the standards they apply in their negotiations.

If they do not, they should not bring us trade deals for our consideration under this fast track authority. Along with the authority we are granting the administration, we are providing ourselves, in Congress with new oversight of the progress of trade talks.

We will use this new authority to keep our negotiators on course. The slim margin in the House, and the vigorous debate on the Senate bill should provide ample guidance about the standards we will apply to any trade deal negotiated under this authority.

We will continue to remind our negotiators of those concerns over the three-year life of this authority. A 2-year renewal will not be automatic not in this new climate of concern about the net benefits of trade nor should it be.

My ''no'' vote today is not a vote against expanded trade. It is a vote against complacency in the conduct of our trade negotiations.

Today is not the end of the debate on this new grant of fast track authority. It is the beginning.

Mr. KYL. Mr. President, I rise today in reluctant support of this conference report. The underlying bill granting the President authority to negotiate trade agreements is critical. The problem is all of the other extraneous costly provisions in the trade assistance portion of the report. On balance, it has only been marginally improved during conference, and, in fact, one could argue that it has been made worse by the addition of a misguided and fiscally reckless new entitlement program.

When this bill last came before the Senate, I outlined four main concerns, and said that how those issues were addressed in conference would influence my vote on the final version of the bill. First, I said the conference report would have to maintain the 2002–2006 suspension of the 4.9 percent tariff on steam generators for nuclear power facilities. That was accomplished. Second, the conference report would have to remove the so-called Dayton-Craig language. That was accomplished. Third, it would need to either eliminate or substantially amend the language creating a ''wage insurance'' program for workers age 50 and older who are certified under the Trade Adjustment Assistance Program. That was not accomplished. Fourth, the conference report would have to make significant changes in the health-insurance tax credit for TAA-certified workers. That was not accomplished, and arguably, the provision was made worse.

More specifically, the Senate-passed bill and the conference report will suspend for a period of five years the 4.9 percent tariff on steam generators used by nuclear facilities. These generators are not manufactured in the United States, so there is no domestic industry to protect through the imposition of tariffs. Tariffs should never be imposed on products that are not domestically manufactured, especially those products that are critical for maintaining the U.S. domestic supply of energy.

The existing tariff amounts to a ''tax'' of approximately $1.5 million per generator. Although ostensibly paid by utilities, the cost would actually be passed on to ratepayers and consumers. In the case of the Palo Verde plant in Arizona, the nation's largest nuclear power facility in terms of production, the additional cost, due to the tariff, would be over $8.2 million for the six generators that it will need to import.

The tariff suspension will save ratepayers money, which is why it has strong bipartisan support. I appreciate the conferees maintaining this provision in the conference report.

I am also pleased that the conferees agreed to remove the so-called ''Dayton-Craig'' language. This is a provision that would have made it easier to defeat legislation negotiated under trade-promotion authority if it amended U.S. trade remedies, no matter how technical or even beneficial the change might be. It would have resulted in the unraveling of successful trade negotiations. Moreover, the provision was unnecessary since language is already included in the bill to ''preserve the ability of the United States to enforce rigorously its trade laws'' and ''avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade.''

The next issue of concern to me involved the many trade-adjustment assistance, TAA, provisions in the bill. One such provision was the new ''wage insurance'' entitlement, which would provide a subsidy of up to $5,000 for older TAA-certified workers who are subsequently employed at lower-paying jobs. With no data supporting the efficacy of such a proposal, this provision would create significant disincentives for workers to forgo needed training or conduct a more intensive job search, likely resulting in workers choosing lower paying and perhaps lower-skilled jobs with taxpayers liable for the difference. It is indeed unfortunate that conferees were unable to remove this provision. Although the nature of the entitlement is altered somewhat, it remains deeply flawed.

Another provision in this conference report would provide an advanceable, refundable health-insurance tax credit to TAA-certified workers. Although the conferees agreed to lower this tax subsidy from 70 percent to 65 percent, the credit remains at an arbitrarily high percentage of the premiums' cost.

With one small exception, the credit can only be used to subsidize the cost of company-based, COBRA, or pooled health-insurance policies. I believe that it is unfair for American taxpayers, many of whom may not have health insurance themselves, to provide such a generous health-insurance subsidy. Under an extremely small exception, individuals will be able to use the credit for the purchase of an individual health insurance if the policy is bought at least one month before unemployment. This restriction makes the small exception for the purchase of individual health insurance nearly worthless.

Worst of all is the poison pill that was added to the conference report. By expanding the eligibility for the health tax credit to retirees receiving benefits from defunct pension plans taken over by the Pension Benefit Guarantee Corporation, PBGC, the conference report has taken a significant step backwards. Potentially, this provision could end up covering individuals who worked for companies that went out of business 20 years ago. Today, these individuals will be eligible for this new benefit. These individuals, who will often be 55 years or older, will be included in the pool of workers benefitting from new Trade Adjustment Assistance health provisions, making it even more expensive for the relatively younger workers to purchase health insurance. Aside from doubling the costs of these health provisions, which now total over $4.8 billion over 10 years, this legislation could have numerous other unintended consequences on our pension system. It

allows companies that over-promised benefits to walk away from their obligation and leave taxpayers with the bill.

As a matter of principle on the one hand, and sound economic policy on the other, I still believe it is imperative that we grant the President trade-promotion authority. As a Senator who is committed to expanding free trade and its accompanying benefits, I am frustrated that this legislation has been loaded up with costly new entitlement programs.

I will vote for this bill because I know how important it is to grant the President Trade Promotion Authority. But because of the numerous bad provisions in the bill, and the bad precedents they set, the decision does not come easy. That shouldn't have been the case.

Ms. SNOWE. Mr. President, I rise today to support this conference report. Although I am disappointed that several provisions were removed in conference, on balance this legislation still represents a major expansion of the Trade Adjustment Assistance that is crucial for those workers who have lost their jobs due to imports or plant relocations to other countries.

I supported this legislation during the Finance Committee's markup, as well as during the Senate vote in May as I have been involved with this legislation for over a year with hearings, markups, negotiations, consideration by the Senate, and now the consideration of the conference report. I worked with Senator BINGAMAN on the Trade Adjustment Assistance, TAA provisions and then with Senators GRASSLEY and BAUCUS. In the same manner, both agreed to a critical expansion of the existing TAA program while also including provisions I advocated to accelerate assistance to dislocated workers and provide them with greater options in the utilization of these benefits. And, when the healthcare provision of TAA threatened to scuttle the bill, Senator BAUCUS and I worked together to fashion a deal that would be acceptable to both Republicans and Democrats.

At no point was my decision to support the Senate package, and the TPA section in particular, a foregone conclusion, as I have opposed trade agreements and fast-track authority in the past. I did so because I never felt they struck the proper balance between free and fair trade, and I've been concerned that both Republican and Democrat administrations approached the enforcement of U.S. trade laws not with vigor, but with at best a benign neglect.

However, when the Finance Committee marked-up this fast-track legislation in December and the Senate passed it in May, I supported it precisely because it did strike the appropriate balance, and because of this administration's commitment to aggressively enforce our trade laws so that American workers aren't undermined by unfair trade practices.

Furthermore, while some oppose linking TPA and TAA as contained in this trade package, my support is contingent on this linkage and I have repeatedly emphasized the importance of joining these proposals that are inextricably joined. TAA would not even exist if not for the fact that trade agreements impact U.S. jobs, so attempting to bifurcate TAA and TPA is like trying to divide the ''heads'' from the ''tails'' on a coin—sure, it may be possible, but the end product won't be worth one red cent!

TPA and TAA were enjoined and I supported that approach because we must never forget that in the engagement of trade there is a downside—chiefly, that real lives are affected, people not just statistics. When Americans become unemployed due to increased imports or plant relocations to other countries, it is because of trade agreements negotiated by the government of the United States and passed by Congress. Therefore, we have an obligation to also work toward forging a system that provides these trade-impacted Americans with the new skills needed to gain new employment.

This conference report does contain many provisions on both trade and trade adjustment assistance that I think are critical components that make them better than in the past. An expanded TAA program is going to be created, which I support, that will allow more workers to receive re-training and income support assistance quicker and for a longer period of time. This income support and re-training is vital to ensure that these workers can re-enter the workforce and also provide temporary assistance while they are learning new skills.

There are also provisions I fought for that will help speed up the approval process. Specifically, besides consolidating the current TAA and NAFTA-TAA programs into one, more efficient program, the bill includes my proposal to speed-up assistance to displaced workers by decreasing the TAA petition time for certification from 60 days to 40 days. Reducing this time by 20 days will allow people to get on with their lives that much quicker.

The TAA section also provides a 65 percent tax credit for trade-impacted workers to continue their health coverage for themselves and their family. This tax credit is ''advanceable'' so that people will receive this assistance immediately rather than paying up front to get a tax refund later.

Moreover, this bill addresses another issue that has created problems in my State this year, the current budget for training assistance. Since last year, Maine has run short of training funds by almost $3 million, forcing them to apply for five different Department of Labor National Emergency Grants and potentially causing a freeze in re-training assistance. By providing $220 million in funding, this shortfall will be fully addressed.

And we didn't stop there. Not only does this funding level address state shortfalls, but it also ensures expanded coverage for secondary workers affected by trade. Specifically, under the compromise developed by Senators GRASSLEY and BAUCUS, secondary workers with a direct relationship to the downsizing or closing of a plant will be covered by TAA, while so-called ''downstream workers'' covered now under a Statement of Administrative Action, SAA, as part of the NAFTA-TAA program will also be covered through the SAA's codification.

But make no mistake, the conference report does not contain some provisions that would be vital to people and communities adversely impacted by trade. Specifically, a small business pilot program that would allow those workers receiving TAA to start a small business without losing their benefits was dropped. Performance assessments of the TAA program that included the economic condition of the state were dropped, as were all performance requirements.

Not only were these removed but so was TAA for fishermen. Instead, this bill requires a study to determine whether TAA for fishermen is ''appropriate and feasible''. What is amazing is that TAA for farmers is covered in this bill but that somehow their coverage would be different than for fishermen. That is why we are working right now with the Department of Labor on administrative procedures to ensure that fishermen will be eligible for TAA.

TAA for communities was also dropped in conference. This would have allowed communities that suffered a plant closure due to import competition to apply for grants in order to attract new businesses. As in my home State of Maine, many States have rural towns that are dependent on a single plant for their livelihood and this provision would have given them a chance should that plant close.

In addition, coverage for workers that have watched their plant move overseas, known as shifts in production, has also been limited in the bill. As opposed to granting eligibility to workers whose plant moved to any country overseas, this conference report limits coverage only to those workers whose plant moved to a country that has a Free Trade Agreement, FTA, with the U.S., is a country receiving the reduced duties or duty-free benefits of the ATPA, the Africa Growth and Opportunity Act, AGOA, and the Caribbean Basin Initiative, CBI, or, if there has been an increase in imports from the country to which the plant moved.

This may appear to cover all the bases, except for the possibility that a plant will move overseas and may not actually import back to the U.S., thus there will be no increase in imports. If the U.S. has no FTA with that country or it is not participating in a U.S. duty-reduction program like the ATPA, then those workers are not eligible for TAA. How are these workers

affected differently from others who lose their jobs due to imports?

As I said earlier, on balance, the TAA provisions represent a significant expansion and improvement of the former TAA and NAFTA-TAA programs and will provide an invaluable service to those dislocated workers as they seek new jobs. While the government is assisting workers whose jobs have been lost due to imports, this bill also provides the Administration with the ability, through TPA, to negotiate trade agreements that will improve and increase U.S. exports. As I mentioned earlier, my past opposition to fast-track, due to concerns about the balance between free and fair trade and our enforcement of our trade laws, have been addressed in this bill.

The bottom line is that enforcement is an inseparable component of free and fair trade. If you don't believe me, just look at the record. In the past, when free trade and fair trade have been treated as mutually exclusive, import-sensitive industries in Maine and America were decimated by foreign competitors. Why? Because foreign businesses enjoyed the benefits of a lack of reciprocity in trade agreements, foreign industry subsidies, dumping in the U.S. market . . . and non-tariff trade barriers.

For this reason, I was disappointed that the Dayton-Craig language on trade remedy laws was removed in conference. However, the fact that the existing language on maintaining our ability to ''enforce rigorously'' our trade remedy laws became a Principal Negotiating Objective demonstrates a recognition of the utmost importance with which we hold these laws. In that regard, the Administration should take note that no trade agreement should ever be submitted to this Congress that weakens our trade remedy laws. As a member of the Finance Committee, I will do everything that I can to ensure that no trade agreement never ever weakens or undermines these laws.

The enforcement of our trade remedy laws are vital as the surrender of our rights have had serious consequences in the lives of real people. In Maine alone, we lost nearly 15,400 manufacturing jobs since NAFTA's inception including 2,400 textile jobs, 6,000 leather products jobs, 500 apparel jobs, 3,700 paper and allied products jobs, and 4,800 footwear jobs, excluding rubber footwear, and 5,200 manufacturing jobs so far just this year. We failed those people because we abdicated our responsibility to take a balanced, comprehensive and integrated approach to trade.

That is why I can not and will not support the Andean Trade Preference Act, ATPA. I opposed this during the Finance Committee's markup of the legislation and, although I supported the Senate's trade package legislation, I opposed its inclusion in the trade package.

The ATPA represents a unilateral action by the U.S. to open our markets to the Andean countries in order to bolster their economies in the hopes of reducing drug cultivation. Its effect the last ten years has been questionable with the ITC not able to make a definitive, affirmative determination that it has greatly contributed to the reduction of drug cultivation by providing economic opportunities.

The amount of exports from these countries which fall exclusively under the ATPA has remained relatively constant at 10 percent over the years. The fact that this has changed little indicates that there has been no major change in the production structure of ATPA economies meaning that these countries have not been taking more advantage of what ATPA offered. Therefore, what this legislation seeks to do is change our policies to conform to the Andean countries rather than these countries changing to take advantage of what the U.S. has already offered. U.S. jobs are on the line for an unproven trade benefit program.

That is why I worked in the ATPA to provide the rubber footwear industry with a comparable tariff provision to that which they received in NAFTA. The original ATPA further threatened this industry by giving the four Andean nations a tariff phase-out schedule that was only half as long as the 15-year schedule contained in the NAFTA. I was pleased that the Senate passed the trade package last May with this same 15 year phaseout, because without it we would have set a precedent that would be demanded by other countries as well.

This conference report drops this provision and with it went the hopes of the domestic rubber footwear industry and its 3,400 workers—1,000 of which are in Maine. Not only was my provision lost, but the Senate receded to the House. Under this, all footwear—that was excluded under the expired ATPA legislation, as well as textiles and apparels, leather products, and watches will enter the U.S. duty-free with no phaseout.

Such an immediate tariff reduction to zero will only serve as a sign to other countries, particularly Chile and Latin America nations, that the U.S. rubber footwear industry, once considered import-sensitive, is not only open for business, but for decimation. For this reason, I have been working with the USTR to impress upon them the significance this precedent will have on other trade agreements, particularly with Chile. I am pleased that the USTR provided me with unequivocal assurances that the ATPA provisions regarding rubber footwear in no way establishes a precedent for Chile, and that they will continue their efforts to prevent any adverse impact during trade negotiations on domestic rubber footwear.

And while we cannot bring back these or other jobs that were lost due to the miscues of the past, we can learn from those miscues and apply the lessons to our present and future actions. We can change our approach at the negotiating table. We can enforce existing trade laws.

In the real world, we have to acknowledge that there are many nations that don't care about labor or environmental standards. And that creates a tilted playing field where it's harder for us to compete. In that regard, this legislation goes further than any past fast-track bills on the issues of labor and the environment. The bill before us today not only sets as an overall objective the need to convince our trading partners not to weaken their labor or environmental laws as an inducement to trade, but it also requires the enforcement of existing labor and environmental laws as a principal negotiating objective.

The conference report also recognizes the need to take steps to protect the import sensitive textile and apparel industry. It calls for reducing tariffs on textiles and apparels in other countries to the same or lower levels than in the U.S., reducing or eliminating subsidies to provide for greater market opportunities for U.S. textiles and apparels, and ensuring that WTO member countries immediately fulfill their obligations to provide similar market access for U.S. textiles and apparels as the U.S. does for theirs.

And this legislation includes new negotiating objectives to address the issue of foreign subsidies and market distortions that lead to dumping. As a result, many industries stand to benefit from the adoption of this legislation, including the forest and paper, agriculture, semiconductor, precision manufacturing, and electronic industries of my home state. According to Maine Governor Angus King the fast track approach is, ''On balance . . . beneficial to Maine. There might be some short term problems, but in the long run, we have to participate in the world economy.''

And Maine has been participating. From 1989 to 1999, total exports by Maine companies increased by 137 percent from $914 million to $2.167 billion, with the largest industry sector for trade being semiconductors—employing about 2,000 in Maine. The computer and electronics trade, which includes semiconductors, accounted for 33 percent of Maine's exports in 1999, followed by paper and allied products at 17 percent.

The Maine industries that benefit from exports have also seen job gains in the state. From 1994 to 1999, the electrical and electronics industry had a job gain of 2.3 percent and the agriculture, forestry and fishing industry saw a 19 percent increase in jobs. In 2000, Maine's exports supported 84,000 jobs.

Mr. President, these measures and commitments represent a significant strengthening of our resolve and our ability to utilize existing remedies to protect American industries and workers. This comes not a moment too soon, as the success of our economy relies more than ever on fair and freer

trade U.S. exports accounted for one-quarter of U.S. economic growth over the past decade . . . nearly one in six manufactured products coming off the assembly line goes to a foreign customer . . . and exports support 1 of every 5 manufacturing jobs.

Given these facts, it is an understandable concern that the U.S. has been party to only 3 free trade agreements while there are more than 130 worldwide. Since 1995, the WTO has been notified of 90 such agreements while the U.S. only reached one in the trade arena, the Jordan Free Trade Agreement. In contrast, the European Union, EU, has been particularly aggressive, having entered into 27 free trade agreements since 1990 and they are actively negotiating another 15. Perhaps not surprisingly, the Business Roundtable reports that 33 percent of total world exports are covered by EU free trade agreements compared to 11 percent for U.S. agreements.

Why should these facts raise concerns? Because every agreement made without us is a threat to American jobs. Nowhere is this better exemplified than in Chile which signed a free trade agreement with Canada, Argentina and several other nations in 1997.

Since that time, the U.S. has lost one-quarter of Chile's import market, while nations entering into trade agreements more than captured our lost share. According to the National Association of Manufacturers (NAM), this resulted in the loss of more than $800 million in U.S. exports and 100,000 job opportunities. One specific industry affected was U.S. paper products which accounted for 30 percent of Chile's imports but has since dropped to only 11 percent after the trade agreements were signed.

We need to look to the future of our industries and open doors of opportunity in the global marketplace. In order to do so responsibly, we need to learn every economic lesson possible from the past, and this package provides for not only a study I requested of the economic impact of the past five trade agreements, but also an additional evaluation of any new agreements before TPA is extended.

And we need to make sure that everyone who can benefit from these agreements can get their foot in the door. Small businesses, for example, account for 30 percent of all U.S. goods exported, and in Maine more than 78 percent export, so I am pleased this bill includes my proposals placing small businesses in our principle negotiating objectives.

Finally, the package includes consultation rights for the House and Senate Committees with oversight of the fishing industry. As the past Chair and current Ranking Member of the Commerce Subcommittee on Oceans and Fisheries, I can tell you that the actions of other countries with regard to fishing plays a crucial role in ensuring our industry has a level playing field on which to compete. Last year this country exported $11 billion worth of edible and nonedible fish products, and in Maine the industry—which is our 5th leading exporter—generates 26,000 jobs.

In the eleventh hour race, Mr. President, as was the case with many TAA provisions, some other items that were crucial for small businesses which make up 99 percent of all U.S. businesses were also lost. One was a provision to create a small business Assistant USTR which the Senate-passed bill included. Although the conference report states that the Assistant USTR for Industry and Telecommunications would be responsible for this portfolio, it contains a only sense of Congress that the title reflect that. I am shocked at how seemingly difficult it was for us to create a position for small business at the USTR with a title that reflects that fact.

Similarly, a provision requiring the USTR to identify someone to be a small business advocate in the WTO is also no longer in this bill. Why? Is it that controversial for us to ensure that the interests of small business are represented in the WTO?

This is not a perfect bill but the adoption of this comprehensive package will ensure that trade agreements will be pursued in a fair and balanced manner to the benefit of all Americans while also recognizing the need for expanded assistance for those who lose their jobs due to trade.

Mr. FEINGOLD. Mr. President, I rise to offer some comments on the fast-track conference agreement.

Once again, the supporters of this measure seek to characterize this vote as a vote on the issue of whether or not we should have trade agreements. They argue that to favor the bill is to favor trade, and to oppose the bill is to oppose trade.

Of course, this is nonsense.

As a number of my colleagues have noted, the issue of whether to enact fast-track procedures is not a question of whether one favors or opposes free trade, but rather what role Congress plays in trade agreements.

Under this bill, that role will be little more than that of one of those bobble-head dolls—nodding its head ''yes'' or shaking its head ''no'' in response to proposed trade agreements.

And it may actually be worse, because nothing in the measure before us limits this bobble-head role strictly to trade agreements. Under this bill, the President is at liberty to submit just about any policy he wants as part of a fast-track protected trade bill, and Congress would have to swallow that policy if it wanted to endorse the trade agreement to which it was attached.

As I noted during the debate on this bill last May, this has, in fact, occurred. The last fast-track protected trade agreement this body considered, the measure implementing the Uruguay Round of the GATT, included more than $4 billion in tax increases that were beyond the reach of this body to amend or even delete.

Of course, some may argue that the risk that extraneous matters might be slipped into a fast-track protected trade bill is greatly reduced because the two trade committees—the Finance Committee in the Senate and the Ways and Means Committee in the other body—will stand guard against such an event, protecting congressional prerogatives.

Let me first note that the GATT bill, with its $4 billion in tax increases, came to us with the blessing of those two committees.

More recently, the track record of those two committees on this very legislation is not reassuring. The bill before us includes many questionable provisions, but let me cite two in particular that have absolutely no business being in the measure. They both raise serious civil rights and civil liberties concerns.

The first of these two issues relates to immunity for customs officers. Central to any lawsuit against a government official alleged to have committed misconduct is the immunity standard for that official. Under Supreme Court law, every government official—federal, state and local—is protected by the doctrine of qualified immunity. This is a very broad shield from liability. In the words of the Supreme Court, it protects ''all but the plainly incompetent or those who knowingly violate the law.'' And it is the type of immunity that sets the bar plaintiffs must overcome to win law suits.

In the legislation before us, a provision was slipped in that will make it harder to hold an abusive customs officer accountable for bad behavior. The bill changes the immunity standard from one of ''objective'' immunity, meaning an official had to prove that he or she did not violate clearly established law, to ''good faith'' immunity, meaning that the official only had to prove that he or she believed that he or she was not violating a person's constitutional rights and was not acting with a malicious intent.

The practical effect of this change is that an abusive officer will merely have to file an affidavit stating that he or she acted in good faith, and the case will be dismissed. This would make it very difficult for a court to hold a customs officer accountable for abusive behavior, behavior such as racial profiling.

Putting aside the question of whether or not this provision belongs in a bill that relates to the procedures under which Congress considers trade bills, the provision is not justified. There is no record of any great abuse of the existing system.

Some might suggest that because customs officers work on the border, they need special protection. But Border Patrol agents and other law enforcement officers like FBI, DEA, and local police are stationed near borders, and they will all continue to work under an objective immunity standard.

Beyond that, this provision has no business in this bill. It has nothing to do with how Congress should consider trade agreements. And it certainly merits the kind of scrutiny that it will not get as part of a conference report that cannot be amended.

A similarly inappropriate but little discussed provision in this bill would allow customs officers to search outgoing mail without the approval of a court. That is right. Under this bill, a customs officer can open mail you send overseas without getting a search warrant.

The provision applies to all mail weighing more than 16 ounces no matter how it is sent, and it also applies to any mail under 16 ounces, that is sent through a private carrier, such as Federal Express or UPS.

This is an enormous change in law. A customs officer would no longer have to go to court to obtain a warrant to search our mail. It takes away much of the protection we all thought we had when we mail a letter to a friend or relative overseas.

Again, setting aside the question of whether the provision has merit, it simply has no business in this bill.

These two provisions are deeply flawed, in and of themselves, but they should also give us pause when we consider what future proposals we might see included in fast-track protected trade bills—measures that cannot be amended. If the congressional committee watchdogs allowed these provisions to be slipped into this bill, what might find its way into future measures?

And I remind my colleagues that there are no requirements in this bill that fast-track protected bills consist only of provisions germane, or even relevant, to the trade agreement to be implemented.

The bill is flawed in a number of other critical ways. As others have noted, the bill moves backwards in the area of worker rights and the environment. It even backslides from the modest progress made in the Jordan Free Trade Agreement.

The bill also guts the Dayton-Craig provisions that sought to ensure our own trade laws would not be undercut as part of a fast-track protected trade bill. That amendment was supported by a strong majority of the Senate, but it was essentially eliminated in conference. In fact, there is little doubt that it was dropped even before this bill went to conference.

Nor does this bill address the so-called Chapter 11, issue where foreign investors can use secret trade tribunals to effectively weaken or eliminate existing state and local laws and regulations that protect our health and safety. Because that problem is not addressed, we can expect future trade agreements to include this anti-democratic provision.

As I noted during the debate we had on this issue last May, fast-track is not necessary for free trade. We have entered into hundreds of agreements without those procedures.

More importantly, fast-track may actually undermine the cause of improved trade.

As I noted then, rather than encouraging trade agreements that produce broad-based benefits, fast-track has instead fostered trade agreements that pick ''winners and losers,'' and in doing so has undermined public support for pursuing free trade agreements.

Fast-track also advances the short-term interests of multinational corporations over those of the average worker and consumer. With opposition to the entire trade bill the only option left, Congress has swallowed provisions that advance corporate interests, even when they come at the expense of our Nation's interests. The so-called Chapter 11 provisions are an excellent example of this. Here again, fast-track procedures actually work to undermine public support for trade agreements.

Let me reiterate that many of us who support free and fair trade find nothing inconsistent with that support and insisting that Congress be a full partner in approving agreements.

Indeed, as the senior Senator from West Virginia, Mr. BYRD, has noted, support for fast-track procedures reveals a lack of confidence in the ability of our negotiators to craft a sound agreement, or a lack of confidence in the ability of Congress to weigh regional and sectoral interests against the national interest, or may simply be a desire by the Executive Branch to avoid the hard work necessary to convince Congress to support the agreements that it negotiates.

I can think of no better insurance policy for a sound trade agreement than the prospect of a thorough Congressional review, complete with the ability to amend that agreement.

This was a bad bill when it left the Senate. It is much worse now, and I urge my colleagues to oppose this legislation.

Mr. ENZI. Mr. President. I rise to share my thoughts on the trade bill we passed this afternoon that gives our President renewed trade negotiating authority

Like many of my colleagues, I hail from a State that is particularly sensitive to foreign imports of agricultural products, for example Wyoming's two largest cash crops are sugar and cattle, and where trade makes a big impact on certain industries.

I believe in fair trade, and I support the efforts of our President as he works to improve our multilateral and bilateral relationships. I have also worked diligently with Members from both sides of the aisle to improve our ability to participate in international trade. You will remember I urged my colleagues last year to vote for the Export Administration Act, a bill which would streamline our export control system so that items that do not need to be controlled may move more easily across borders. I believe that international trade is an effective way to boost the economy, but it must be done responsibly and carefully.

I voted in favor of this bill today for three primary reasons.

First, I strongly support the bill's provisions that recognize the sensitive nature of some industries. I believe the most essential provision related to import sensitive goods is the mandate that requires the President to consult with Industry Advisory Committees and the International Trade Commission on certain negotiations. This bill requires the administration to notify and gather input during trade negotiations from people like ranchers and farmers who produce import-sensitive products.

Second, as an original cosponsor of the Craig-Dayton Amendment, the new language in the bill addressing trade remedy laws is critical. The bill provides that if negotiators don't listen to concerns about proposed changes to trade remedy laws, Congress can pass a formal resolution of disapproval. This puts up a red flag to the negotiators that they are treading on shaky ground and may want to rethink their position. In addition, I am also pleased this bill sets rigorous enforcement of U.S. trade remedy laws as a principal negotiating objective and increases reporting requirements for possible modifications to trade laws.

Third, there is specific language in this bill that addresses a major concern of sugar producers. Wyoming sugar producers have been hurt by a ''sugar laundering'' operation being conducted through Canada. The process starts when a commodity trader in Canada blends sugar, water and molasses in a ratio that would exempt the mixture from U.S. import duties Canada enjoys under the North American Free Trade Agreement, NAFTA. This mixture is then trucked across the U.S. border to a factory controlled by the same commodity trader where the sugar is separated from the molasses mixture. The sugar is then sold in the U.S. market free of tariffs and the rest of the mixture is returned to Canada to be ''stuffed'' again. The ''sugar loophole'' and others like it would be closed by this trade bill. The bill makes the determination that stuffed molasses should be considered imported sugar and therefore subject to tariffs. It also requires the Secretary of Agriculture to monitor other existing or likely circumventions of tariff-rate quotas and report on these to the President.

Beyond these specific reasons, I cast my affirmative vote today because fair trade is essential to the economic growth of all industries. The next step is rule and regulation, and I will carefully watch to ensure that the interests of Wyomingites are protected.

Mr. KERRY. Mr. President, I will support this final conference report to give the President the authority to negotiate nonamendable trade agreements and to reauthorize the Trade Adjustment Assistance Program. I am

pleased that this TAA package provides greater benefits to more workers than ever before.

The Nation's economy is fundamentally linked to our Nation's ability to export. Today, one-tenth of all jobs in this country are directly related to our ability to export goods and services. When you consider multiplying effects, that number rises to nearly one-third. Businesses in Massachusetts alone sold more than $19.7 billion worth of goods to more than 200 foreign markets last year. That is more than $3,000 worth of goods sold abroad for every resident. Massachusetts businesses also help break the stereotype of international trade as the arena of large corporations. Almost 75 percent of my State's exporting businesses are small businesses.

Of larger businesses which have overseas subsidiaries, almost three-fourths of profits earned abroad are returned to parent companies in the United States. That means more jobs and higher wages at home. These statistics present a strong case for support of this bill.

I believe strongly that more international trade results in a greater occasion to help developing countries grow and develop the roots of democracy. The chance to improve ties with other countries and use trade as one means of advancing American foreign policy is an opportunity that we should not pass up. And so I will support this conference report.

However, we do ourselves a great disservice to ignore the growing concerns of our own people who view the trade equation as imbalanced: Working families in mill towns across New England or steel towns in the Midwest who fear that we have looked only at the export side of the puzzle, ignoring our fundamental obligations to a clean environment, basic labor standards and to those Americans whose lives change when factories close or businesses cannot compete with cheaper foreign-produced products.

Some important safeguards were in the Senate-passed bill. Indeed, the bill that passed the Senate in May was precedent-setting in many ways. We would have provided trade promotion authority to the President while also firmly stating that our Nation's trade remedy laws should not be eviscerated by trade agreements. Significantly, we provided the strongest safety net ever to workers left jobless by the short-term economic upheaval that comes from increased international trade. We also had a thorough debate on the importance of labor and environmental standards in trade agreements, and on my efforts to prevent investor-State disputes from undermining U.S. public health and safety laws. I have no doubt that the Senate will come back to these issues in the future.

Unfortunately, this conference report represents a mild retreat from the Senate-passed bill. The conference report does not protect American trade remedy laws. The safety net for workers is less comprehensive than it could have, and should have, been. It still does not adequately preserve American sovereignty in directing trade negotiators how to develop settlement panels for investor-State disputes.

As a result, we can only hope that our trade negotiators will not undermine the values that many Americans worry are not being honored in our trade agreements. To be quite honest, though, I have some concerns that the President will not make a full commitment to either the environment or the basic rights of workers in future trade agreements, because he has not done these things at home. And so it must fall to the Senate to put the President on notice that he must address the concerns that Americans have about trade. I, for one, will be watching agreements that grow out of this trade promotion authority very closely.

I must make one more point. With respect to the Trade Adjustment Assistance Program, this bill is not as good as the one the Senate passed 3 months ago. But this bill does expand benefits for workers who lose their jobs due to increased foreign competition in ways that, frankly, would have been inconceivable just a few years ago. That is real progress. If we are to continue to seek the benefits of increased trade, we must also fulfill our commitment to families and communities whose lives are disrupted by the short-term impacts of trade.

I am particularly disappointed that the conference report did not retain the important new program making TAA available to fishermen. This program was included in the TAA bill marked up by the Finance Committee last December and included in the bill that passed the Senate in May. U.S. fish imports now outstrip exports by $7 billion, due in some measure to the fact that no other nation in the world requires sustainable fishing practices. This deficit may soon put some fishermen out of business.

While a separate program for fishermen makes sense, the administration has informed me that fishermen who seek TAA benefits through the Department of Labor will indeed be eligible, although they may have to seek a blending of TAA and Workforce Investment Act benefits. Nonetheless, I have the Department's pledge to work with me on this issue, and I look forward to doing just that.

I have also been informed that the Secretary of Agriculture will do a rulemaking to determine whether fishermen are eligible for the TAA for Farmers program as well. I will make sure that the Secretary is aware of my strong belief that fishermen are no different from farmers, and deserve equivalent consideration in this program. I ask unanimous consent that these letters be made a part of the RECORD.

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

U.S. DEPARTMENT OF LABOR, ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING,
*Washington, DC, August 1, 2002.*

Hon. JOHN F. KERRY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR KERRY: I understand that you have a strong interest in providing assistance to workers and fishermen impacted by trade or for other reasons. We at the Department of Labor share your desire to help all dislocated workers get back to work.

Workers, including fishermen, who lose their jobs through no fault of their own can receive a wide range of employment and training services through the Workforce Investment Act formula programs. On July 1, 2002, Massachusetts received an allotment of $55,189,519, of which $12,321,163 is allocated to serve dislocated workers. When these formula funds are insufficient to respond to a mass lay-off, plant closure or natural disaster, the Secretary of Labor has discretion to award National Emergency Grants, which are authorized under section 173 of the Workforce Investment Act. National Emergency Grants provide resources for job training and reemployment assistance, as well as supportive services for child-care, transportation and needs-related payments for income support while a worker is enrolled in training.

Workers who are impacted by trade may qualify for TAA benefits. Although the Department of Labor has not received any petitions for certification of eligibility for TAA assistance from fishermen over the last five fiscal years, they certainly could apply as long as they meet the requirements of the Act. For example, one of the criteria for TAA eligibility is that the impacted firm has to be involved in the production of an article. We consider fresh fish to be an article. Therefore, if imports of that fish or other fish that were directly competitive contributed importantly to the decline in the sales or production of the fishing firm and the loss of jobs of the crew, the group of workers could be certified for TAA. An owner who works on a fishing vessel with as few as two crew members would be eligible to initiate the petition for TAA.

It may also be noted that the Conference Report that is currently before the Senate expands eligibility for TAA to cover certain secondary workers, including suppliers of component parts. In the case of a firm and its fishermen that provided fresh fish to a company that canned the fish and sold the canned fish, and imports of that canned fish led to the workers in the canning company being certified under TAA, the fishermen who supplied the fish could also be certified as secondary workers. This would also require that the loss of business with the canning company constituted at least 20 percent of the fishing firm's sales or contributed importantly to the loss of the fisherman's jobs.

It is important to recognize, however, that there are certain limitations on the assistance provided under TAA. One of the requirements for receiving extended income support under TAA, in addition to being enrolled in training or receiving a waiver from that requirement, is that the worker was eligible for and exhausted regular State unemployment insurance. Generally, fishermen on vessels of under 10 tons, and that are not involved in the commercial fishing of salmon or halibut, are excluded from unemployment insurance coverage. Therefore, even if certified for TAA benefits, many fishermen may not qualify for the income support benefit. Therefore, in some cases, fishermen may be able access to income support to enable them to participate in training through WIA formula funded programs, and to the extent

possible, through a National Emergency Grant awarded in response to a state application, where eligibility for unemployment insurance is not necessarily a prerequisite.

I share your concern for all workers who have been laid-off due to trade or other reasons, and I want to assure you that my staff will work with you to help respond to layoffs that may impact fishermen in Massachusetts.

Sincerely,

EMILY STOVER DEROCCO.

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THE SECRETARY OF AGRICULTURE,
*Washington, DC, August 1, 2002.*

Hon. JOHN KERRY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR KERRY, As you are aware, the conference agreement on H.R. 3009, the Andean Trade Preference Expansion Act is pending before the Senate. This Act includes provisions important to the Administration on Trade Promotion Authority and Trade Adjustment Assistance (TAA).

We understand you have concerns regarding the eligibility of the fishing industry to participate in the TAA programs for agriculture authorized in the legislation. As well, we understand the difficult situations that have faced the fishing industry in your State over the last few years.

There has been precedent for including certain fishing enterprises in previous USDA disaster programs. As the Department promulgates the necessary regulations to implement the new authorities provided in the Act, we would be willing to carefully examine and discuss with you whether we can include the fishing industry in the appropriate regulations on TAA.

Sincerely,

ANN M. VENEMAN.

The PRESIDING OFFICER. The Senator from Massachusetts.

## PATIENTS BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I regret that we continue to be unable to reach an agreement on the Patients' Bill of Rights that would protect the interests of patients instead of the profits of insurance companies. The sponsors of the Senate Patients' Bill of Rights, Senators MCCAIN, EDWARDS and I, have spent many months talking with the White House. We have repeatedly tried to reach a fair compromise that would address many of the concerns voiced by the opponents of this bill without sacrificing the protection patients need. Unfortunately, we were not able to reach an agreement with them. The Bush administration has simply been unwilling to hold HMOs and insurance companies fully accountable when they make medical decisions. In the end, they were more committed to maintaining special preferences for HMOs and big insurance companies than passing legislation that would protect patients.

This is, at heart, an issue of corporate accountability. HMOs and insurance companies have not been held accountable for their medical decisions; and, as a result patients are being injured every day. Just as Congress took the lead on corporate accountability in the Sarbanes legislation when the White House would not take strong action, I believe Congress will now take the lead and enact a strong Patients' Bill of Rights. The political climate is very different today than it was when the House acted last year. The public is focused. I do not believe the Republican leadership will be able to resist the tide of popular opinion.

Throughout this process, we have been particularly concerned about those patients who sustain the most serious, life-altering injuries. If the law does not allow them to obtain full and fair compensation for their injuries, we will fail those who are most in need of our help. Yet, the administration has steadfastly refused to agree to liability provisions that would treat the most seriously injured patients justly.

Holding HMOs and health insurers fully accountable for their misconduct is essential to improving the quality of health care that millions of Americans receive. Nothing will provide a greater incentive for an HMO to do the right thing than the knowledge that it will be held accountable in court if it does the wrong thing. Placing arbitrary limits on the financial responsibility which HMOs owe to those patients who have been badly harmed by their misconduct would seriously weaken the deterrent effect of the law. Yet, the administration has insisted on a series of provisions which were designed to limit the accountability of HMOs.

The Bush administration wanted to weaken the authority of external review panels to help patients obtain the medical care they need. They demanded a rebuttable presumption against the patients in many cases that would effectively deny them a fair hearing in court. They demanded an arbitrary cap on the compensation which even the most seriously injured patients could receive. They wanted to allow HMOs and insurance companies to block injured patients from going to court at all, forcing them instead into a much more restrictive arbitration process. They insisted on preventing juries from awarding punitive damages even if there was clear and convincing evidence of a pattern of intentional wrongdoing by the HMO. At every stage of the accountability process, the administration was unwilling to treat patients fairly. A right without an effective remedy is no right at all, and the administration was unwilling to provide injured patients with any effective remedy.

Every day, thousands of patients are victimized by HMO abuses. Too many patients with symptoms of a heart attack or stroke are put at risk because they cannot go to the nearest emergency room. Too many women with breast cancer or cervical cancer suffer and even die because their HMO will not authorize needed care by a specialist. Too many children with life-threatening illnesses are told that they must see the unqualified physician in their plan's network because the HMO won't pay for them to see the specialist just down the road. Too many patients with incurable cancer or heart disease or other fatal conditions are denied the opportunity to participate in the clinical trials that could save their lives. Too many patients with arthritis, or cancer, or mental illnesses are denied the drugs that their doctor prescribes, because the medicine they need is not as cheap as the medicine on the HMO's list.

The legislation passed by the Senate would end those abuses, and it would assure that HMOs could be held responsible in court if they failed to provide the care their patients deserved. The Senate bill said that if an HMO crippled or terribly injured a patient, it had a responsibility to provide financial compensation for the victim and the victim's family. It said that if an HMO killed a family breadwinner, it was liable for the support of that patient's family.

The Senate passed a strong, effective patients' bill of rights by an overwhelming bipartisan vote. It was not a Democratic victory or a Republican victory. It was a victory for patients. It was a victory for every family that wants medical decisions made by doctors and nurses, not insurance company bureaucrats. It said that treatment should be determined by a patients' vital signs, not an HMO's bottom line.

Under our legislation, all the abuses that have marked managed care for so long were prohibited. Patients were guaranteed access to a speedy, impartial, independent appeal when HMOs denied care. And the rights the legislation granted were enforceable. When HMO decisions seriously injured patients, HMOs could be held accountable in court, under state law, under the same standards that apply to doctors and hospitals.

The story was different in the House. There, a narrow, partisan majority insisted on retaining special treatment and special privileges for HMOs. That legislation granted HMOs protection available to no other industry in America. Under the guise of granting new rights, it denied effective remedies. It tilted the playing field in favor of HMOs and against patients. The Republican majority in the House said yes to big business and no to American families. Their bill represents the triumph of privilege and power over fairness.

Under the House Republican bill, a family trying to hold an HMO accountable when a patient was killed or injured would find the legal process stacked against them at every turn. The standard in their bill for determining whether the HMO was negligent would allow HMOs to overturn the decision of a patients' family doctor without being held to the same standard of good medical practice that applies to the doctor. Think about that. One standard for a doctor trying to provide good care for patients. Another, lower standard for the HMO which arbitrarily overturns that doctor's decision because it wants to protect its bottom line.

The House Republican bill puts artificial limits on the liability of HMOs when a patient is killed or injured. The Republicans often complain about one-size-fits all legislation, but their bill is an extreme example of it. No matter how seriously a patient is injured, no matter what remedies are available under state law, no matter how negligent or outrageous the actions of that HMO, no matter what a judge and jury decides is an appropriate remedy, there is the same flat dollar limit on the HMOs' liability. And the limit in the Republican bill is far below what the most seriously injured patients receive when they are badly hurt by a doctor's negligence or by the negligence of any other industry. For a child paralyzed for life by an HMO's penny-pinching—an arbitrary limit on compensation. For a child who loses both hands and feet—an arbitrary limit on compensation. For the families of women needlessly killed by improper treatment for breast cancer an arbitrary limit on compensation. For a father or mother hopelessly brain-damaged—an arbitrary limit on compensation.

In addition, the bill essentially provides no punitive damages to deter the most egregious denials of care. Even if the HMO denies medically necessary care over and over and over again, no punitive damages. Even if the HMO engages in fraud or willful misconduct, no punitive damages. Even if the HMO routinely turns down every request for expensive treatment, no punitive damages.

If a patient ever gets to court under the Republican plan, they face a form of double jeopardy—the so-called ''rebuttable presumption.'' If a patient loses an appeal to an external review agency, that patient faces an almost impossible legal hurdle in court. But if an HMO loses an external appeal, the patient does not gain a comparable advantage. In effect, the patient has to win twice. The HMO only has to win only once. This one-way presumption is grossly unfair.

In area after area of Federal legislation, Congress has set minimum standards guaranteeing basic fairness but allowed states to go farther in protecting their citizens. But the House Republican bill sets a ceiling instead of a floor. States are not permitted to have stronger patients' rights laws. The bill would preempt the external review process in more than 40 states, abolishing state laws that provide greater protection for patients.

In a bill that purports to expand patient protections, it is remarkable that the Republican bill actually takes rights away. The Federal RICO antiracketeering statute is a powerful weapon against fraud. Under current law, patients and businesses buying health insurance policies have the right to bring a RICO class action suit against a health insurance company which has engaged in systematic fraud. The House Republican bill would in essence repeal that right, erecting new barriers to class actions against health insurance companies.

Not only does the Republican plan fail to protect patients against HMO abuse, it includes unrelated provisions that could actually harm patients. The bill provides new tax breaks for the healthy and wealthy by expanding and extending so-called ''Medical Savings Accounts.'' These accounts are the pet project of certain insurance companies that have made large donations to the Republican party. They not only benefit the healthy and wealthy purchasing high deductible insurance policies, but a number of independent analyses have concluded that they could result in dramatic premium increases for everyone else. Every day, we seem to find new evidence that the Republicans have never found a tax break for the wealthy that they didn't eagerly embrace.

And finally, the Republican bill eliminates state regulation of so-called ''association health plans,'' a new name for multiemployer welfare arrangements. While well-run plans of this kind can benefit consumers, too often they have failed financially and left patients holding the bag. Fraud has been their frequent companion. Most authorities believe that they need more regulation, not less. And not only does the Republican plan expose millions of families to financial disaster, it would deny more millions important benefits required by state insurance laws—benefits that help women at risk of cervical cancer, children with birth defects, and the disabled. According to estimates by the Congressional Budget Office, hundreds of thousands of people, predominantly those in poorer health, could lose their coverage as a result of this proposal.

I am disappointed that we were unable to reach an agreement with the Administration that would have made it possible to pass a strong, effective patients' bill of rights—one that would have protected patients without providing sweetheart deals for HMOs.

It is unfortunate that this Administration so consistently sides with the wealthy and powerful and against the interests of ordinary people. The positions taken by the White House on these critical health issues do not represent the views of the American people. Just a few days after the President called for severe limitations on a patient's right to seek compensation when he or she is seriously injured by medical malpractice, a strong bi-partisan 57–42 majority of the Senate rejected the President's position and sided with patients.

The Senate version of the patients' bill of rights—supported by virtually every group of patients, doctors, nurses, and advocates for workers and families—passed the Senate with a strong, bipartisan majority of 59–36 . In contrast, the key vote in the House of Representatives gutting the provisions of the bill which would hold HMOs accountable for injuring patients passed by a narrow partisan majority of only six votes—and then only after the Administration used every weapon of arm-twisting and patronage in the book to hold their votes in line.

In the last two weeks, the Senate debated the critical issues of reducing the high cost of prescription drugs and providing a long-overdue prescription drug benefit under Medicare. Over the strenuous objections of the Republican leadership and the Administration, the Senate voted by an overwhelming bipartisan majority of 78–21 to end abuses by wealthy and powerful drug companies that stifled competition and raised prices to patients.

A majority of the Senate also voted to provide comprehensive prescription drug coverage under Medicare—but the objections of the Administration and the Republican leadership proved too strong to reach the 60 votes necessary for passage. The misplaced priorities behind the Republican position were made clear by separate comments of the President and the Republican leader. Senator TRENT LOTT stated that both the comprehensive plan a majority of the Senate supported and even the scaled-back downpayment plan were too expensive for the Republican leadership. But while Republicans rejected prescription drug coverage for the elderly as just too expensive, the President reiterated yesterday his support for extending the trillion dollar plus tax cuts that primarily benefitted the wealthy.

While I am disappointed by the failure to reach agreement on the patients' bill of rights and to achieve 60 votes for Medicare prescription drug coverage, I am not discouraged. The American people want action, and in the end, I believe the Congress will listen to their voice.

We will never give up the struggle for prescription drug coverage under Medicare until we mend the broken promise of Medicare and guarantee senior citizens the prescription drug coverage they deserve. And we will never give up the fight for a strong, effective patients' bill of rights.

Now we will move to a patients' bill of rights conference with the House of Representatives and try once again. We commit today that we will do everything we can to make the conference a success. We will never give up this fight until all patients receive the protection they deserve. We will not rest until medical decisions are made by doctors, nurses, and patients, instead of insurance company bureaucrats.

Finally, I want to once again commend my two friends and colleagues who provided such important leadership here on the floor of the Senate. They were valued advisers, counselors, and helpers in trying to work through, in a constructive and positive way, the differences that existed. They took an enormous amount of time, including great diligence, expertise, and understanding of the issues at stake; They were enormously constructive and

helpful in trying to move this in a positive way. We were unsuccessful in that phase of this path towards completing our mission of achieving an effective Patients' Bill of Rights, but we are all committed to achieving it ultimately. I thank them for all the good work they have achieved.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Senator KENNEDY and Senator EDWARDS for the over-a-year-long effort we have been involved in attempting to reach agreement on S. 1052, the bipartisan Patient Protection Act. It has been over a year since the Senate passed it. It has been just under a year since another version was passed by the House of Representatives. The White House was instrumental in crafting the House-passed version.

So since last year Senator KENNEDY, Senator EDWARDS, and I have worked with the White House in the hopes of reconciling the Senate and the House bills. Much progress has been made as a result of these negotiations. But, regrettably, a resolution eludes us, and I think it is time to appoint conferees.

America has been patiently waiting for Congress to pass a Patients' Bill of Rights. It will grant American families enrolled in health maintenance organizations the protections they deserve. For too long this vital reform has been frustrated by political gridlock, principally by trial lawyers who insist on the ability to sue everyone for everything and by the insurance companies that want to protect their bottom line at the expense of fairness. Caught in the middle are average citizens who are members of HMOs. Americans want and deserve quick enactment of this legislation.

Several years ago I began working with my colleagues on both sides of the aisle to address the problems in HMO's provisions in health care and to craft a bipartisan bill that truly protects the rights of patients in our Nation's health care system.

The Senate passage of the bipartisan Patient Protection Act furthered the effort to restore critical rights to HMO patients and doctors.

I, again, express my appreciation to the Senator from North Carolina, Mr. EDWARDS, for his incredibly fine work. Both the Senate- and the House-passed versions contain important patient protections for the American people. I am confident that with perseverance we can resolve the few differences that remain. If we do not continue to work toward a resolution on this issue, we will be turning our backs on strong patient protections included in both bills.

This is really the shame of our failure so far because included in both bills are external and internal review, direct access to an OB–GYN for women, direct access to pediatricians for children, access to clinical trials for cancer patients, access to emergency room care, access to specialty care, and access to nonformulary prescription drugs. If we do not negotiate, and if we do not reach a successful conclusion, these important commonalities and progress will be lost.

I believe a conference report represents one final opportunity to work out the differences between the House and Senate efforts to enact meaningful HMO reform. I remain committed to working with Members of both bodies, and with the President, to make sure we will enact into law these important protections for which too many Americans have waited far too long.

I look forward to working with my colleagues in conference to bridge the differences between the House and the Senate bills and provide patients with the protection they deserve.

The problem, as I see it, is that we have very small differences, and during the course of our negotiations there will be different versions about how close we came and what our differences were. But I believe they were very narrow differences, and I am very disappointed that they were unable to work out. And I got to spend a lot more time than my colleagues wanted—Senator KENNEDY and Senator EDWARDS and I together—but I believe there was a good-faith effort made.

I believe we are going to lose so many important advances on behalf of patients because of a small difference that really has to do with cases that will be adjudicated in court. And that is a very small number of these cases because with internal and external review, and other safeguards in the bill, there would be a minuscule number of cases that actually would end up in court. And that is the aspect of this agreement on which we were unable to reach agreement with the White House. And I regret it very much.

So as Senator KENNEDY just stated, I believe we will prevail over time, just as we have prevailed on other issues over time, because this is something the American people need and deserve.

There are too many compelling cases out there of people who have been deprived of fundamental care which has inflicted incredible damage, hardship, and sorrow on so many Americans because they have been deprived of simple rights, such as a woman to see an OB–GYN, such as the right of a child to see a pediatrician, such as a doctor making a decision rather than a bureaucrat.

This is what it is all about: Who makes the decisions on patients' care? Should it be someone who is wearing a green eyeshade who can count up how much the costs are or should it be a doctor, a qualified physician, who makes the decision? That is really what this reform is all about.

Unfortunately, it has gotten hung up over court proceedings and who should go to court and whether there should be caps on economic and punitive damages, and other aspects of the minuscule number that would ever be required to do so.

So I hope we can all step back and look at this situation. In the context of how far we have gone, we have gone 99 percent of the way in doing what my colleagues and I set out to do a long time ago; and that was to provide members of health maintenance organizations with fundamental protections which they need and deserve.

So, again, I conclude by thanking Senator KENNEDY and Senator EDWARDS for their hard work and for their dedication to the resolution of this issue. I thank the White House for their efforts as well. In the little interest of straight talk, I think from time to time they were constrained by the other body in the latitude as to the agreements they could make, but I also understand that is how the system works.

But I believe that while we are gone in August, back with our friends and neighbors and fellow citizens, our friends and neighbors are going to come to us and say: Look, we deserve this legislation—the millions and millions of Americans who are members of HMOs—we deserve that we get certain basic protections.

I hope that will reinvigorate us, upon our return, to enact final legislation and resolve the few remaining differences in this bill.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from North Carolina.

Mr. EDWARDS. Madam President, first, I say thank you to my colleagues and my friends, Senator MCCAIN and Senator KENNEDY, who have worked so hard on this legislation. Senator KENNEDY worked long and hard on this before a number of us, including Senator MCCAIN and myself, became actively involved. He has been rowing the boat for a long time. And his work has been critical to the progress that has been made on behalf of patients. And Senator MCCAIN has had such an enormous influence on the work that has been done and the progress that has been made.

Today conferees will be appointed, which is unfortunate. I want to say a word about why this matters and why it matters for people, for patients, and why most of the people in this country don't care at all about the process or the procedures inside the Senate or a conference between the House and the Senate. All they care about, and all they know, is they write those checks every month to the insurance company for their insurance premiums, and they want to get what they are paying for.

They expect, if they are going to pay the insurance company for health care coverage, they ought to get it. If their child needs to see a specialist, that child ought to be able to see that specialist. When they are going to the emergency room, they should not have to call a 1–800 number to get permission to go.

If a woman wants to participate in a clinical trial, she ought to be able to participate in a clinical trial. If the insurance company and the HMO say, we

are not paying for this, we will not give you the care toward which you have been writing those checks for every month, they ought to have a simple, inexpensive, fast way of getting that decision overturned. That is what the Patients' Bill of Rights is about. It affects real people's lives.

There is a fellow from North Carolina named Steve Grissom whom I got to know over time. Steve developed all kinds of health problems as a result of a blood transfusion. It got to the place where he needed oxygen basically 24 hours a day in order to continue to function. All of his doctors, including a specialist at Duke University, said he needed it—everybody except an HMO bureaucrat who came along after the fact and said: You don't need this. We are not going to pay for it.

Steve, because of what happened to him, became an enormous advocate for doing something about patients' rights and the Patients' Bill of Rights. He became a powerful, passionate voice for regular people against the HMOs in order to do what needs to be done for families to be able to make their own health care decisions.

Steve lost his life this week, not as a result of what the HMO did, but he is the personification of the problem that exists all over America and what HMOs are doing to patients all over America. Millions and millions of people, children, and families can't make their own health care decisions. Health care decisions are being made by bureaucrats sitting behind a desk somewhere who have no training, no business making those kinds of decisions, and the patients and the families can do nothing about it. They are totally powerless.

HMOs live in a privileged, rarified world that no other business in America lives in. In this era of corporate responsibility, we are trying to say on the floor of the Senate that corporations ought to be held accountable for what they do, for their decisions, they ought to be responsible for what they do; not HMOs, HMOs can do anything they want, and we are powerless to do anything about it.

What the Senate did in the Patients' Bill of Rights, which received strong bipartisan support, was create real rights for patients: Allowing people to make their own health care decisions, to go to the emergency room, to participate in clinical trials, to get bad decisions by HMOs overturned. That is what we did in the Senate. All we said was this: We want HMOs to be treated like everybody else. Why in the world should every person in America be responsible for what they do, every other business in America be responsible for what they do, but we are going to put HMOs up on a pedestal and treat them better and differently than everybody else? They can't be held responsible. They can't be held accountable. They are different. They are better than all the rest of us.

Well, they are not. They are just like everybody else. What could be a better example of the abuses that occur than what we have seen happen over the course of the last several months with the corporate irresponsibility that has had an enormous effect on all American people—investors, Wall Street, the economy?

In this era of trying to do something about corporate responsibility, are we going to maintain this special, privileged, protected status for a group of businesses that have proven—there is no question about it—that they are willing to engage in abuses, all in the name of profit and all at the expense of patients? That is what this is all about.

That is the reason virtually every group in America that cares about this issue supported the Patients' Bill of Rights that passed the Senate. Unfortunately, when the bill went to the House, a much weaker bill passed, a bill that in many cases would have actually taken away rights that States had put into place on behalf of patients. Many would argue it was an insurers' bill of rights, not a Patients' Bill of Rights.

If you put the bills side by side, on every single difference between the Senate bill and the House bill, the Senate bill favored the patients, the House bill favored the HMOs. It is no more complicated than that. As a result of having two bills passed—a strong bill in the Senate and a weak bill in the House—it was necessary for Senator MCCAIN, Senator KENNEDY, and me to begin negotiating with the White House because, as I said earlier, the people of this country couldn't care less about the process of what goes on inside Washington. They want to be able to make their own health care decisions. They depend on us to do something about that.

So over the course of many months, Senator MCCAIN, Senator KENNEDY, and I had a whole series of meetings, many meetings over long hours, to talk about trying to bridge the differences. I do have to say, on every single one of the discussions, the differences between us and the White House in the negotiations were the same as the differences between the Senate bill and the House bill. Our position favored the patients; their position favored the HMOs.

They did make a good faith effort to talk to us. Senator KENNEDY, Senator MCCAIN, and I made a very good faith effort to try to bridge the gap. The differences could not be bridged.

At the end of the day, decisions have to be made. To the extent there is a conflict, you have to decide which side you are on. You can compromise. You can compromise. You can compromise. We made so many proposals in these discussions, new, creative proposals to try to bridge the gap, to try to find a way to bring the differences together. Over the course of time, we did make progress. Senator MCCAIN said that. He is right. We did make some progress.

But at the end of the day, a judgment has to be made about whether you are going to decide with patients and families or whether you will decide with the HMOs. It gets to be a fairly simple judgment.

At the end of the day, the White House stood with the HMOs, and we were with the patients, as we have always been. We were willing to compromise. We were willing to make changes. We were willing to do things to get something done. Throughout the whole discussion, we were willing to do that. But our focus was always on the interests of the patients, not on the interests of the HMOs. We knew the HMOs were being very well represented, both in terms of their voice here in Washington and on Capitol Hill, and their influence with the administration.

Unfortunately, this is a pattern. This is not one isolated example. The White House stands with the HMOs, and has throughout this process, and against patients. They have done exactly the same thing in standing with pharmaceutical companies. When we try to do something about the cost of prescription drugs, about bringing a real and meaningful prescription drug benefit to senior citizens, we know where they are; they are with the pharmaceutical companies. They always have been.

The same thing is true when we try to protect our air. Right now they are changing the law, the regulations under the Clean Air Act, to give polluters, energy companies, the ability to pollute our air at the expense of children with asthma and senior citizens who have heart problems. We know where they stand. They don't stand with the people who are going to be hurt. They stand with the energy companies that are doing the polluting.

Over and over and over, they were dragged kicking and screaming into doing something about corporate responsibility, and they finally embraced the Sarbanes bill that passed in the Senate. This is not an isolated incident. This has happened over and over and over. And at the end of the day, it is about corporate responsibility. There is absolutely no question about that.

We will, though, get a bill. We will get a bill for exactly the reason Senator MCCAIN said: Because ultimately we will do what the American people are demanding that we do. They have been saying to us for years now: We are not going to continue to stand by and have HMOs run over us. We will not let insurance companies make health care decisions. We want you, our elected leaders, to make decisions that are in our interest, not in the interest of the HMOs.

We all know we can't move out here without bumping into some lobbyist for an HMO. They are everywhere. Who is going to look out for the interests of regular people in this country, for kids and families who need to be able to make their own health care decisions? We are going to; that is who is going to.

That is why, when this process is over, we will have a real Patients' Bill of Rights. We will put decisionmaking authority back in the hands of kids, back in the hands of families. And if HMOs are going to make health care decisions, they ought to be treated just like the people who make health care decisions every day—doctors and hospitals.

We never said we wanted them to be treated any worse. What we did in the Senate was pass a bill that said exactly that. If you make a health care decision—if some HMO bureaucrat makes a health care decision and overrides the decision of a doctor or of a hospital, they are going to be treated exactly as the hospital and the HMOs are treated. They will stand in the shoes of the people who make the decisions. We are going to treat them as everybody else.

Madam President, we are still optimistic. We believe we can do what needs to be done for the American people. This is a critical piece of legislation to families all over America. We will not stop. We will not stop until this legislation and this law that is so desperately needed is signed by the President of the United States.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Madam President, they said they are standing with the American public on what they are demanding. The American public is demanding health care insurance. The Patients' Bill of Rights dramatically increased the cost of health insurance. If we are interested in what the American public is demanding, it is lower health insurance bills. What they would have gotten if this bill had passed and become law in the Senate is higher health care bills, because under this bill we would allow employers to be sued—yes, not HMOs. You always hear HMOs, HMOs. Look, I am happy to have HMOs, but what this bill allows, what they have been arguing for from day one is to allow people who have employer-provided insurance is to let the employer be sued.

To be clear, I haven't talked to one employer in Pennsylvania who, if the Senate bill were passed, which allows employers to be sued simply by providing insurance to their employees—I haven't talked to one who said: I am out of the insurance business; that is not my job; that is not why I provide insurance to employees. I do it as a benefit and to be competitive in the marketplace. But do you know what. I am not going to open up the books and the entire revenues of my company to trial lawyers suing on behalf of my employees because they got a bad health care outfit.

This bill will not only drive up costs, but it will drive employers out of providing health insurance. That is not what the American public is demanding. They are not demanding higher costs and to be uninsured by their employers. That is what this bill would do.

I respect greatly the President for standing firm and saying we are not going to cause massive uninsurance, we are not going to cause massive increases in health insurance, all to the benefit of the trial lawyers of America. That is not what we are about, and it is not what the American public wants, and that is not what we are going to do. I thank the President for not going along with this scheme to end up driving the private markets into the ground and then having those who drove the market into the ground come back to the Senate floor and say: See, look, private employers are not doing their job anymore, so we need a Government-run health care system; let's pass that.

Madam President, that is not why I got up to talk. That is what happens when you listen to other people's speeches.

## THE PRESIDENT'S FAITH-BASED INITIATIVE

Mr. SANTORUM. Madam President, we have been trying over the last few hours to get a unanimous consent agreement on the President's faith-based initiative called the CARE Act, passed out of the Senate Finance Committee on a bipartisan basis. We have been working, first, to clear a unanimous consent agreement to get the CARE Act, as passed by the Finance Committee, cleared without amendments being offered by either side, simply a managers' amendment that includes provisions not in the Finance Committee mark because the Finance Committee didn't have jurisdiction over those elements of the bill that Senator LIEBERMAN and I and the President have agreed on as a compromise. We tried to clear that, and there was objection.

So Senator LIEBERMAN and I talked with Senator DASCHLE to see if we could clear a unanimous consent with the limitation on amendments—not relevant amendments but simply tax amendments. We suggested five on either side. That was cleared on our side. That was acceptable to us, to have a limitation on amendments of five on each side. We have just been informed that is not acceptable on the Democrat side. We asked if six was. No. Seven? No.

So my concern is that we will not take the bill clean or with a limitation on amendments. I guess I have to ask—and I will not propound a unanimous consent request, but I believe there are Members on both sides working in good faith to see if we can get this piece of legislation before the Senate and get it enacted into law. It is something I know Members on both sides of the aisle feel very strongly about—to support charitable giving at a time when charitable giving has really taken it on the chin, other than with respect to 9/11. With the stock market down, we have seen charitable giving go down and, in some cases, dramatically. This is needed to help the nonprofit sector to provide for the human service needs out there in America.

So I will withhold a unanimous consent request, even though I think we had some agreement to try to propound one tonight, because there are objections on the Democratic side of the aisle. I just encourage my colleagues on both sides of the aisle to try to work with us to see if we can find a regime in which we can bring this legislation to the floor with some sort of limitation on amendments and debate and have a good discussion and then move forward and pass this legislation. Maybe even if it is acceptable, we can get the House to accept it and move it on to President, and we must go to conference.

I hope we can work in a bipartisan spirit to help. This is targeted to help those who are in need in our society. It is something the President cares about and Senator LIEBERMAN, as do others, including Senator DASCHLE.

Let's have a good-faith effort here to move forward on this legislation and find some sort of unanimous consent agreement to move us forward on this important piece of legislation that is so needed by those who want to be helpful to others in need in our society.

Thank you. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Madam President, I ask unanimous consent that I may be allowed to proceed in morning business for up to 30 minutes.

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

Mr. GRAHAM. Will the Senator allow me to enter a unanimous consent request as well?

Mr. BENNETT. I am happy to.

Mr. GRAHAM. Madam President, I ask unanimous consent that I be allowed to speak as in morning business up to 20 minutes immediately after the Senator from Utah.

Mr. REED. Reserving the right to object. I have been waiting patiently for many moments. I only have approximately 5 or 10 minutes to speak, and I have a press deadline. The way it is right now, I will get the floor an hour from now. Is there a way I might be able to go before my colleagues?

Mr. BENNETT. Madam President, I have no problem with the Senator from Rhode Island going ahead. I have been waiting while the other three Senators went through. I don't have to worry about a press deadline in Utah. We have probably already passed it. I am happy to allow the Senator from Rhode Island to go first if the Senator from Florida is agreeable.

Mr. GRAHAM. I am agreeable to the unanimous consent agreement that I follow the Senator from Utah.

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

The Senator from Rhode Island.

Mr. REED. Madam President, let me thank the Senators from Utah and Florida for their graciousness in allowing me to go forward.

REAUTHORIZATION OF TEMPORARY ASSISTANCE TO NEEDY FAMILIES

Mr. REED. Madam President, I rise to discuss the necessity to provide broader flexibility to States in their effort to reward work, lift people out of poverty, and benefit children. As we contemplate the reauthorization of the Temporary Assistance to Needy Families, TANF, program, we have to ask ourselves: On what basis do we want to judge the success of welfare reform?

Will we focus only on the reduction of case loads and increases in work participation, without regard to whether the wage levels raise families out of poverty and children are better off? Or, do we want to build a system that truly breaks the cycle of poverty and supports the long-term economic well-being of welfare recipients and results in a better future for children?

We need to move to the next generation of welfare reform. Our goal should be to reduce poverty, reward work, and ensure the well-being of children.

Much of the debate on welfare policy revolves around the issue of work, but how do we reward work? During the past two decades states have experimented with new approaches to cash welfare assistance for low-income families. These initiatives have included mandatory employment services, earnings supplements, and time limits on welfare receipt.

How do we know which strategies work best? A federally-funded evaluation of welfare-to-work experiments by Manpower Demonstration Research Corporation, MDRC, provides a wealth of information on the effect of these strategies on employment and income, as well as child well-being. This rigorous random-assignment research lays a strong foundation for legislative deliberations about the reauthorization of TANF.

Although most of these initiatives increased the employment rate among welfare recipients, programs that included only mandatory employment services usually left families no better off financially than they would have been without the programs.

The only programs that both increased work and made families financially better off were those that provided earnings supplements to low-wage workers. These programs also increased job retention and produced a range of positive effects for children, including better school performance and fewer behavioral and emotional problems for elementary school-age children. One income-raising program also significantly reduced domestic violence and family breakup.

Earnings supplements are easily provided to working recipients by allowing them to keep more of their benefits. For example, some States have not cut or eliminated a family's assistance on a dollar-for-dollar basis when the family enters employment.

However, under current law, States are restricted in how they can use their TANF block grant funds to help working families, because any month in which Federal funds are used to provide ''assistance'' to a working family counts against the Federal time limit on assistance.

Some States, including my state of Rhode Island, Illinois, Delaware, Maryland, and Pennsylvania, operate programs using State money to help low-income working families. In Rhode Island, our Family Independence Program, FIP, provides a State earnings supplement as a work support and does not count it as ''assistance'' if a parent is working at least 30 hours per week.

Using this FIP wage supplement, families have funds to buy basic necessities.

Knowing that their income will not plummet after some artificial time limit is an incentive to find a job. Providing stable income helps parents stay attached to the workforce and rewards work.

For example, a mother with two children, who works 30 hours per week and earns the average starting wage of about $7.80 per hour in Rhode Island, receives a supplemental FIP payment of $132 per month. This brings her total income to about $1,044 per month. Even with this supplement even with her work, that $1,000 per month is still only 83 percent of the Federal poverty level.

With a supplement and with work these women are still not making income relative to the poverty level.

If Rhode Island did not use state dollars for the wage supplement, when a mother reached her 5-year time limit and the FIP payment stopped, she would lose 13 percent of her total income.

Using State funds offers broader flexibility for States to support families that meet work requirements and yet remain eligible for earnings supplements because of low wages. However, with State budgets being severely constrained, the ability to sustain this work support for low-income families is in jeopardy.

Further, as a State equity issue, all States should have the flexibility to use their Federal TANF funds to help low-income working families without restrictions—for the simple reason that it works.

Sadly, the income-enhancing effects of wage supplements and the positive effects on children are undermined by current restrictions on the use of TANF funds and definitions of what counts as ''assistance.''

Income gains disappear after families reach their time limits. The rigidity of the current system that counts wage subsidies as ''assistance'' conflicts with the success of supplemental cash payments, which rewards work.

If we want to reward work and help children, we must give States the flexibility and the option to provide continuing assistance to working families using Federal TANF dollars, ensuring that these supplements are not considered ''assistance'' under this program.

If the Senate were to permit TANF funds to be used in this flexible way, families would continue to be subject to all other Federal and State TANF requirements, including work and universal engagement requirements. But States would have flexibility in deciding whether to exercise the option and for how long to exercise this option. This provision has no cost; it would simply give States more flexibility in using existing Federal TANF funds to support low-income working families.

Earnings supplements have a proven record for boosting work and ''making work pay.'' These programs reward those who do the right thing by getting jobs and it results in better outcomes for children.

I urge my colleagues to work with me during the upcoming debate on the welfare reauthorization bill to ensure the inclusion of this broader flexibility for States.

I again thank the Senator from Utah for his kindness and graciousness. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

INTERNATIONAL CRIMINAL COURT

Mr. BENNETT. Madam President, 1 month ago today on July 1, 2002, the International Criminal Court was formally brought into existence. There has been objection to the International Criminal Court in America and, indeed, there has been a great deal of angst among our friends and allies around the world over the fact that President Bush removed America's signature from the treaty that created the International Criminal Court.

I have read some of the press around this controversy with great interest. I have been particularly struck by the fact that Chris Patton of the European Parliament, who is probably as good a friend as America has anywhere in Europe, has, in the American newspapers, expressed his great concern about our failure to endorse the International Criminal Court and to fully support it.

I cannot speak for the administration. I cannot speak for my colleagues in the Senate, but I can speak for myself, and I think Chris Patton and the others throughout the world who have expressed concern with our actions on this issue have the right to understand why some Americans are opposed to the International Criminal Court. I intend to lay out today the reasons why I, as one Senator, am opposed to the International Criminal Court in an effort to help our friends around the world understand some of the difficulties that many Americans have and to make it clear that my opposition to the International Criminal Court is not a knee-jerk response as some European newspapers may expect.

First, I should make it clear for those who may be listening or who might read the speech afterwards what the International Criminal Court is because I find that many of my constituents have no idea what it is. So very

quickly, Madam President, I will lay out what it is we are talking about here.

The International Criminal Court is a permanent international judicial institution that was organized and established by countries around the world for the purpose of redressing the most serious crimes in the international community. And here we are talking about those crimes that historically have lent themselves to war crimes tribunals—genocide, crimes against humanity, and war crimes. Those are the crimes considered to be so horrific that nations and leaders of nations can be held responsible for their commission.

The International Criminal Court is similar in purpose to the World War II tribunals that were convened after the end of that conflict. We know of the Nuremberg trials and the trials related to the Japanese war criminals. The International Criminal Court was created as a permanent tribunal of that kind. It is comparable to two tribunals that are currently in operation: The International Criminal Tribunal for Former Yugoslavia, and the International Criminal Tribunal for Rwanda.

In both cases, those two bodies are moving forward to identify the individuals who committed crimes against humanity, or war crimes, and take action against them in an effort to establish an international norm of behavior and make it possible to hold people accountable for how they behaved in conflicts.

Currently, over 75 countries have ratified or otherwise accepted the statute that created the International Criminal Court. That statute said when 60 countries had ratified, it would become effective. It is effective as of July 1. It is located in The Hague.

So with that background, let me outline why I am opposed to America's ratification and support of the International Criminal Court as it currently stands. I will begin by saying why I am not taking this position.

I am not taking this position because I believe America should not enter into international agreements. I know there are some who say we should not have any international agreements at all. That position is foolish, in my view. We have to enter into international agreements in the world in which we now live. Indeed, one could argue it is to America's benefit to do so.

There has been controversy, for example, about the World Trade Organization, the WTO. I have constituents who complain about America membership in the WTO saying it is terrible that we are under this international agreement. I tell them that the WTO was America's idea and that the WTO makes it possible for Americans to do business around the world. If we did not have this kind of mechanism to sort through the disagreements on trade issues, America would not be able to export, America's economy would be damaged, and Americans would be put out of work. It is a good thing for the United States to be part of the WTO. So my opposition to the International Criminal Court is not because I am automatically opposed to international agreements.

Also, it is not because I want, as some European journalists suggest, American dominance around the world; that America is so haughty and so proud that we cannot honor any kind of international law. I am enough of a student of history to know that any superpower that tries to dominate the world through their own power ultimately falls. The Romans found they could not maintain a worldwide empire. The Ottomans found they could not maintain the far-flung empire that existed all the way from Spain to the borders of India. More recently the British, with the viceroy in India and troops around the world, discovered they could not do it either.

I do not think the International Criminal Court is a bad idea because I want America to take some kind of hyper-power position of dominance around the world. I think America's record throughout history is very good on this issue. We should remember that Americans, when they win wars, do not occupy territory. When we won the Second World War, we not only liberated the Dutch, the French, and the Belgians, we also liberated the Germans. They are freer today than they were under the Nazis. They have more human rights and more individual property rights than they ever had prior to the war.

America leaves behind, as we now are demonstrating in Afghanistan, a legacy of freedom and food, and that legacy will continue. So the suggestion that opposition to the International Criminal Court stems from some kind of empire impulse on the part of Americans is something I reject.

Finally, I do not reject the International Criminal Court because I want Americans to dismiss the importance of international law. After all, the United Nations, which heavily influences the development of international law, was an American idea and is located on American soil and has been supported by American appropriations. Most United Nations functions around the world involve American troops. So I reject many of the journalistic arguments that supposedly explain why I oppose the International Criminal Court. I do not think they are appropriate.

So why do I object to the International Criminal Court? I need to go back a little bit in history, and I hope my colleagues will indulge me as I go into America's history to lay the predicate for the position I am taking. We in America adopted as our first state paper a document we call the Declaration of Independence. It is perhaps the most important state paper we have ever adopted.

In the Declaration of Independence, we lay down certain principles which the Continental Congress believed were beyond debate; that is, self-evident truths. One of these self-evident truths held that individual rights do not come from government. The phrase in the Declaration of Independence is ''endowed by their Creator with certain unalienable rights.'' The purpose of government is set forth in that document. The purpose of government is to secure these rights, deriving its just powers from the consent of the governed.

These are sacred words to Americans, and they come, as I say, from our first state document, and I believe still our most powerful.

The reason they are so sacred is because we are the only nation in the world that is founded on an idea. Every other nation throughout the world is founded on a tribe. People are bound together by a common ethnic history. That may have been our beginning, but it is not the nation we now have.

If I may go back to an example very close to Utah and talk about the Olympics. If one watched the Olympics on television and saw the athletes coming from the various countries around the world, one can almost always identify where the athlete is from by his or her name or the ethnic look that he or she brings to the television. But that cannot be done with Americans. The American Olympians are named Kuan and Lapinski, Louganis and Blair, Jordan and Byrd. They are Black, they are White, they are Asian in ethnic background. They come from all over the world.

In America, we do not have a common tribal base. All that holds us together as a nation is a dedication to the ideas set forth in the Declaration of Independence, the ideas that our rights come from God and that the purpose of government is to secure those rights, not grant them in the first place.

That is demonstrated by the fact that those of us in this Chamber, unlike any other parliamentarians or officeholders around the world, do not take an oath to uphold and defend the country or the people. Our oath is to uphold and defend the Constitution that was drafted to incorporate the core idea of this Nation. We have a sworn oath recorded in Heaven, to use Lincoln's phrase, to uphold and defend the Constitution against all enemies. So we have a unique attitude about rights, about law, and about our responsibilities to a document and an idea that undergirds that document.

Let me speak a little more American history, and any of our European friends who might ultimately read this speech might, I would hope, find this somewhat interesting. I think there is something of a parallel between the adoption of the Constitution and the discussions that are going on around the world right now.

The 13 States that made up the United States of America in the first place were united against a common

enemy during the Revolutionary War. But when the war was over, they began to quarrel among themselves. They each printed their own money. There were tariff barriers between States. There were all kinds of arguments about what law would apply from one State to the other, somewhat like the confusion that goes on around the world today.

The decision was made to try to find a way to impose a single rule of law across all 13 of these States. That is what produced the Constitutional Convention. When the Constitution was written and then submitted to the 13 States for ratification, it said, much like the underlying statute of the International Criminal Court, that it would take effect as soon as three-fourths of the States had ratified it. It did not require unanimous ratification but said that as soon as three-fourths of these States have ratified it, it will take hold and it will apply to all. Now, in the practical world of that time, one State could prevent it from taking hold because if that one State, which was so much more powerful than the others, had not ratified it, the whole thing would have fallen apart. That was the State of Virginia. Another State arguably in that same position would be the State of New York. If Virginia and New York had not ratified, the other 11 could have, and we still would not have had a workable document.

This, if I may be so bold, is somewhat similar to the situation that people are raising with respect to the International Criminal Court. They say 75 nations may ratify it but if the United States doesn't, it will not work. And the United States is outside.

Back to our own history for a moment. Virginia was outside. Virginia was not the first State to ratify, Delaware was, followed by Pennsylvania, followed by Georgia, and so on. But Virginia was holding out. One of the reasons Virginia was holding out was that the man who was arguably the second most powerful politician in Virginia—the No. 1 politician in Virginia was, of course, George Washington—and the second most powerful politician in Virginia, Patrick Henry, multiple times Governor of Virginia, was unalterably opposed to the Constitution. He led the fight against ratification in Virginia on this ground: He said there is no bill of rights in this Constitution. The rights that it seeks to protect for us Americans are not specified. I am not sure that he used the term ''vague'' but he could have because the Constitution, as originally drafted, was very vague about which rights would be preserved.

Now, the leading politician in Virginia seeking ratification, James Madison, and Alexander Hamilton, who did get it ratified in New York, argued with Patrick Henry. Madison and Hamilton said to Patrick Henry: You don't want these rights laid out specifically in this Constitution; you want to leave it vague. If you enumerate them specifically, you will inevitably forget something, and then by not listing that which you forget, you will put that right in peril.

Everybody understands, Madison and Hamilton said, that all of the rights we have are protected by the Constitution as it exists, and to specify them will limit them. You are making a mistake if you demand specificity.

Patrick Henry was having none of that. Patrick Henry stood firm and demanded the defeat of the ratification resolution in the Virginia Legislature. However, he ultimately gave way to the predominant rule of politics in America in the 18th century which is: Anybody who opposes George Washington loses. George Washington, as the president of the constitutional conference, had enough prestige that the Constitution was, indeed, ratified in Virginia but with this political understanding: James Madison said, if you ratify the Constitution, I will run for Congress. I will go into the House of Representatives—which he assumed would be the dominant body of the new government—and I will propose a bill of rights. That promise took enough sting out of Patrick Henry's argument that Patrick Henry lost the fight and Virginia ratified and the Constitution was adopted and we had the new nation.

True to his political promise, Madison went to the House of Representatives, and offered 12 articles of amendment to the Constitution, 11 of which were adopted. The first 10 we now revere as the Bill of Rights. We can now, looking back after two centuries, realize that Patrick Henry was right, that the Bill of Rights is as much a revered part of the idea that holds this country together as anything else that is written in the Declaration of Independence or the rest of the Constitution itself. We hold commemorative ceremonies honoring the adoption of the Bill of Rights.

Now, what does this have to do with the International Criminal Court? At the risk of being overly egotistical, let me try to play Patrick Henry. The International Criminal Court is based on a statute that is vague, so vague that I believe my constitutional rights, those for which Henry, Madison, Hamilton, and Washington and all the rest of them fought, are in peril. When I say that to my European friends, quite frankly, they laugh. Or they say to me, reminiscent of Madison's argument to Hamilton, no, no, no. You misunderstand. The International Criminal Court is not going to threaten your constitutional rights in any way. It is designed to go after the bad guys. It is designed with the same intent as the tribunal for Yugoslavia or the tribunal for Rwanda. It is designed to make sure that we have a permanent tribunal in place.

My reaction to the assurances that my rights will never be attacked is, I think, in concert with Patrick Henry's reaction to the assurances that he was given by Madison and Hamilton. My concerns are reinforced by some of the things I have heard. For example, I have been told there are groups that want to bring suit in the International Criminal Court against President Bush, charging him with a crime against humanity for his failure to send the Kyoto treaty to the Senate for ratification, that his opposition to the Kyoto treaty constitutes such a gross violation of the opportunities around the world that it is a crime against humanity.

I have inquired whether or not such an action could come before the International Criminal Court and have gone through it with legal scholars. The answer is, yes, such an action could come before the Court, but, of course, it would be laughed out by the prosecutor and the President would never have to go to trial. That does not give me a lot of reassurance, that the case could be brought—but of course the President would not be found guilty.

How can we know, 20 years from now, or 30 years from now, that some future President would be found guilty for making a policy decision that he or she decided was in the best interest of the United States but that the International Criminal Court decided was not in the best interest of the rest of the world, and so it would be defined as a crime against humanity? And given the vague nature of the statute of the International Criminal Court, that is a very real possibility.

Let me give another possibility that comes very much to home. There are those around the world who are insisting that the United States pick a numerical target for foreign aid; that is, we pick a number which would be a percentage of GDP. And they are saying in their rhetoric that the United States is not meeting its responsibility to the underdeveloped world until it meets this arbitrary percentage of GDP in adopting foreign aid.

I am a member of the Foreign Operations Subcommittee of the Appropriations Committee, the subcommittee that determines how much foreign aid we appropriate. Under the language of the International Criminal Court, am I liable for my actions as a Member of the Senate? The language is very specific. Being a member of the parliament does not exempt one from the jurisdiction of the International Criminal Court.

Suppose someone decides that the U.S. failure to meet that artificial number constitutes a crime against humanity and that if we do not raise our foreign aid to that number, all of those who are legislators, most specifically those who are appropriators, can be hauled before the International Criminal Court and prosecuted for our failure to adopt that kind of appropriation.

I do not want to run the risk. When I raise it, once again, with those who are in favor of the International Criminal Court, they laugh it off and say

that is not why it was designed, that is not what it will look at, no, that kind of prosecution will never be brought.

Then when I raise the question: But could it be brought under the language of the statute as it currently exists? They say, Well, yes, it could be. But you know the prosecutor would never go forward with such a case.

Again, at the risk of being immodest, I want to be Patrick Henry on this issue. I want to say we will not proceed—I will not proceed; again, I will not speak for my colleagues—I will not proceed to vote to ratify a treaty on the International Criminal Court until I am satisfied that the language is so absolute that I will not lose any rights I currently have under the U.S. Constitution.

I say to those who say: no, no, this is only going to deal with people like Milosevic. We are never going to see this sort of frivolous activity, and the United States should understand that you have no need to worry whatsoever about this international tribunal. Indeed, the United States helped create safeguards that are already in the International Criminal Court that say if the United States proceeds to prosecute someone who is accused of a war crime, the International Criminal Court will lose its jurisdiction. In other words, if an American serviceman is accused of a war crime, as happened in Vietnam in the village of Mi Lai, and the United States prosecuted that serviceman, as we did under the Uniform Code of Military Justice, then the ICC has no jurisdiction and backs away. So you, who have a great track record of prosecuting war crimes among your own servicemen, need have no worry whatsoever of this international tribunal.

We have two precedents that are now before us that have just come up in the last few months, and I find them disturbing in the face of all of these reassurances. The first one has been written about rather extensively in the Washington Post and the New York Times. It involves a Washington Post reporter who has been subpoenaed. He happens to live in Paris right now. He has been summoned by the tribunal dealing with Yugoslavia to come in and testify. And he said: I don't want to come in and testify. It would have a chilling effect on reporters covering the war if we thought the things we wrote about the war would be subject to the jurisdiction of a war crimes tribunal afterwards.

The Washington Post has taken the position that the reporter is exactly right. It has been written up in the New York Times also, sympathetically.

The reporter's name is Jonathan C. Randal. He is retired from the Post. As I say, he now lives in Paris. The Yugoslavia tribunal has said: You do not have the right to refuse. We are going to require you to come. And he can be arrested by the police in Paris, handed over to the tribunal by the police in France, and he loses his American constitutional rights because the statute creating that tribunal is vague on the area of his rights.

There is another incident that has just come up. The same tribunal, which we are told is a precedent for the International Criminal Court, has been asked to indict William Jefferson Clinton and his National Security Adviser, Anthony Lake; and the then-Deputy National Security Adviser, Samuel Berger; and Ambassador Richard Holbrooke; and the U.S. Ambassador to Croatia, Peter Galbraith, all of whom are being accused of complicity in war crimes conducted by a Croatian general who was acting within the framework of American foreign policy at the time.

Here is a case where a President and his advisers make a decision in the best interests of the United States. The President and his advisers are now being investigated to see whether or not they should be called before the tribunal.

The specter of an American President called before an international tribunal for actions as straightforward as President Clinton's actions were in this circumstance is a specter I do not want to see repeated before the International Criminal Court. I do not want any future American President to believe that he or she is in danger of being named as an accomplice in some act of some other individual. We do not know whether or not the International Criminal Court could do that under its present statute. It is so vague that it cannot answer that question. In other words, under the present circumstance, it is not just an American citizen such as the reporter from the Washington Post who might be called in, it is not just a member of the Appropriations Committee who might be called in, there is a precedent being established that the President of the United States might be called in to answer in this international forum for actions he or she took in the best interests of the United States as those interests were defined at the time.

So I come back to my reasons for not wanting to ratify the treaty creating the International Criminal Court. I understand that as he signed it, President Clinton himself said this treaty is not ready for ratification. President Bush took our signature off it in order to make it clear to the world that it was not ready for ratification. I applaud that position—both President Clinton's position that it is not ready to be ratified and President Bush's decision to remove all doubt as to America's position on this point.

But I do want to make it clear, as I tried to do at the beginning, that I am not opposed to the idea of creating some kind of tribunal that can deal with these heinous crimes we see around us in this world that is still not rid of the horrific activities that are called war crimes and crimes against humanity. I am not opposed to America being subject to the rule of international law in an area where America's track record of behavior is so good that I am sure America could handle this without any difficulty. My problem is the vagueness. My problem is the possibility that the International Criminal Court will go far beyond what we think of as war crimes and will invent new ones, like the ones I have described here. My problem is that we do not have a clear outline of rights that will be protected in this Court.

Just as Patrick Henry stood and said, do not ratify the Constitution of the United States until there is a clear bill of rights written into it, and held that position to the point that James Madison finally gave in and gave us the Bill of Rights, I think American legislators should stand and say: Do not ratify the International Criminal Court until there is a bill of rights, until we know exactly that the rights we have under the Constitution, that the Declaration of Independence declares as being ours by God-given sanction, are protected, that Americans will not be called before this Court in a way that would put us in jeopardy of those rights. That is my bottom line with respect to the International Criminal Court.

I believe the United States should stay engaged and involved in discussions about it. I don't think we should turn our backs and walk away and say we will never have anything to do with it or be involved in it. I think by virtue of its observer status, which it still has with respect to the International Criminal Court, the United States should continue to talk to the other countries in the world about this.

But the bottom line should be that when the United States finally does decide to ratify the International Criminal Court, it will be in a regime where no American citizen will lose any of the rights that are currently guaranteed to him or her under the American Constitution.

I believe it can be done. I encourage everyone around the world to focus on that and not say we don't need to talk about that, that this is just for the bad guys, but recognize that if you are building an institution that is going to last for 50, or 100, or 200 years, as our Constitution has, you must be as careful in creating it as the Founders were in creating our Constitution in the first place.

We are the freest nation in the world. We would like the rest of the world to have the same benefits as we do. Let us be very careful as we create an international judicial body to make sure that it maintains that high standard of freedom.

I yield the floor.

## TRADE ACT OF 2002

Mr. CORZINE. Madam President, I rise today, sadly, to express my sincere disappointment with the passage of the Trade Act conference report.

It is deeply troubling to me. I will go through a number of the reasons I have

these feelings and why I think they need to be expressed in an explicit nature.

I come from a business background, as many know. While I was a very sympathetic and active promoter of the passage of NAFTA early in the nineties, I believe in the principle of comparative advantage and understand that it can work to maintain competition in prices for many goods and services broadly throughout our society, and in certain sectors of our economy it certainly can promote job growth.

But on balance, when we look at the nature of a lot of the elements that are a part of this so-called fast-track trade promotion authority given today, I think the costs and the benefits don't align themselves well at all. I feel particularly troubled by the dilution of many of the elements that were in the Senate bill that went to conference that really left us in an even weaker position with respect to where we stand in protecting workers' environmental rights and the ability of America to represents its own interests in negotiations.

There are also some fine-print issues that I am very concerned about—the potential for degradation of our antitrust laws and the ability for American law to be represented on a coequal basis with what we see as potentially being dictated by trade laws as we go forward. I will try to itemize some of those.

Again, I understand there is a strong theoretical case for comparative advantage. But I think when you put it in the specific context with the fine print of the details we are talking about with regard to this trade law, this is a very troubling piece of legislation. And I hope it is one that I am wrong about and that we will not come to regret over a period of time.

Let me start with the reality that anytime something passes, there will be shifts in economic fortunes for sectors of the economy. One of the reasons we fought so hard for trade adjustment authority in the package in the Senate—and that many of us believed we made a little progress thereon—was health care benefits and employment insurance. Some of those stayed. But, in fact, I think we undermined very seriously the conference report benefits that we were applying in health insurance versus the simple elementary move from a 75-percent to a 5-percent tax credit. We undermined the definition of the pool in which workers would be available.

While we have the language that we are aiding those who lose their jobs as a result of trade activities and shifts in production offshore, when you look at the details, it will be very hard for those to be applicable, and in the practical context of people's lives it is really a false presentation.

By the way, there are no standards with regard to the health benefits people will get. There is no premium protection for individuals. The details just do not match the rhetoric with regard to the hope that I think we promised.

There is also talk that coverage is going to be broad. But when you look at the fine print, the fact is that the element of production shifts doesn't include some of the biggest marketplaces—places where production is likely to shift because of the applicability of the law as it stands.

For instance, in fact, Brazil and China and Southeast Asia are generally left uncovered. If a factory moves out of the State of Washington or the State of New Jersey and moves to those countries, they are excluded from some of the definitions of how a shift in production would apply and whether there is a need for trade assistance.

While countries such as Jordan, Israel, and the Caribbean Basin, and the Indian region are included in those definitions, they make up about 5 percent of the American trade, and large blocks of that are in places left out of the shift in coverage for production. I think it is a real problem. It is a real problem with the reality of matching the language.

We talk, particularly in the Senate bill, about substantial resources for workers who lose their jobs. The conference committee report came back $30 million below CBO's estimate and $80 million below what the Senate bill authorized—already a skinny number and one that I think makes the hope of real job retraining something that is a false hope for a lot of folks when you translate it into the reality of how it will work.

Continuing. Labor and environmental standards: We all fought for the Jordanian standard, the agreement that was negotiated on a specific trade agreement. It was to make sure that those standards were met in all future trade agreements.

When the conference agreement came back, we found that it allows for the preservation of status quo elements with regard to basic protections for children under 14. That means in Burma, if they are truly practicing slave labor, they can maintain the status quo in any kind of trade negotiations. It denies the basic rights of workers to operate with collective bargaining in countries where they don't already have it. There is no change for those countries to which we might want to apply those standards. That is really a quite serious backing away from the standards that were included in the Jordanian agreement which I think most people would embrace. And they would have made for a very serious, positive step forward in our trade negotiations. This is a very serious backing away that I think really does undermine the labor standards.

I will not go into details, but there are some provisions that we have backed away from on environmental standards. We have, basically, a status quo standard for anyone who enters into these negotiations. That is a difficult way to approach fair trade, as well as free trade, if you are looking for those kinds of elements in a legitimate movement forward in our trade relationships.

With regard to the role of Congress, there was debate on the floor about Dayton-Craig, which we adopted, which had to do with having a real challenge to trade remedies in these packages. We pulled back, and we now have a sense of the Congress. I do not think anybody believes that is going to seriously impact how this process is going to go forward. It may sound good for press releases and sound bites, that we are really being involved in the process, but I do not think it deals with the facts as we see them. I think it is a serious problem.

There is another element that I also think is truly important with regard to fast track and an element with regard to the role of Congress. The conference agreement adds a completely new restriction that was not in the House bill or the Senate bill, and that would provide that there is only one privileged resolution per negotiation on any given trade treaty—one.

We had no restrictions on those in other situations. We could now see a real weakening of the ability of Congress to have a legitimate role in debate with regard to the elements of trade negotiating.

Finally, on this particular piece, one element that troubles me the most is that in many ways we have changed the language, where we are going to provide greater rights for foreign investors than are available to U.S. investors under U.S. law. And that is because we just changed a word in the language to say: Foreign investors should not be accorded greater substantive rights than U.S. investors. The only thing new is that we put in the word ''substantive.'' And ''substantive'' leaves it open to trade negotiators to decide what rights are equal or unequal.

By the time we get done applying that, we could very well see substantially different treatment for foreign investors than we would see for U.S. investors. I think it is a definite weakening of what is appropriate as we go through the application of these trade laws and needs to be watched very carefully. I suspect it will lead to an enormous amount of litigation as time goes forward. But a lot of the decisions with regard to that will be taking place behind closed doors and by trade negotiators and trade adjustment bodies. So there are a number of issues that concern me.

There are a couple of other issues I want to cite before I yield the floor because I think they are also important.

It seems to me, in line with what I was talking about before, we have put ourselves into a position where foreign investors might very well have their international disputes resolved by trade negotiators as opposed to courts.

Let me just remind people that when we were debating this on the Senate

floor, we used the example of a Canadian company that sued the State of California with regard to the use of MTBE. The elected representatives of the people of California determined that MTBE was not such a good thing for their health and environmental quality of life. We have that same proposition in New Jersey.

But the judgment of one of these international trade bodies could overrule that decision made by the people, in legislation that was properly passed, if the language is used that we talked about, that substantive quality principle that was mentioned. I think this is dangerous as we go forward, and it truly concerns me.

Mostly, I am concerned that the principle of privatization may very well be subject to rulings from trade bodies making a decision about whether something is appropriate or not, whether privatization is a restraint of trade or not. We had a very close vote with regard to the subject in the Senate, but I think, very possibly, you could see many services that are provided by State and local governments, and even Social Security by the Federal Government, being argued that it is a restraint of or a break in our trade agreements, restricting the ability of the foreign company to come in and provide those services on a private basis. This has been certainly challenged in other countries, and I am very fearful that we have set up a regimen that allows those kinds of processes to happen.

Finally, there is an area that also is quite concerning to me, and that deals with some of what I am concerned about with regard to civil liberties. I am pleased that included in the conference report was the Senate provision I authored with regard to the Customs inspection of mail, to make sure you have to get search warrants to look at small letter carrier mail.

But I am very concerned that the conference report includes a potentially egregious violation of civil liberties, in my view, and an expansion which is based on the expansion immunity for Customs officials. Quite simply, there is a blank check for Customs officers to engage in illegal behavior, particularly and including racial profiling.

I think the Presiding Officer knows I have long been an outspoken opponent of racial profiling. I introduced legislation with Senators FEINGOLD and CLINTON and Representative CONYERS in the House, the End Racial Profiling Act, which really does work against the kind of action I think we have seen documented with the Customs Service in previous measures. I think that needs to be addressed.

The President and the Attorney General have recognized that racial profiling is wrong and must be ended. The President acknowledged that in his very first State of the Union speech. I think we are taking a step backwards by providing these immunity provisions on profiling for Customs officials that are included in this legislation.

Current law provides qualified immunity to Customs agents which is based on the assessment of what a reasonable officer should have done in any given situation. This means that the Customs agent is entitled to immunity from suits if they conduct an unconstitutional search based on a reasonable but mistaken conclusion that reasonable suspicion exists. This legislation expands that protection and establishes a new kind of immunity called good faith immunity.

Essentially, a victim of an unconstitutional search would not be entitled to relief unless the officer acted in bad faith, a nearly impossible standard to meet. So I think it is a significant weakening of the protections in our current law, and I find it dangerous.

In March 2000, the GAO had a report that found that African-American women were nearly nine times more likely to be subjected to x rays and customs searches than White women, and they were less than half as likely to be found carrying any kind of contraband: The whole point of why racial profiling is not only morally wrong, it is bad law enforcement, and doesn't lead to better results.

In fact, under the stewardship of Commissioner Ray Kelly of the Customs Service, they implemented significant changes in policies to stop the racial profiling that was occurring. I think we are taking a step backward here. It is just another one of the fine details that one sees in this conference report that make this not even ideal but, I believe, bad legislation.

For a whole host of reasons—the dilution of our trade adjustment authority; the issues with respect to the role of Congress, the role we rightfully should be playing in this process; the role of foreign investors in America and their ability to use trade agreements to supersede U.S. law; some of the civil liberties issues I pointed out and my concern about the use of the new trade laws to undermine public responsibility roles; the challenge to privatization that is a legitimate question that our elected officials should decide, not trade negotiators—I am led to the conclusion that we have the potential for what could be a very seriously flawed piece of legislation.

I voted against it in the Senate, and I am even more strongly opposed to the conference report. I hope I am wrong and the majority in the Senate are correct. But there are grave dangers embedded in this. We will need to monitor very carefully the application of this trade law as we go forward.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Florida.

## GRAHAM-SMITH PRESCRIPTION DRUG COMPROMISE

Mr. GRAHAM. Madam President, yesterday, July 31, the Senate voted not to waive the Budget Act to allow consideration of the Graham-Smith prescription drug compromise. This legislation was estimated by the Congressional Budget Office to cost $390 billion over the 10-year period, a cost which turned out to be within a few percentage points of the legislation offered by the Republicans. Although unscored by the Congressional Budget Office, the sponsors of the Republican legislation estimated that their cost was in the range of $370 billion.

However, in spite of the fact that both the Democratic and the Republican plans were above $300 billion, which had been provided in the 2001 Budget Act, almost 18 months out of date, in spite of that fact, we could not get the 60 votes to waive the Budget Act and allow consideration of the substance of the proposal to provide a critical additional health care benefit for America's older citizens.

Had we gotten to the proposal, what would the Graham-Smith compromise have provided? It would have provided full coverage to the 47 percent of America's seniors whose incomes were below 200 percent of poverty, approximately $17,700 for a single person. It would have provided a mechanism for significant discounts, in the range of 15 to 25 percent, as well as a Federal subsidy on top of those discounts for all Americans. For all Americans, it would have also provided insurance against catastrophic costs, costs beyond $3,300 of payments made by the beneficiary.

Think of this: Had we been able to get to the substance of our amendment, Americans could have had the opportunity of purchasing an insurance policy for $25 a year that would have given them the peace of mind they would not be crippled, potentially financially devastated, by the consequences of a major health emergency, such as a heart attack or being determined to have a chronic disease such as diabetes. All seniors who fell into that category would have had all of their prescription drug costs above $3,300 per year paid with only a modest $10-per-prescription copayment.

This compromise would have afforded very real protection and assistance to all Medicare beneficiaries at a cost which both Republicans and Democrats had deemed to be reasonable.

One of the fundamental reasons this failed yesterday and I appear today is because at the last minute—I correct that to say, within the last hour before the vote was taken, the information on this chart was dragged from some source and reproduced on a floor chart used by one of my colleagues and in handouts which were circulated in the Chamber, which purported to show that the effect of adopting our amendment would be to impose massive new costs on the States.

It was stated that the first-year cost would be over $5 billion, and the 10-year cost would be $70 billion.

Madam President, I accept the fact that we have rules in the Senate and

that one of those rules requires that to waive the Budget Act, you have to have 60 votes. But what I cannot accept is the method that some of our opponents used to defeat our plan.

There is an old adage: Everyone is entitled to their opinion; no one is entitled to their own facts.

It is impossible to have an honest debate without everyone using the same factual basis as the premise for their arguments and opinions. We can't pass legislation in 1 week to make businesses adopt honest accounting practices and standards and then not apply honest accounting standards to ourselves. Using only partial information that intentionally misleads U.S. Senators—in this case, misleading them to the wrong conclusion—is demeaning to this, the world's greatest deliberative body.

Several of our colleagues used a chart which misled other Senators into believing that the Graham-Smith amendment imposed these massive unfunded mandates. In the words of one of our colleagues: ''$70 billion on the States.''

This is simply untrue. It is, in my opinion, an intentional misrepresentation of the facts.

The floor chart used yesterday, as well as the paper distributed on the Senate floor, contained no source as to where the data was analyzed, or who among our colleagues would assume responsibility for distributing this information. No one—in violation of the spirit of the Senate rules—would accept personal responsibility for these distortions.

What happened yesterday was Enron accounting come to the Senate Chamber. It makes a point based on an inaccurate representation of the facts. It seems to me that if we are going to require companies to be more accountable, require their chief executives to sign the financial statements before they are released to the public, we should require the same of ourselves in the Senate.

In addition to distributing this distorted information, there were also statements made as to the motivation of the sponsors of this amendment. I will quote a statement made by one of our opponents who stated that:

The sponsors chose to spring the text of this amendment on the Senate yesterday for the first time. Perhaps they thought they could slip in something new that we would not catch. Well, we caught it, and you know we have caught it by the speeches of the Senator from Maine. We actually have had a chance, and we have studied the Graham amendment. The Graham amendment imposes a massive new burden on States just when State treasuries are in terrible shape.

We have been accused of bad faith in offering this amendment, surreptitiously attempting to commit the States to a massive new unfunded commitment. That is not true. In fact, the Congressional Budget Office is the basis of the analysis that we have done. It was the basis of the support that was sought and gathered for the Graham-Smith amendment. None of its supporters, intentionally or otherwise, would have allowed a provision to be included that increased State costs.

On the other hand, we have an analysis that was developed by an unknown source, distributed by unknown persons to the Senate floor.

The basis of our estimate is the nonpartisan Congressional Budget Office, a set of experts with no political stake in this debate. The Congressional Budget Office estimates that the Graham-Smith amendment would not increase State spending.

Let's look at an analysis upon which the Congressional Budget Office predicated that statement, realities which the Republican analysis totally ignores: States would receive considerable relief from the creation of this new Medicare prescription drug benefit.

Let me explain why. Under current law, States are required to provide drug benefits to those eligible for Supplemental Security Income, SSI—generally, those below 75 percent of poverty—and others fully eligible for Medicaid.

In addition, some States have elected to go up to 100 percent of poverty. Those seniors' drug costs are now paid by the States at their regular Medicaid matching rate. Therefore, States are paying for part of total drug costs for these seniors, and the Federal Government is paying for part.

Under our proposal, the Federal Government would assume 100 percent of the cost above $3,300 incurred by each senior currently covered by the Federal-State match.

In addition, the Federal Government would be solely responsible for 5 percent of the costs incurred by each senior currently covered by the Federal-State match; that is, 95 percent of the costs below the stop loss would continue to be shared between the State and the Federal Government.

However, all the costs above $3,300 would be assumed by the Federal Government. Additionally, the Federal Government will pay for 100 percent of 5 percent of the drug costs.

The 100-percent Federal assumption of costs that are currently shared between the Federal and State governments would result in substantial savings to the States. None of these savings are included in this analysis.

Just yesterday, the administration approved a Medicaid waiver for the States of Maryland and Florida. This waiver will allow those States to extend coverage for prescription drug costs to their citizens between 175 percent and 200 percent of poverty, respectfully, at the regular Medicaid matching rate.

These States, plus others with similar waivers, would receive significant relief from having both a Medicare drug benefit and a higher Federal matching rate—including 100 percent matching rate for costs of those with incomes between 150 and 200 percent of poverty. None of these savings are included in the analysis presented by my Republican colleagues.

The Graham-Smith amendment does not include a ''maintenance of effort'' provision on current State spending on these programs.

According to the National Council of State Legislators, 31 States already provide pharmacy assistance programs and Medicaid drug waiver programs to seniors above 100 percent of poverty. Three more are authorized to do so, but have not yet implemented their authorization. All of these States would receive significant relief under my proposal. Yet, none of these savings are included in the analysis presented by my Republican colleagues.

According to the Congressional Budget Office, states are currently spending roughly $95 billion on prescription drugs for Medicare beneficiaries through the Medicaid program. A significant portion of this amount would be assumed by the Federal Government under the Graham-Smith compromise amendment, resulting in savings to the States.

The floor chart used by my colleagues showing $70 billion of new expenses was incomplete. I don't know if the $70 billion figure is accurate, but I do know that the State savings achieved by the Federal assumption of costs currently borne by the states is not reflected on that chart.

So what we have is an analysis that only stated what the new cost to the States would be as a result of this program and failed to include the new savings to the States as a result of this program.

Even the most junior budget analyst would not make the mistake of forgetting that States will save dollars as a result of the Graham-Smith amendment from the Federal assumption of many costs.

This is more than an oversight; it is a deliberate omission intended—unfortunately, in some instances it apparently had this effect—to scare off potential supporters of a responsible prescription drug benefit for older Americans.

This analysis is but one of several politically motivated analyses which have come out of the White House that conveniently support their policy positions.

Let me just review a few of those positions. On July 18, 2002, the Office of Management and Budget wrote:

However, the administration opposes S. 812, [the underlying generic drug bill that the Senate, by an overwhelming majority, passed yesterday] in its current form because it will not provide lower drug prices.

No analysis by the Office of the Actuary supports that claim, and the Congressional Budget Office estimated that the bill will save $60 billion to American prescription drug consumers over the next 10 years.

The Senate, by its overwhelming vote, obviously decided with the Congressional Budget Office and not with the White House Office of Management and Budget.

Second, the White House produced an analysis claiming that the original Graham-Miller-Kennedy bill would ''bankrupt'' the Medicare trust fund—when this drug benefit, like the drug benefits in the Republican plan, is funded through a distinct fund that has nothing whatsoever to do with Medicare's Part A.

Third, just this month, OMB made its midsession review look substantially more rosy by including only $190 billion for prescription drugs, despite the fact that the Secretary of Health and Human Services, former Gov. Tommy Thompson, stated before Congress in April:

Congress has seen fit to raise the funding for prescription drugs to $350 billion, and I came here today to indicate to you that the administration wants to work with that latter number.

This administration has not demonstrated in actions or words that it prioritizes State fiscal relief. As such, its concern for States, as expressed on this distorted chart, is a new revelation, only emerging when it is seeking an excuse to oppose an amendment to provide significant prescription drug assistance to America's seniors.

Less than a week ago the Administrator of Medicare, Mr. Tom Scully, stated the administration opposed increasing the Medicaid matching rate even temporarily, an amendment which has been aggressively sought by the States in order to receive some relief from rapidly escalating Medicaid costs. The administration opposed that amendment. The Senate, by an overwhelming vote last week, adopted it.

I might say that during the consideration of the tax bill, I was concerned that the proposal of the White House was to accelerate the repeal of the State's portion of the estate tax at a substantially faster rate than the repeal of the Federal estate tax. In fact, the State's portion of the estate tax will evaporate in approximately 3 to 4 years, while the Federal Government's share of the estate tax continues until the year 2010.

The effect of that early acceleration of the repeal of the State component of the estate tax will have a significant adverse financial effect on the States beginning this fiscal year.

The 47 percent of Medicare beneficiaries with incomes below 200 percent of poverty would have gained comprehensive drug coverage had the Graham-Smith amendment been adopted. Seniors in all States would have been helped. Seniors in all States would have been given the peace of mind that if they suffered a debilitating illness or disease or accident that they would have been helped with their catastrophic drug costs, and the States would have been helped by getting relief through the Federal assumption of costs that they are currently bearing.

I conclude by saying that I hope in future debates on the Medicare prescription drug benefit that we will all rely on the facts, not on incomplete and distorted analysis. Our seniors deserve better than what we have done to date, because what we have done is talk about, talk about, talk about, the need for a prescription drug benefit. We have not yet delivered, delivered, delivered a responsible prescription drug benefit.

It is going to be our challenge over the next few weeks, working with the facts and with honest analysis of those facts, to arrive at a prescription drug plan that will meet the needs of our seniors, will provide us with the basis of integrating a prescription drug benefit into a comprehensive health care program for older Americans, and to find the political will to act this year.

That will be our challenge and that quest will be advanced if we all agree that we are going to differ in our opinions, yes, but that we will all agree that we would use the same set of legitimate facts.

I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. NELSON of Florida. Madam President, I wish to speak on a matter of great importance to this country, keeping the soundness of Social Security—and I say to my colleague from Florida how much I appreciate the great leadership that he has given to the Nation in the last several weeks as he has led the effort to try to honor the senior citizens of this country with a prescription drug benefit that would modernize Medicare to provide for what senior citizens ought to have in the year 2002.

It has been my privilege and pleasure to support him in his efforts. It is beyond me why we could not get the 60 votes. Some of the misinformation that was distributed, as the senior Senator from Florida has explained, is part of the reason. Part of the reason I happen to think has something to do with partisan politics as well, unfortunately, during an election year.

I want him to know my profound appreciation for him as a colleague, as a friend, and as a leader for this Nation in offering a needed change to Medicare for a prescription drug benefit.

## SOUNDNESS OF SOCIAL SECURITY

Mr. NELSON of Florida. Mr. President, tonight I want to discuss another subject which is near and dear to our hearts, particularly the two of us coming from Florida, on the attempts to privatize Social Security. In fact, it even comes down to the fact that in the State of Florida, the pension program for Florida retirees was changed within the last 2 years by the legislature of Florida to basically allow a privatized element, other than a defined benefit element for all Florida's 600,000 retirees.

It sounded awfully good while the stock market was doing so well, but now in the last few months, the stock market has not been doing well. Lo and behold, would you believe that out of 600,000 retirees in Florida on the Florida retirement system, the State pension, only 3,000 retirees out of 600,000 have signed up for the privatized retirement plan. That should give us a clue as to why we should not be privatizing Social Security.

I do not want to hold my colleague on the floor, but before he left the floor, I wanted to share that with him as I get into my comments on Social Security.

Mr. GRAHAM. Will the Senator yield?

Mr. NELSON of Florida. With pleasure.

Mr. GRAHAM. The Florida retirement plan, prior to its modification, was in what would be called a defined benefit plan that gave security assurance to Florida's retirees as to what they would have in retirement, what they could count on, what they could sleep comfortably at night knowing was going to be available to them.

Mr. NELSON of Florida. That is exactly right. It was a defined benefit. Every retiree did not have to worry about the vicissitudes of the stock market and part of their retirement suddenly disappearing overnight.

Mr. GRAHAM. Is that not the same basic structure that we have had from the very beginning with Social Security, that it also provides the same level of security and peace of mind to its beneficiaries because it also is a defined-benefit program?

Mr. NELSON of Florida. It certainly is—the same system that has been in place in Florida for years, the system over which the senior Senator from Florida presided as Governor, and therefore the chairman of the State Board of Administration that oversaw the State retirement system, and when I had the pleasure years later, as the elected State treasurer, of being one of the three trustees of the State pension fund.

Mr. GRAHAM. Finally, does not the Senator think there are ample opportunities available for a person who wishes to take the risk and assume the chance that they may be buying into a stock market which is not always going up, they might be buying into a stock market such as in recent months it seems that goes down more than up, that they have plenty of opportunities with their savings, and if they have an individual retirement account or a 401(k) to take some risk, but with the core of

their retirement, Social Security and the basic retirement through their employer, that they would be well served to have the confidence and assurance of knowing what they are going to do and not be on the Wall Street roulette wheel as to what their retirement benefits will be?

Mr. NELSON of Florida. The Senator has said it very well, and Social Security is a social safety net. The retirees, the senior citizens of this country, should know that it is a defined benefit that is going to be there when they need it and it is not subject to the roulette wheel, as the Senator has suggested, in the case that the stock market is suddenly in a downward trend. So, too, the State retirement system of the State of Florida was a defined benefit in the past, when the two of us had the opportunity of being part of the governing body of the board of trustees, and it gave confidence because there was a defined benefit.

So there is an exact parallel between what we have seen in the State of Florida and what we want to talk about tonight, which is President Bush wanting to privatize a part of Social Security and transfer a trillion dollars out of the Social Security trust fund over to private individual accounts that the individual would then invest in the stock market. That sounded like a good idea to a lot of people when the stock market was going up, but now that the stock market is going down, it is beyond me that the President is still insisting, as recently as last week, that he have Social Security privatized.

That is what I wanted to talk about tonight, and I am so delighted I came to the Chamber before my colleague from Florida left so that he could engage in this colloquy and dialogue with me. I thank him for that.

Mr. GRAHAM. I thank the Senator.

Mr. NELSON of Florida. Madam President, I will summarize my remarks because Senator GRAHAM and I have pretty well covered it in the discussion we had, that one only has to look back a couple of years. The Nasdaq has fallen by 75 percent, and the broader S&P has dropped more than 40 percent, and given this market downturn, as we say in the South, it is beyond me, I am surprised that the Bush administration is sticking by its proposal to allow workers to divert some of their Social Security into private accounts of the stock market instead of there being a defined benefit that would give the Social Security retiree the security, the knowledge, the confidence that when their retirement years came, they knew they had a certain amount they could rely on, even though most retirees are going to have to supplement that Social Security benefit, but at least they would know that benefit was there and was not going to evaporate if, in fact, the Social Security privatized account was invested in stocks that had suddenly taken a turn going down.

That is the essence of what I wanted to share. I will be speaking frequently on this matter when we resume in September, because this issue has had scant attention—an article here, an article there, about how the Bush White House is so intent that it wants to privatize these accounts. Clearly, if the times had not been of the economic downturn and the suffering that so many people have had in the stock market, perhaps they would have been lulled into a false sense of security. But with the stock market doing what it has done—a reflection, by the way, of the corporate scandals that have come to light and therefore a lessening of the confidence of the investing public of America in those corporations—if that had not come, the governmental decision process might have been seduced into going for this privatized part of Social Security. Clearly, that is not, in my judgment, in the best interest of our senior citizens.

That is what I wanted to share tonight. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

## LEGISLATIVE ACTION

Mr. NICKLES. Mr. President, as we wrap up this summer session prior to the August break, I want to make a few comments. Several of my colleagues have discussed different issues.

First, let me state that I am very pleased that this Congress was successful in passing trade promotion authority and the Andean Trade Preferences Act. Both of those are vitally important and long overdue. The Andean Trade Preferences Act should have been passed by the end of last year. Unfortunately, the majority said it had to be packaged with trade promotion authority and with trade adjustment assistance. I have no objection to passing trade adjustment assistance; I think we should. We have always done it. I happen to agree with it.

Unfortunately, the majority—in this case the Democrats—said, in addition to trade adjustment assistance, we want to put in new entitlements and expand trade adjustment assistance not only for individuals who might directly lose their job to imports, they also said indirectly. That is an expansion. They also said we want to include agricultural workers. You might have every agricultural worker in America who says they lost a job, that it was due to imports because we are in an international market and prices go down. Now they want Federal assistance.

Then we also made a mistake because there was a new benefit added that said, in addition to trade adjustment assistance, in other words, being trained to pick up a new job, now the Federal Government is going to pick up 65 percent of the health care cost, an advanceable, refundable tax credit. We don't do that for somebody employed. We don't do that for a lot of people. But we will do it for somebody who says, I was unemployed because of trade. And they will be eligible to receive that for 2 years.

Then in conference, inexplicably, it was suddenly altered to qualify those now receiving benefits under the Pension Benefit Guarantee Corporation, if they are between ages 55 and 65, to receive the tax credit. That little amendment which didn't pass the Senate is going to cost over $2 billion.

So the entitlement portion of the trade adjustment assistance has more than doubled, and I am constantly amazed at the number of people who always say: Wait a minute. Spending is going up, we should not be spending here, but it is fine if we do it in entitlements. They insist we do it in entitlements. That is real money. And a lot of times entitlements are hard to roll back.

I wanted to express my displeasure with the almost frivolous way we have greatly expanded the Trade Adjustment Assistance Program and then held trade promotion authority hostage to get this kind of expansion.

That being said, the good of trade promotion authority and the Andean Trade Preferences Act outweighed the negative of the expansion of the entitlement. So I voted for it. I am pleased we were able to pass it. It is a very significant accomplishment.

Chairman Greenspan said we could do two things to advance the economy in this country, one of which was to show fiscal discipline—we have not done that—two, he said, to expand trade. By passing trade promotion authority, we have made it possible for this country to regain its leadership which we had lost. We lost it during the Clinton administration. Every previous President, going all the way back to Jerry Ford in 1974, had trade promotion authority. Bill Clinton had it in his first 2 years of office. He did not get it extended in 1996.

He was running for office. It expired in 1994. He didn't ask for an extension until after his reelection in 1996. At that time he couldn't get it through the House. The House was controlled by the Democrats. It was controlled by the Democrats when he was in power the first 2 years. He didn't get it extended then, and he couldn't get it extended later. In the Senate we had the votes to extend it. He wasn't able to get it.

Now this President, President Bush, is going to get it. I am glad. I think that will help expand trade and again regain our leadership role as it has been, as it should be, as really the promoter, the leader, the cheerleader, frankly, for international free trade. Ronald Reagan helped expand it in the

early 1980s, and that has certainly been a benefit to our economy and the economy of the free world.

A couple of other issues have been brought up. I want to touch on them.

I heard some of my colleagues say we need to pass a Patients' Bill of Rights, and maybe there will be an attempt to appoint conferees to conference on the Patients' Bill of Rights. I will probably be a conferee.

I have been involved in that issue for several years now. I look forward to working with our colleagues on both the House and the Senate sides to pass a good Patients' Bill of Rights package. But I do find it kind of curious that we passed the bill over a year ago. Let me repeat that. We passed Patients' Bill of Rights over a year ago. The House passed it a year ago tomorrow, on August 2 of last year. We are just now appointing conferees. This was the most important item on the agenda for the Democrats who regained control of the Senate last summer—the first major legislative item we passed. However the House passed it a year ago.

We could have appointed conferees a year ago. We are just now getting around to doing that. I find that kind of curious. I still want to pass a bill. I might be able to refresh my memory enough to see if we can't negotiate a positive package. Let me restate that I don't want to pass a package that will greatly increase health care costs for patients. Unfortunately, that is what passed the Senate 13 months ago—a bill that would increase health care costs, estimated by the CBO, by 4 or 5 percent. I think at one time they scored it at 4.7 percent. And this is an increase over and above the increases already coming in on health care inflation and insurance costs, and health care insurance costs are exploding.

The California health care plan, CalPERS, may be one of the largest plans in America. I remember reading the headline that their health care insurance costs are going up 25 percent. Small business insurance costs are going up 15 to 20 percent. Nationally, almost everybody's is going up 12 to 14 percent. This is going to add another 4, 5 percent on top of it.

I don't want to do that. I will work energetically to see that we don't pass a bill that would greatly increase health care costs. Also, I don't want to pass a bill that will increase the number of uninsured. If I remember the Senate bill accurately, the bill also had new causes of action where people could sue not only the big, bad HMO, but employers as well. Some of us wanted to protect employers. We know if you make them liable for health care costs, employers don't have to provide them, and a lot of employers won't provide health care costs. The net result will be more people joining the ranks of the uninsured.

We should do no harm. We should not pass any bill that will increase costs dramatically or increase the number of uninsured. I am afraid that will happen if we pass the Senate bill. I am happy to work with my colleagues on both sides of the aisle. If you are looking at what the major changes are—when I was chairman of the task force—and I was chairman of the conference committee for over a year, which dealt with this issue—we had internal appeals in the bill we passed in the Senate at one time; we had external appeals. So if somebody is denied coverage, they can get an immediate response and get it overturned if it was unfairly denied by a big, bad HMO bureaucrat. That decision can be final. We can make a penalty if somebody doesn't abide by the external appeal. We can make that binding, where it would be ridiculous, or expensive, for somebody not to comply with the appeal so they can get health care when they need it.

Some people don't want to have that be the final solution. They think the real solution should be in court. Oh, yes, they want unlimited damages, or damages that, frankly, are so high it would scare a lot of employers away. I don't want to do that—pass a bill that will increase the number of uninsured, or the cost of health care beyond the reach of countless businesses and individuals across the country.

I am happy to work with our colleagues. I don't know why it has taken us a year to appoint conferees. I find it almost ironic. I look forward to working with my friends on both sides of the aisle to do it.

Mr. President, next I want to touch on the issue of prescription drugs. Some of our colleagues who were proposing an amendment yesterday came to the floor tonight and were implying that colleagues who opposed that proposal were not truthful. I was reading the remarks and thought, wait a minute, is he talking about me? I opposed the proposal. And I think I was right. I remember hearing a colleague saying that you are entitled to your own opinion, but you are not entitled to your own facts. I use that, also. I thought, he is using that against me or my colleagues.

That bothers me. I would do anything before I would mislead my colleagues. If I ever mislead colleagues, I will be more than happy to come and apologize, correct the record, you name it. I want to win badly, but I never want to win so badly that I would distort the truth—ever. I think that was implied. I hope it wasn't. If it was, I believe it is in violation of rule XIX of the Senate. That should not happen.

Certainly, nobody should be misled. The issue at hand was on Medicaid costs. I am happy to talk about the facts of that. I did see a chart that was shown on the floor of the Senate. I saw a chart that showed that a lot of States would pay a lot more money in Medicaid costs. Where did that chart come from? Somebody said it is some anonymous chart, and I guess it didn't have any identification on it. It wasn't handed had out to every Senator. It was handed out to a lot. It was available in the Chamber. It came from the administration, from the Department of Health and Human Services, to try to get kind of an estimate on what the impact of the last Graham proposal offered because we are trying to figure it out. Senator GRAHAM read a comment that was made. I thought it was made by me, but it turned out to be made by Senator GRASSLEY. He implied that it was incorrect. I looked at that. I happen to know CHUCK GRASSLEY, and he would never misstate anything intentionally, and I don't think he misstated one word.

I am bothered that somebody would quote somebody in the Record—when he is not here to defend himself—and imply that he didn't tell the truth in order to win the debate. That bothers me. I love the Senate and I hate to see this kind of almost accusation.

Let's look at the facts. Senator GRAHAM's amendment was introduced yesterday. We never saw a copy of it until it was introduced. It was held overnight. I think it was brought to the floor at 2, 3 o'clock in the afternoon on Tuesday. We voted on it Wednesday morning. Granted, overnight, the Department of Health and Human Services looked at it and gave us some estimates.

I know in my State it would cost a lot. The Medicaid Director, Mike Fogerty, said Oklahoma would not be able to do it without cutting the program's financing. If there is any cost, the only way you can find the money is other places in the program.

We did find some serious problems with the Graham amendment. It said we are not going to just expand Medicare, we are going to have a low-income benefit, and do it through Medicaid. Medicaid happens to be, factually, a Federal-State program. The Federal Government pays a portion and the State pays a portion. In some States it is 50/50. In some States, it is 70/30. The Graham amendment said we are going to provide a brand new drug benefit with very small copays from the beneficiary—$2 and $5—and we are going to provide this benefit for anybody who makes less than 200 percent of poverty. Well, State Medicaid drug benefits for most States—31 States, maybe 30—I counted them yesterday, and I think I counted 31, but it may be plus or minus. This had to be done very quickly. It may not be 100 percent accurate because it was done quickly. Every State has to provide a prescription drug benefit for Medicaid up to 74 percent of poverty. They do that on the State match.

So, again, for this drug benefit, whatever benefit the State has—in my State, you get three prescriptions per month and the State pays its share—in my case, 30 percent—and the Federal Government pays 70 percent. That is up to 74 percent of poverty. The Graham amendment says let's make that 120 percent of poverty. In other words, we

greatly expanded the pool of eligible people because our State, right now, is only 74 percent. So we greatly expanded it to 120, and the State is still liable for its share.

Well, that is a big new unfunded mandate for which the State has to pay. That will cost millions and millions of dollars because there is no limit on the number of drugs. The State will have to make its match, depending on what the State match is. Between 120 and 150 percent, a State still has to pay.

There is an enhanced match. The State would get S–CHIP. S–CHIP usually has a reimbursement rate of 78 percent, I believe, on average. The State would still have to put in 22 percent. So you are expanding the eligible pool of people who are going to receive the benefit, and you are also expanding what the State has to pay. Those are facts. Those are in the Senator's bill.

Between 150 percent and 200 percent of poverty, the Federal Government would pay 100 percent. The Federal Government pays that, so I guess that is not an unfunded mandate. It is just a cost to the Federal Government.

Below 150 percent of poverty, between, frankly, 74 percent and 150 percent of poverty, there is a big new mandate on the Federal Government and on the State government. The State would have to pay its share, and that would cost——

Mr. GRAHAM. Mr. President, will the Senator yield for a series of questions?

(Mr. NELSON of Florida assumed the Chair.)

Mr. NICKLES. I will be happy to yield in just a moment. That is a great big cost. That has to be accounted for somehow. Someone might say: There might be savings because we have catastrophic on the other end. Right now, maybe the State is paying that—that may be—but that may not get there.

Mr. President, 80-some percent of the people do not have drug costs that exceed $2,000. Catastrophic did not kick in until $3,300. No doubt some people would benefit, but maybe the majority of the people would not. It looked to me as though it was a real loser for the States. I think OMB happens to agree. They estimate it would cost my State something like $62 million. I would not be a bit surprised if it cost more than that. Our State cannot afford that. We have a Medicaid Program that is already going bankrupt.

My point being—and I mention this with my friend from Florida here. I have respect for my colleagues, but always I think it is important we not impugn the integrity of Senators.

Mr. GRAHAM. Mr. President, I ask the Senator to yield.

Mr. NICKLES. I will be happy to yield for a question.

Mr. GRAHAM. I think my integrity was impugned when it was suggested yesterday that we had slipped into this amendment, hoping it would go undiscovered, a provision that would end up costing the States some $70 billion over the next 10 years. That is close to a verbatim statement.

That was made on the basis of this sheet which was printed and distributed on the Senate floor without a source and without anyone accepting personal responsibility. This is what I call Enron accounting. You only accounted for the additional cost to the States without any reference to the savings the States would get as a result of the Federal Government picking up substantial costs the States are currently incurring which the Congressional Budget Office has stated to be approximately equal to what the States would have to expend in terms of these new obligations. No reference was made——

Mr. NICKLES. Mr. President——

Mr. GRAHAM. No reference was made on this chart to the fact there were very substantial savings to the States in addition to the costs.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. NICKLES. Mr. President, I regain the floor. I looked at the chart. The chart does not have all States. Maybe some States were not impacted as much. Maybe they highlighted the States that have the most additional cost.

I mentioned my State. I know my State would be out of a lot of money. We offered a drug benefit that goes up to 74 percent of poverty, and we are going to put a new mandate between 74 and 150 percent of poverty. The State has to make that match. I know it is going to cost my State millions. HHS said it cost $68 million. They said the cost for the first year is over $5 billion. Maybe some States are pluses, maybe some are winners. Maybe they did not include all this.

I will say a couple words about the legislative process. I happen to be a believer in the legislative process, and I think my colleague from Florida knows that. We did not abide by the legislative process.

We did find his amendment greatly increases Medicaid costs for a lot of States. Yes, we exposed that. That happens to be factual. This was not just a Medicare expansion. It was a Medicaid expansion, and the States have to match Medicaid.

Did we find it? Yes. Did we find in the original Graham proposal that the proposal limited the prescription drugs to one, up to two, drugs for therapeutic class? We did. I think it probably is one of the reasons that proposal did not pass—because it is such a limitation.

Did we find it? Yes, it was in the language. Did we have a whole lot of time? No, we told people about it. I do not back off that a bit. I think we have a right to point out the weaknesses of arguments. As always, my colleague can point out this was not a complete chart. We did not have time to get a complete chart. I did not. Maybe there is a complete chart around, but the amendment was offered in the afternoon and we were voting on it in the morning.

One of the things that is really wrong is to try to legislate in a manner such as this. I believe in the legislative process. I believe in hearings. I would love to have a hearing on the proposals we voted on this week. I would love to have experts testify on the pluses, the strengths, the weaknesses, the gaps, the minuses on the various proposals. We have had some good proposals. We have had some that are not so good. I heard my colleague from Florida say that CBO by e-mail said this is a net wash for the States. HHS shows me that some States, or these States that are listed, would have a net loss of $5 billion in 1 year. This is a 10-year program.

Mr. GRAHAM. Will the Senator yield for a question?

Mr. NICKLES. The point I am making: It would be nice to go through the process, have a bipartisan markup, have hearings, have experts, and not be relying on e-mails that came from somebody in CBO.

Incidentally, I noticed in CBO's scoring of the proposal, it was scored and was estimated to be $394 billion, but there is an asterisk: Scoring done by estimates, not by the language of the bill. In other words, they did not have the language of the bill on which to do the scoring. This is the most important expensive expansion of an entitlement that we have dealt with in decades. It is the most expensive important expansion of any entitlement, and we are doing it with CBO not even having legislative language to look at.

I find that to be a pretty crummy way to legislate. I am offended by this process. I am offended by being a member of the Finance Committee and not even being able to offer an amendment in the markup of the bill. I am offended by the fact—I looked at the history of the Finance Committee, which is one of the great committees of the Senate. I waited 16 years to get on that committee. It took a long time. It is a great committee. I thought it would be worth the wait because we would be marking up very substantive legislation, such as Social Security, Medicare, Medicaid, welfare reform, and taxes. Yet the committee is bypassed, so we have 20 members of the committee who did not get a chance to offer an amendment.

We have an amendment that was created somewhere and scored overnight not by legislative language. No one gave us a chart and said here is the impact of your State. I would love to see the impact to my State. My State Medicaid director says this is going to be a real problem; we cannot do it.

We exposed that a lot of States would have a problem doing that. There is no reason to apologize for doing that. I just want to make sure that Senate debate never improperly impugns the integrity—I believe my colleague who was quoted was Senator GRASSLEY—I do not ever want anybody's integrity

to be impugned on either side of the aisle. That is below the Senate, and there happen to be Senate rules against it. I wanted to make that point.

I will just assume and take for granted no one meant to do that. But we have to be very careful not to do that. We have to be careful that we are factual. Sometimes maybe in the heat of the debate things get going.

I want to move on to one other subject.

Mr. GRAHAM. Mr. President, before the Senator does that, will he yield since we are on this subject?

Mr. NICKLES. I yield just for a question.

Mr. GRAHAM. Does this chart in any of the columns contain the offset savings which the States would have secured as a result of the passage of the underlying Graham-Smith amendment?

Mr. NICKLES. The chart does not show any offsetting. It shows a total cost increase of the new Medicaid mandate. I think the Senator is trying to imply there may be some savings for some areas if a State had a lot of catastrophic and the Federal Government were going to pick up 100 percent of that cost, I guess. That may be correct, but it does not have a column that shows that. Maybe if we would have had a little more time—the answer is no.

I ask my colleague, though, since CBO did some work for the Senator, did they do a State-by-State analysis on what the impact of the State of Oklahoma would be?

Mr. GRAHAM. They did not do a State-by-State analysis. I do not know who did the analysis of the State-by-State costs presented by my Republican colleagues so I cannot have any means of even determining who to go to talk to about where these numbers came from. But the answer to the question, which is relevant, is there are very substantial savings to the States. In fact, according to the Congressional Budget Office, the savings to the States as a result of the passage of this prescription drug amendment would be equal to——

Mr. NICKLES. I have the floor.

Mr. GRAHAM. These additional costs.

Mr. NICKLES. The Senator can answer the question. I have the floor and I will state again, some States lose under the Senator's proposal big time. I am not sure all States do; some States lose big time.

The Senator stated that he did not have a State-by-State analysis, so every fact that is on this chart may well be accurate. The Senator also stated that CBO did not do a State-by-State analysis, and I will say if we are going to be changing Medicaid formulas, or if we are going to be changing Medicaid programs and States have to make a certain percentage match, it is only prudent that we would do an analysis of what the impact would be on a State-by-State basis.

Unfortunately, CBO did not do that. Fortunately, the Department of HHS did. The States that are included on this list are the States that get hit the hardest, and we expose that.

Now, there may be some offsets, but I tell my colleague from Florida, I can almost assure him, since 80 percent of seniors have prescription drug costs that are $2,000 or less, that catastrophic program savings would not come near to offset the increased costs of utilization. And the fact that they have to make matches up to 50 percent, almost to 100 percent, for the program, minus a small deductible for people under 200 percent of poverty, it would not come too close to make it. It would not come close in the State of Nebraska or the State of Oklahoma. I know that. There are not near that many people who would have the savings through the State.

In our State program, the individual who gets three prescriptions per month is not going to come close to $3,000. That program is not that generous in my State so the savings on the catastrophic side would not come close to making the savings or the increased costs that is on the low-income side.

Mr. GRAHAM. Could I ask the Senator another question?

Mr. NICKLES. Yes.

Mr. GRAHAM. What leads the Senator to believe that the only way in which the States would secure savings under the Graham-Smith amendment would have been through the catastrophic savings?

Mr. NICKLES. Well, I will tell my colleague, all we had from CBO on the Senator's amendment was one page that said, one, it never went State by State and, two, it said $394 billion and it said it was not based on legislative language. We had nothing to score off of from what was provided for by CBO or by the Senator, except for the Senator's word that he had an e-mail that said the States net out about even.

I did have work that was done by HHS, and it may not have included every extrapolation, but they did compute the cost of the low-income benefit and how much that would cost the States to make the match, and it is in the billions of dollars, to the tune of $5 billion for some States. Maybe some States would come out better. I am not sure. But that is my point. This is not the way to legislate.

This is legislating as if we are going to legislate on the back of an envelope. It is almost as if Senator DASCHLE said, do not go to committee, do not have a markup, here is $400 billion, $500 billion, $600 billion, or $800 billion and can we not cobble together 60 votes?

That is a crummy way to legislate. We could have passed a prescription drug bill if we had done two things. If we would have passed a budget, this Senate—the House passed a budget. Incidentally, the House passed a budget with a prescription drug amount of $350 billion. The Senate passed a budget a year ago, I might mention when Republicans were in control of the Senate, and it was a $300 billion total Medicare change. It could be prescription drugs or it could be for something else.

That is what we are relying on in the Senate today. Why? That is a year old. Because the Senate Democrats, or the leadership of the Senate, did not pull up a budget. We do not have a budget. We did not pass a budget, first time since 1974, and because we did not, a budget point of order lay against anything that was over $300 billion.

If we had passed a budget, gone to conference with the House and resolved whatever amount that would be—and let's presume the House would prevail—then the committees would have been instructed to pass a bill, if the House prevailed, up to $350 billion. It could be passed if it went through the Finance Committee. Any bill could be reported out that would be up to $350 billion, and it could pass with a majority vote. No budget point of order would lay against it. We could have passed a prescription drug benefit this week. Unfortunately, that did not happen.

So the committee did not mark up any proposal that came out that was over $300 billion. Last year's level had a budget point of order, had to have 60 votes, had to have a supermajority. The real fault of that came because we did not pass a budget earlier.

Again, I love the Finance Committee but I hate the way the Finance Committee has been trampled on. I hate the fact that the Finance Committee is being ignored, the fact they did not mark up the bill, the fact I did not have a chance to offer one amendment, the fact I did not get to have the chance to ask the Medicaid director: How does this impact you? Is this a good proposal? Do you mind if we put on this new requirement, oh, yes, below 150 percent of poverty? Here is this brand new benefit. It is going to cost you a ton of money. How much does it cost? Can you afford it? Could you pay for it? I am afraid the answer would be, no, no, no, no.

We did not have a chance. Instead, we had to try to write the bill on the floor, and in this case we had to take up this amendment and we had less than 24 hours to deal with it.

Again, my purpose in expanding this is not to redebate the amendment. My purpose is to defend my colleague, Senator GRASSLEY, whose integrity I value more than anything. I would not—and I know he would not—misstate a fact to win a debate for anything.

I came to the Senate with Senator GRASSLEY in 1980. That was 22 years ago. We have cast thousands of votes together. I know him very well. I agree with him most of the time—not all the time—but I would defend his integrity every day of the year.

I am going to start making points of order, rule XIX, if people imply or impugn the integrity of another Member. I am going to do it, and those words will be stricken from the RECORD and

the Senator will not be allowed to get access to the floor for the rest of the day; and maybe other penalties. We have not done that, but maybe we need to do it. So that is my purpose for coming to the floor.

I want to make a couple of other comments.

Mr. GRAHAM. Will the Senator yield for another question?

Mr. NICKLES. I am not going to yield. I am going to make one other comment on a different subject.

## JUDICIAL NOMINATIONS

Mr. NICKELS. Mr. President, earlier today we confirmed a total of eight judges. A lot of people said, boy, didn't we do great? We have done more in the last 12 months than anybody has done in the last 12 months.

I thank Senator DASCHLE, Senator LEAHY, and others because we did confirm a few more circuit court judges, but let me state my disappointment in the fact that we have not done near enough. I want to put out facts. We have now confirmed 13 circuit court judges. President Bush submitted 32. We are in the second year of his Presidency. We are not quite finished, but we have confirmed 40 percent of his circuit court nominees. I looked at the first 2 years of the Clinton administration, and this Senate confirmed 19 of 22. That is 86 percent. I looked at the first 2 years of the first President Bush, the 101st Congress, and we confirmed 22 of 23 circuit court judges. That is 95 percent.

I looked at the first 2 years of President Reagan, 97th Congress, we confirmed 19 of 20 of his circuit court nominees. That is 95 percent.

So for the three previous Presidents we confirmed over 90 percent of their circuit court nominees in their first 2 years.

This Congress—and granted, the first several months, the first 6 or 7 months of this Congress was controlled by Republicans and we did not confirm any judges because the President was just sending his nominees through and they did not have time, and that is not unusual. We usually do not confirm very many in the first 6 months of any administration.

So far this year, we have done 13 out of 32; that is 40 percent. That is less than half the percentage of what we did in three previous Presidencies. Those are just facts. I heard someone said we confirmed 72 judges. Great, 72 is a lot more than we confirmed in the last 2 years of the Clinton administration. Granted, we usually don't confirm very many in the last year of a President's terms, but in the first 2 years we usually do, and we are way behind.

Some of the individuals were nominated 449 days ago—over a year ago. They were nominated last May—a year ago May. Some of these are the most outstanding nominees I have ever seen. John Roberts, nominated for the DC Circuit, has argued 37 cases before the U.S. Supreme Court. Is this individual qualified? He was nominated a year ago in May, and he has yet to have a hearing. He has argued 37 cases before the Supreme Court. How do you get more qualified? Miguel Estrada argued 15 cases before the Supreme Court and was unanimously rated well qualified by the ABA. He emigrated to the United States as a teenager from Honduras and spoke virtually no English. He graduated magna cum laude from Harvard Law School, editor of the Harvard Law Review, law clerk to Justice Kennedy, a former assistant solicitor general and assistant U.S. attorney. He has not received a hearing.

I guess you can say, we have confirmed 72 this year, how is it fair to have 2 individuals such as John Roberts and Miguel Estrada not even have a hearing, having been nominated over a year ago? Senator LEAHY made a commitment we would do Miguel Estrada. I am waiting.

Priscilla Owen: We had a hearing in July of this year but no vote. The Republicans asked that be postponed because we are not sure where the votes are. Texas Supreme Court justice since 1994; unanimously rated well qualified by ABA; Baylor Law School graduate; member, Baylor law review; highest scorer on the Texas bar exam; eminently qualified.

Maybe some people are now putting a litmus test in the committee. We did not used to do that. People used to rail against having a litmus test, and now people are trying to come up with a litmus test. If she is not confirmed, that is a travesty.

Terrence Boyle was nominated in May, a year ago chief judge of the U.S. District Court, District of North Carolina, since 1997; unanimously rated well qualified. He worked as counsel in the House Subcommittee on Housing; was a legislative assistant in the Senate; prior district judge, 1984 to 1987; very well qualified and still no hearing and certainly has not had a vote.

Michael McConnell, nominated to the Tenth Circuit; presidential professor of law, University of Utah; unanimously rated well qualified by ABA; one of the country's leading constitutional law experts; argued 11 cases before the U.S. Supreme Court; prior assistant solicitor general; law clerk for Justice Brennan and cannot even get a hearing.

Deborah Cook, nominated to the Sixth District; justice to the Supreme Court of Ohio since 1994; unanimously rated well qualified by ABA. The Sixth Circuit is almost half vacant, with 7 out of 16 seats empty in the Sixth Circuit; exceptionally well qualified and no hearing.

Jeffrey Sutton, nominated to the Sixth Circuit as well; rated well qualified by ABA and qualified by ABA; graduated first in his class, Ohio University College of Law; law clerk to Supreme Court Justices Powell and Scalia, and argued 9 cases and over 50 merits and amicus briefs before the Supreme Court; and prior State Solicitor of the State of Ohio. He has yet to have a hearing in the Judiciary Committee.

Dennis Shedd, nominated to the Fourth Circuit; a judge in the U.S. District Court of South Carolina since 1991; rated well qualified by ABA; 20 years of private practice and public service prior to becoming a district judge; law degree from the University of South Carolina; master of law degree from Georgetown. He received a hearing on June 27—still not reported out of committee.

I thank my colleagues for the fact we have confirmed 72 judges, but I mentioned 8 nominees who were nominated in May of last year; a couple have had a hearing, and the rest have not had hearings and have not been voted on in committee, and we have not had a chance to have a vote on the floor. A year and a half, how much is enough? This is an outrage. I don't think this should be done, Democrat or Republican.

I plan on being back in the majority, and I tell my friends and colleagues on the other side of the aisle, I plan on treating judicial nominees fairly. Regardless of who is in the White House, we should treat them fairly. If there is a judge really out of the mainstream, let's debate it. But to hold up these individuals who have argued 30, and 15, and 9, and 10 cases before the Supreme Court and we do not even give them a hearing in committee, that is not fair. That is an injustice. That is an abuse of power.

Maybe we are confirming district judges, and that is great, and district judges have sponsors of Senators. These are appellate court judges, circuit court judges, next to the highest court in the land, next to the Supreme Court, and they cannot get a hearing. I don't think that is right. I don't think it is fair. I am not saying there have not been injustices before by Republicans. Enough of this nonsense: You did not treat us right, we are not going to treat you right.

Again, the tradition of the Senate: We do not usually confirm a lot of nominees in a President's last year or so. We certainly do his first year or so, as evidenced by the fact—and I will put this in the Record—that 95 and 96 percent of the three previous Presidents' circuit court nominees were confirmed in the first 2 years—almost all of them—and this year we are at 40 percent on circuit court nominees.

That is totally unsatisfactory. That is not fair to those individuals. It is not fair to the judicial system. It is certainly not fair to the Sixth Circuit Court, which is almost half vacant.

I tell my colleagues, we have made some progress, and my compliments. But we have a lot more to do, especially on circuit court nominees and on individuals such as John Roberts and Miguel Estrada. Let's lower the rhetoric and get some people confirmed. Let's treat them like individuals, with dignity. They have been nominated to

the highest courts in the land. They have been nominated for lifetime appointments. Let's do our work. The Senate traditionally, over the years, would move judicial nominees expeditiously. And they are getting more difficult.

Now people are saying: We want to review every case that the judge has ever written; we want to review every case on which he made a recommendation. That is ridiculous. It is an excuse for delay. That is not right. It is not for the majority or the minority. I urge my colleagues to be fair to the nominees and get as many confirmed and move the Senate along as we should and restore the Senate through the great traditions that the Senate has long held so we can be worthy of the title of Senator, and not have a reputation of: I am sorry, judge, we are sorry about your political career or, Mr. Attorney, you were nominated by the President of the United States, but we are sorry you have waited a year and a half and you cannot get a hearing before the Senate; they are too busy. That embarrasses me.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. I ask unanimous consent the order for the quorum call be rescinded.

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

## HEALTH CARE

Mr. GRAHAM. Mr. President, this is the last day of a long legislative season. We are about to take the month of August to go back to our home States, be with our constituents, and maybe have a little opportunity to get some personal relaxation and rejuvenation, and come back after Labor Day and complete this 107th session of Congress.

It is exactly this time in the legislative calendar where maybe tempers and tolerance are beginning to wear thin and short.

I share with my friend from Oklahoma high feelings for the persons who debated vigorously over the last 2 weeks on an issue whose importance we all understand and feel deeply about, which is the issue of providing a health care program to 40 million senior Americans by adding to that 37-year-old program, at long last, a prescription drug benefit. I think the goal is one we all share. We have somewhat different ideas as to how to get to that goal.

The reason I came to the floor earlier today was out of, yes, a sense of personal attack but also a sense of the need to set a very obvious erroneous record somewhat straighter. My concern was piqued by a statement that was made which implied that I, Senator SMITH, and others, tried to slip something by the Senate. And that ''something'' was not a small amount, but a very substantial, maybe as much as a $70 billion additional cost on the States according to my Republican colleagues.

I knew that was not accurate because I had received from the Congressional Budget Office, which had scored our legislation, the fact that they had determined that, in fact, there was no additional cost to the States and I had made that representation to my colleagues. I felt my personal credibility was at stake. So I went back to the Congressional Budget Office today to recheck what they had said and they reaffirmed the statement that there was no additional cost to the States.

I showed them this—

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. Let me just finish, get the facts out, and then we will talk about the policy.

So I showed them this chart. They pointed out what was obvious which was that this chart only shows half, in fact less than half of the equation. It shows the additional costs to the States that will come incident to their picking up some of the prescription drug costs. What it does not show is that the States are going to be relieved of a substantial amount of their current costs.

The Senator from Oklahoma mentioned one of these costs. But, in addition to that, there are other costs from which the States will receive relief. For example, there are 31 States that provide State pharmacy assistance for low-income senior citizens, the States which have received Medicaid waivers in order to allow them to cover additional groups of seniors. As the Federal Government has dawdled on the subject of providing prescription drugs for senior Americans, many States have stepped forward and have done so.

So within the Medicaid Program as well as in areas where the States have tried to fill the void that the Federal Government has left behind, there are substantial savings to the States—thus the report of the Congressional Budget Office that there is no increased cost to the States. But there is no column or figures on this chart which reflect the fact that there are these offsetting savings to the States.

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. What got Enron in trouble was it set up a whole constellation of off-budget partnerships in order to hide their expenses.

Mr. NICKLES. Will the Senator yield for a question?

Mr. GRAHAM. And therefore it overstated their profitability.

We have a chart here which does the opposite. We have a chart here which hides the benefits the States are going to get and only highlights those additional costs.

Mr. NICKLES. Will the Senator yield for a question?

Mr. GRAHAM. I am almost there.

Therefore, presenting the impression that the passage of this amendment would result in substantial additional cost to the States—touted to be $70 billion—is a patently untrue statement.

I wanted to set the record straight before we went home so none of our colleagues spend August worrying that they might have been deceived into believing there was going to be a very major additional cost to the States and that might have influenced their vote on this matter.

So my only purpose was to make those corrective comments and express my hope that in the future we would follow the spirit and custom of the Senate, which is when you distribute a document such as this, you put your name on it so someone is held accountable. And I suggest it would also be helpful if we adopted the custom that there be some source given for documents such as this, so those who are interested in pursuing the basis upon which the calculation was made would at least know whose telephone number to call.

Mr. NICKLES. Will the Senator yield?

Mr. GRAHAM. I would be pleased to yield.

Mr. NICKLES. I am wondering about all these savings. I am looking at my State. You said if the State had a prescription drug program, the Federal Government might be picking up a lot of that State program so therefore it is saving. My State doesn't have that, other than the fact we provide Medicaid prescription drugs up to 74 percent, and that is limited to three prescriptions per month.

So where is the savings for my State? HHS said this is going to cost my State something like $62 million. My director of Medicaid said it is going to cost our State, and we can't afford it.

There, obviously, under your proposal are some States, maybe a lot of States, that would be losers; isn't that correct? It would increase their Medicaid costs dramatically?

Mr. GRAHAM. What CBO has said is that for the States as a collective, that there would be no additional cost as a result of this. I have asked CBO to prepare a State-by-State analysis of what those offsetting savings would be. I do not have those numbers today.

Mr. NICKLES. Isn't it likely that some States would be losers?

Mr. GRAHAM. But I think it is a given that no State is going to have zero savings. So that every one of these State-by-State numbers is overstated.

Mr. NICKLES. I don't know. I will just state to my friend that these are additional new costs. There may be some offsets. I mentioned one possibility. You mentioned: Well, if they have the State drug program, that might be a savings. I didn't have that program.

The only offsets I could see is if the Federal Government is taking over some of the catastrophic, and I don't see that hardly ever happening. So I

think these are pretty accurate costs. I will be very interested maybe CBO will have a chance to do it. Maybe if we would legislate correctly and not just have a new proposal on the floor, we would have a chance for CBO to score it, not through e-mails saying that we think it is no new net cost but have them give a State-by-State. Then we could be more thorough in our analysis and in our description. And if someone highlights a couple of columns and leaves out a couple of columns, that can be brought out in the debate.

Unfortunately, we did not have that time afforded to us the way this bill was brought to the floor and the way we were considering serious alternatives.

I appreciate my colleague saying, wait a minute, maybe this is not complete. There should have been a column that shows some offsets. But I am absolutely certain that some States would lose millions upon millions of dollars, maybe in the hundreds of millions of dollars. And some States would be real net losers.

There might be some that have some better reimbursement from the Federal Government. In fact, it may be for some of the States that are wealthier, that have more generous programs, we are going to pick up the cost of their doing the program which was a previous State program. Maybe that is an offset.

But I hope, and I think my colleague would agree—or wouldn't you agree—that we should have a more thorough cost analysis by the relevant agencies, whether it is OMB, Labor-HHS, or CBO, when we discuss programs of this significance and the significant impact it would have on our States?

Mr. GRAHAM. I completely agree. I think we should have an analysis that includes both the debit and the credit side of the accounting ledger so we will be able to make an informed judgment as to what the real economic consequences of our decisions will be.

Mr. NICKLES. I thank my colleague.

Mr. GRAHAM. I think on that note of common agreement I wish to thank my friend from Oklahoma for having allowed me to ask him a few questions earlier. I hope he has a very good August recess, and I look forward to seeing him back here on the day after Labor Day, refreshed and ready to complete this session of the Congress.

Mr. NICKLES. I thank my colleague.

## MOTOR VEHICLE FRANCHISE CONTRACT ARBITRATION FAIRNESS ACT

Mr. REID. Mr. President, we leave for the August recess having accomplished a lot. When we return in September however, we really have our work cut out for us. It is not simply the annual appropriations bills and completed conference reports we must take up and pass. One measure of particular interest to the Senator from Nevada is S. 1140, the Motor Vehicle Franchise Contract Arbitration Fairness Act. The Judiciary Committee approved this bill back in October 2001. It enjoys 64 bipartisan cosponsors and both the majority and minority leader have indicated their desire to consider this legislation. I am hopeful that any concerns over its merits can be resolved over the August recess so that we can move it expeditiously upon our return.

## CONSTITUTIONAL AMENDMENT TO PROTECT THE PLEDGE OF ALLEGIANCE AND THE NATIONAL MOTTO

Mr. LOTT. Mr. President, on June 27, the Senate voted 99 to 0 to pass S. 2690 to reaffirm the reference to ''One Nation under God'' in the Pledge of Allegiance and the National Motto ''In God We Trust.'' Today, to be absolutely sure that the Nation's courts abide by the original intent of our Founding Fathers, I am proposing an amendment to the Constitution of the Untied States that would make it clear that the establishment clause in the first amendment was never meant to be construed in a manner that would prevent schools from leading our children in reciting the Pledge of Allegiance simply because it contains the words ''under God.''

The Senate and the House of Representatives—and the vast majority of the American people—have all expressed their outrage at the decision by the Ninth Circuit Court of Appeals on June 26 that reciting the Pledge of Allegiance in school is unconstitutional because it includes the phrase ''under God.'' People are still understandably stunned and find it not only unbelievable, but indefensible.

The fact that two Federal circuit judges were capable of making such an absurd decision points up, once again, how vitally important these Federal judicial appointments are in guiding not only the Nation's present, but its future as well. Judges are important at every level, but particularly at the appellate court—the circuit court—level.

And this may not be the end of such shocking decisions. There have been reports that similar court challenges will be made to the use of the National Motto ''In God We Trust'' on our currency and to references to God in our official oaths of office. It is simply incomprehensible that so many Federal judges are so quick to find that the Constitution protects the right of child pornographers to debase society while at the same time requiring the removal of every last vestige of God from the public forum.

It is easy for us all to say the Pledge of Allegiance with gusto and mean it, but we need to look behind this latest decision—and examine how and why it came about. And America's voters need to understand that these Federal judgeships, and who fills them, do make a difference in the kind of society that not only will we live in, but our children's children will live in as well.

## TRIBUTE TO CHARLES KOTHE

Mr. NICKLES. Mr. President, on June 19, the people of Oklahoma, and many others around the world lost a great servant and friend with the passing of Charles Kothe. He was 89. Charles Kothe, a long time Tulsa resident and nationally recognized attorney who specialized in labor law, was born October 12, 1912. Kothe received his B.A. degree from the University of Tulsa in 1934 and his J.D. degree, with honors, from the University of Oklahoma in 1938. In his Tulsa based law practice he served as labor relations counsel to companies in various industries throughout the country.

During his six year tenure as Vice President of Industrial Relations at the National Manufacturers Association he authored two books on labor relations and conducted seminars on Title VII of the Civil Rights Act. He was personally commended for this activity by President Lyndon Johnson, and later served as an advisor to Secretaries of Labor Mitchell, Goldberg, and Wirtz. In 1990, he was appointed by the White House to serve as a member of the Federal Service Impasses Panel.

In business, he was an Officer and Director of several corporations, including T.D. Williamson, Inc.; Coburn Optical Co.; and Macnick. Known as a compelling speaker, he appeared as the keynote speaker at conventions and conferences across the Nation. He was named Tulsa Citizen of the Year in 1946, was named as a Distinguished Alumnus of the University of Tulsa, and is listed in the United States Junior Chamber of Commerce Hall of Fame.

He taught labor law at the University of Tulsa and was Dean of the Oklahoma School of Business Accountancy and Law. He also served as Director of Civil Rights and Human Resources in the Graduate School of Business at Oral Roberts University and was the founding Dean of the O.W. Coburn School of Law. For more than 25 years, he taught the Christian Fellowship Class at First Presbyterian Church and later actively served at Boston Avenue Methodist Church. He was very involved with the National Prayer Breakfast here in Washington.

Beyond his credentials and recognitions, Charles Kothe displayed a profound commitment to a cause much greater than himself. This commitment is evident in the life of Janet, his wife of 65 years and in their 4 children and 7 grandchildren. It is evident in the lives of the students that he trained in the rigors of law, many of whom would have not had the opportunity to study but for his encouragement and support. It is evident in his numerous efforts to use the law as a tool for healing in the midst of conflict rather than solely as a means for retribution. You see, Charles Kothe believed that his purpose was rooted in the greatest commitment of Jesus: to love God with all his heart and soul, mind, and strength, and to love his neighbor as himself.

This ability to love and share God's love with others was his greatest gift, his greatest accomplishment, and his greatest legacy.

Many of his former students have spoken of his encouraging example, quick wit, unmatched humor, and how his influence is still felt in their lives today. Countless individuals were transformed by their relationship with Charles Kothe. Through these lives and because of Charles Kothe's influence on these lives, God will effect positive change in our world for generations to come. He will be greatly missed.

Let me conclude by stating that Charles Kothe's tenacious energy, tremendous intellect, and inspiring enthusiasm has undoubtedly influenced countless numbers across our great land. This scholar, this patriot, this man of God, this friend committed himself to our Republic as a prudent, optimistic, and faithful son. May his spirit live on.

## AMERICAN SERVICEMEMBERS' PROTECTION ACT

Mr. LEAHY. Mr. President, I read with interest the statement that Representative HYDE made on July 23, 2002 about the American Servicemembers' Protection Act (ASPA) during House consideration of the conference report on H.R. 4775, the fiscal year 2002 Supplemental Appropriations bill for Further Recovery From and Response to Terrorist Attacks on the United States.

Although neither Mr. HYDE nor his staff were present during the negotiations on ASPA, he suggests that the House readily accepted section 2015, also known as the ''Dodd-Warner amendment'', which was unanimously included in the Senate-passed version of ASPA. I do not think it is necessary to engage in an exhaustive discussion of the legislative history of the Dodd-Warner amendment because it is clear on its face. And, the first rule of legislative interpretation is that one looks to the history only if a provision is ambiguous.

To the extent that the legislative history is relevant, I believe that I can comment on this issue, as I was involved with the drafting of the amendment and was an original co-sponsor. Moreover, I was involved in negotiations over section 2015 during the conference on the Supplemental, and my staff was actively engaged in discussion on this issue throughout.

Contrary to Mr. HYDE's suggestion that the House receded on section 2015 because it is ineffectual, the House understood that the effect of the Dodd-Warner amendment is to qualify provisions of ASPA, including sections 2004, 2006, and 2011, in cases involving foreign nationals. It was for that reason that the House conferees repeatedly and vigorously sought to remove all or part of it from the conference report.

Those present at the negotiations know that the House agreed to accept the Dodd-Warner amendment only when the Senate agreed to drop its provision related to the United Nations Population Fund (UNFPA), which House supporters of ASPA strongly opposed.

Mr. HYDE also asserts that section 2015 ''simply reiterates that this legislation does not apply to international efforts besides the International Criminal Court to bring to justice foreign national accused of genocide, war crimes, or crimes against humanity.'' As a former prosecutor and Chairman of the Senate Judiciary Committee, I appreciate the creativity of Mr. HYDE'S argument. But he is trying to put a square peg into a round hole, and one would have to rewrite the provision to support his interpretation. The flaws in this interpretation are self-evident, if one simply reads the text of section 2015:

> Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

The language of this section is clear, and it is noteworthy that any iteration of the phrase ''besides the International Criminal Court'' does not appear anywhere in the text.

In fact, when Senator Dodd and I were drafting this amendment, I specifically added the phrase ''and other foreign nationals accused of genocide, war crimes or crimes against humanity'' to ensure that this section would apply to the International Criminal Court (ICC). The ICC currently has jurisdiction over these three crimes.

As I mentioned earlier, the importance of this phrase was not lost on the House, and opponents of the Dodd-Warner amendment tried repeatedly to nullify or remove it. It was even reported to me that, at the eleventh hour, House staff members sought, unsuccessfully, to insert the word ''other'' before the phrase ''international efforts to bring to justice . . .'', in an attempt to prevent the Dodd-Warner amendment from applying to the ICC and heavily qualifying portions of ASPA.

Another important phrase in section 2015 is: ''Nothing in this title shall prohibit . . .'', which makes unequivocally clear that no provision in ASPA prevents the U.S. from cooperating with the ICC in cases involving foreign nations.

No one disputes the fact that Congress has serious concerns about Americans coming before the ICC, which is the reason that ASPA was passed. During consideration of ASPA, Senator WARNER made that point clear:

> This amendment would protect U.S. military personnel and other elected and appointed officials of the U.S. government against potential criminal prosecution by an international tribunal court to which the United States is not a party.

However, through the Dodd-Warner amendment, Congress sets a different standard with respect to non-Americans. Congress wanted to be clear that the U.S. can cooperate with international efforts, including those by the ICC, to bring foreign nationals to justice for genocide, war crimes, and crimes against humanity, as Senator DODD pointed out during the Senate debate:

> My amendment merely says that despite whatever else we have said, when it comes to prosecuting these people, we would participate and help, even though we are not a signatory or participant in the International Criminal Court.

This is precisely why the Senate unanimously accepted the Dodd amendment and why the lead sponsor of ASPA, Senator WARNER, joined as co-sponsor of the amendment.

I see that Chairman BYRD is here on the floor and I would ask if he agrees with my recollection of events that transpired during the conference negotiations on the Supplemental and my interpretation of the Dodd-Warner amendment.

Mr. BYRD. I agree with what Senator LEAHY has said about section 2015 of the Supplemental Appropriations bill. The House strongly resisted efforts to incorporate the Dodd-Warner amendment in the bill, and receded only in exchange for the Senate agreeing to drop a provision on UNFPA.

Mr. LEAHY. I thank the Chairman. I want to take this opportunity to say a few words about the importance of section 2015. A primary reason for the creation of the ICC is to remove the uncertainty and protracted negotiations surrounding the establishment of ad hoc tribunals to try those accused of genocide, war crimes, and crimes against humanity. In the future, the ICC may be the only venue for bringing to justice those accused of these heinous crimes.

The Dodd-Warner amendment simply ensures that the United States can assist the ICC, or other international efforts, to try foreign nationals accused of war crimes, genocide, and crimes against humanity. It is not difficult to think of a number of instances when it would be in the interest of the United States to support such efforts. For example:

What if 50 Americans, traveling overseas, are brutally killed by a suicide bomber and the ICC attempts to bring to justice the perpetrators of this horrendous act?

What if a group of terrorists commits war crimes against U.S. military personnel who are posted abroad and the ICC is involved with efforts to bring them to justice?

What if the ICC prosecutes some future Saddam Hussein, Slobodan Milosovic, or Osama bin Laden who is responsible for the deaths of thousands of people?

Would we want the President of the United States to be hamstrung by ASPA in these, or a number of other cases, and prevented from actively supporting efforts by the ICC to bring

these types of notorious criminals to justice? Of course not.

Finally, I want to point out that Mr. HYDE also goes to great lengths to provide an interpretation of sections 2004, 2006, and 2011. Although I was not involved with the negotiations on ASPA with the Administration, I must say that the State Department's efforts with the House on this issue were miserable, and I know this is not typical of the way the Department represents U.S. interests abroad.

The explanation that the State Department offers for supporting ASPA is that it did so in exchange for releasing the U.N. dues. This does not withstand the most basic scrutiny.

In the wake of the September 11 attacks, there was overwhelming support in Congress to assist with efforts to prevent and respond to international terrorism. After September 11, without any quid-pro-quo, the Senate voted to confirm Ambassador John Negroponte to the position of U.S. representative to the United Nations. I am confident that the State Department, with a little ingenuity, could have persuaded the Republican majority in the House to meet our obligations to the United Nations—something that is clearly in our national security interests—without having to agree to support ASPA.

In any event, I take issue with Mr. HYDE'S interpretation of sections 2004, 2006, and 2011, even though they are heavily qualified by the Dodd-Warner amendment. Again, one should look to legislative history only if the text of the provision is unclear, and in this case the text of ASPA is clear and does not support his reading. For example, there is nothing in the waiver language concerning the President's executive authority or authority as Commander-in-Chief that limits the waiver to a subset of this authority. Moreover, ASPA clearly states that the waiver applies to ''any action or actions . . .'' not to ''some'' actions.

For Mr. HYDE's interpretation to be correct it would be necessary to add language to the provision such as: ''if it would be unconstitutional for Congress to restrict the exercise of this authority.'' Moreover, ASPA states that it applies to ''any action'' taken by the President as Commander-in-Chief or exercising ''the executive power'' of the Presidency. If the President has the constitutional authority to take an action, this provision permits him to do so, notwithstanding any other language in the bill. It is not relevant whether Congress could have prohibited such actions.

Further, no matter what was said between those who negotiated ASPA, Mr. HYDE's interpretation of the provision was not necessarily in the minds of the majority of Members voting on ASPA because it simply was not mentioned during the House or Senate debates. These waiver provisions complement section 2015 which is highly relevant in interpreting them, as Senator WARNER alluded to during the Senate debate. Congress decided that it did not want to tie the President's hands if he determined that it makes sense for the United States to cooperate with any international body, including the ICC, in prosecuting foreign nationals accused of genocide, war crimes, and crimes against humanity.

I want to thank Senators DODD and WARNER for their efforts to ensure that ASPA does not include overly-burdensome restrictions on the President that prevent the U.S. from cooperating with the ICC. I also want to thank Senator DODD's staff for providing valuable advice on this issue.

## ARMY CORPS OF ENGINEERS ARTICLE

Mr. DOMENICI. Mr. President, I rise today to include in the RECORD today an inspiring and uplifting occurrence in my home State of New Mexico. Percent news from any Army Corps of Engineers publication, Engineer Update, provides a particular instance in which the Corps went the extra mile to successfully rescue sand hill cranes under uncommon circumstances.

In the middle of repairs on Jemez Dam the cranes were foraging for food and getting trapped in the mud left over from having to drain the reservoir. The depth of the mud and the size and nature of the cranes made the situation extremely hazardous for anyone to get involved.

After bringing in a special boat that could handle the mud they were able to capture the birds and get them to safety where they were cleaned and released. All the while, the Corps put forth the measures to prevent anymore birds from being trapped in the mud.

This was an exceptional effort on the Corps of Engineers' part to handle both the job at hand and the surrounding effects of their labor. I commend them on their concern for the environment in the midst of their already tough labor.

I ask unanimous consent that a copy of the article be printed in the RECORD.

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

TRAPPED BIRDS RESCUED FROM MUD

(By Joan Mier)

ALBUQUERQUE DISTRICT

When Jemez reservoir was drained Nov. 1 to repair a bulkhead guide on the dam, no one could have foreseen the effect it would have on sand hill cranes, which were about to begin their migration to the Bosque del Apache. Using Jemex, about 30 miles from Albuquerque, N.M., as a stopover point on their journey was common. What was not common was the particular area they chose to land in when they began their migration Nov. 6.

''These birds land between 3 p.m. and 6 p.m. The sheen on the mud left behind after the reservoir drained looked like water to these birds, and some of them chose to land there,'' said Susan Shampine, Chief of Operations of Division. About 58 birds became mired in the 30-foot deep mud of the drained reservoir.

Rescue efforts posed a couple of big challenges. First, getting to the birds was problematic and risky. Second, the five-foot-tall birds with long and very strong beaks can be dangerous, according to biologist William DeRagon. ''The beaks of sand hill cranes have been known to crack the skull of a cow,'' he said.

District personnel located a hovercraft operator, but the craft could not operate on the reservoir because of the pudding-like consistency of the mud.

''We also contacted the Army National guard because we were thinking maybe we could use one its helicopters, but they said the prop wash from the rotors would do more harm than good,'' Shampine said.

Meanwhile, as these efforts were underway, the district immediately initiated deterrent activities to prevent any more cranes from landing in the mud. Spotlights, horns and firecrackers were largely successful in preventing more cranes from landing in the area. However, a few more became trapped there, according to Ron Kneebone, project manager.

''We think what happened was that cranes that landed elsewhere at the reservoir would begin foraging for food at dawn and wander over to the mud flats and become stuck,'' he said. After that, deterrent methods were also initiated at dawn.

Although one bird was captured on Nov. 8 and treated and released at the Bosque a couple of days later, personnel were not having much luck reaching the other cranes. As news of the trapped birds hit the media carloads of concerned citizens began showing up at Jemez interested in saving the cranes.

''Conditions at the reservoir were extremely dangerous,'' Kneebone said. ''We certainly appreciated that people were concerned, but we couldn't risk endangering human life.'' Therefore, the road leading to the area was closed to the public.

A break came when personnel contacted New Orleans District and learned about an engine that could enable a regular motorboat to operate in mud. The 20-horse-power engine was flown in overnight from Go-Devil Outboard Motors in Baton Rouge, LA.

''We got it on Nov. 14 and began testing it the next day,'' Kneebone said. ''That afternoon, we began recovery efforts using trained volunteers and Corps personnel, and we were successful in capturing nine cranes.''

Rescue operation continued through the migration season, and 15 cranes were rescued. Of those, three died and 12 were successfully treated and released.

Most of the rescued cranes were cleaned up and rehabilitated at the Rio Grande Zoo in Albuquerque, N.M. Each bird took 45 minutes just to clean because each feather had to be cleaned separately, according to Melissa Stock, editor of Zooscape Magazine.

''It was a three-person job,'' Stock said. ''One person had to hold its feet, another its legs, and then another cleaned the bird.''

''We received a lot of help and cooperation from other agencies and organizations,'' said Kneebone. He credited the Santa Ana Pueblo, which owns the land at the reservoir, U.S. Air Force, and Hawks Aloft for assisting in efforts to both rescue the cranes and prevent more from landing in the area.

## LIVESTOCK DISASTER LEGISLATION

Mr. GRASSLEY. Mr. President, during the conference on the farm bill, the conferees threw out my bipartisan amendment on reasonable payment limits. I was extremely disappointed

the provision was dropped. Reasonable, legitimate payment limits were a top priority to Iowa's family farmers. It is important to the farmers of Iowa that we fix this shortcoming of the new farm bill.

American's recognize the importance of the family farmer to our Nation, and the need to provide any adequate safety net for family farmers. In recent years, however, assistance to farmers has come under increasing scrutiny.

Critics of farm payments have argued that the largest corporate farms reap most of the benefits of these payments. The reality is, 60 percent of the payments have gone to only 10 percent of our Nation's farmers.

What's more, the payments that have been designed to benefit small and medium-sized family famers have contributed to their own demise. Unlimited farm payments have placed upward pressure on land prices and have contributed to overproduction and lower commodity prices, driving many families off the farm.

The new farm bill fails to address the use of generic commodity certificates which allow large farming entities to circumvent payment limitations. The supposed ''reform'' in the farm bill is worthless due to the lack of generic certificate reform. In recent years, we have heard news reports about large corporate farms receiving millions of dollars in payments through the use of generic certificates. Generic certificates do not benefit family farmers but allow the largest farmers to receive unlimited payments.

Legitimate, reasonable payment limits are critical to family farmers in Iowa. I feel strongly the farm bill failed Iowa's farmers when it failed to effectively address the issue of payment limitations. Hopefully, the proposal I am introducing with Senator ENZI AND SENATOR HAGEL will help to restore public respectability for Federal farm assistance by targeting this assistance to those who need it the most, while providing the much needed disaster assistance for livestock producers.

This new proposal allow for a total of $35,000 for direct payments, $65,000 for counter-cyclinal payments, $150,000 for LDP/MLA payments, and $30,000 over the LDP limit for generic certificates.

This new proposal allows for a total of $35,000 for direct payments, $65,000 for counter-cyclical payments, $150,000 for LDP/MLA payments, and $30,000 over the LDP limit for generic certificates.

This new farm bill establishes an $80,000 limitation on direct payments, $130,000 on counter-cyclical payments, $150,000 on LDP/MLA payments, and no limitation on generic certificates.

The grand total for the new farm bill payments is $360,000 with unlimited payments through the use of generic certificates. The cumulative payment limit under the Enzi-Grassley legislation is $250,000 plus $30,000 for generic certificates.

There is no ''active participation'' requirement in this proposal, as compared to my farm bill payment limit proposal.

This legislation does not eliminate the three entity rule, but it does eliminate the need for multiple entities by allowing farmers who choose not to participate in multiple entities to participate at an equal level as those that choose to receive the same benefits from up to three entities.

This legislation finally establishes tangible transparency regarding the fourth payment that only the largest farming entities utilize. That payment is the generic commodity certificate payment.

While I believe generic certificates should be eliminated, I understand the importance in developing a fourth payment limitation so that my colleagues realize there is another payment. Currently, generic certificates are an endless stream of funding only limited by the maximum extent of commodity production by the entity receiving payments.

This legislation would help offset the cost of the much needed livestock disaster assistance and help small and medium-size producers nationwide who are tired of the Government subsidizing large farm entities which drive land rent expenses to unreasonable margins due to economics of scale.

## PRESERVE THE PEDIATRIC RULE ACT OF 2002

Mrs. CLINTON. I am very pleased that today the Senate HELP Committee voted unanimously to report S. 2394, the Preserve the Pediatric Rule Act of 2002, out of Committee, as amended by consensus language to assure that, for already-marketed drug, companies have an opportunity to conduct studies voluntarily before the rule is invoked, which is consistent with current Food and Drug Administration practices.

Mr. DODD. Does the Senator agree that with the exception of the agreed-to amendment to allow a manufacturer to voluntarily study an already-marketed drug before the rule is invoked, the legislation we passed tracks the existing language and policy of the rule, and ensures that FDA and HHS will not weaken or undermine current protections for children on drug safety and labeling?

Mrs. CLINTON. I agree.

Mr. DODD. Also, as the Senator will remember, last year's Best Pharmaceuticals for Children Act BPCA, established a mechanism by which drugs that companies did not voluntarily study would automatically be referred to the National Institute of Health, HIH, to be contracted out for study. Is it not Congress's intention that this tool along with the rule should be used to secure safety and efficacy information for kids as quickly as possible?

Mrs. CLINTON. That is correct.

Mr. DEWINE. We are committed to fighting for dollars for these studies, because the contracting process at NIH only works if there are funds available. If there are no funds available, we must have the rule to ensure that we get needed studies done so that the necessary information can be added to the labels of the medicines children use. Would the Senator agree that the language of the amendment allows other tools to be used, but also makes clear that the rule will be available, enforceable, and unencumbered when needed?

Mrs. CLINTON. I would agree.

Mr. DODD. We will continue to examine the contracting process at the NIH to ensure that it works effectively, in conjunction with the rule, so that there is no delay or bottleneck in conducting the studies and securing this information for children.

Mr. DEWINE. That is correct. Congress made several tools, including the contracting process under the BPCA, available, but Congress never contemplated the exhaustion of all the tools under BPCA before the rule could be invoked. This amendment makes clear that as long as the FDA has first asked a company to voluntarily conduct the study, the FDA will be able to invoke the rule.

## TAX RELIEF FOR LIVESTOCK PRODUCERS

Mr. BURNS. Mr. President, I rise today in support of S. 2762, a bill which would provide tax relief to livestock producers who are forced to sell off part of their herds due to drought. I would also like to commend my colleague, Senator THOMAS, for introducing this legislation.

In my home State of Montana, we are currently in our fifth year of drought. Livestock producers are running out of grass for their herds and very few ranchers in Montana have carry over hay. Their choices are limited. If ranchers can find hay, it is expensive and often hundreds of miles away. Their only other option is to sell off part or, in extreme situations, their entire herds.

The effect on Montana's economy can be seen in the numbers. In 2000, we had 2.6 million head of cattle in my State. As of today, after two severe years of drought, we have 2.4 million head of cattle. The drought is equally devastating on sheep numbers. In 2000, we had 370,000 head of sheep. Today we have 335,000 head of sheep in Montana.

When these cattle and sheep leave the State, the effect on the local, rural economies is great. Ranchers aren't buying as much feed, they are buying fewer veterinary supplies, and worse yet, the ranchers may go out of business all together. These are ranches and herds that have been built up over generations and will be extremely difficult to replace. I have heard from many ranchers these animals won't come back to Montana. They are gone forever.

I have been working on getting disaster relief for producers suffering

from drought since early last fall. I am currently a co-sponsor of a bill with Senator BAUCUS that would provide emergency funds to farmers and ranchers suffering crop and livestock loss. I believe Senator THOMAS' bill fits in perfectly with my earlier efforts to help our producers. It is a common sense approach to a real problem.

I look forward to working with my colleagues to pass this legislation.

## IN MEMORY OF TIMOTHY WHITE

Mr. HATCH. Mr. President, I wanted to take a moment to note the passing of Timothy White, who was the editor-in-chief of Billboard magazine until he died unexpectedly a few weeks ago, leaving a wife and two young sons. He has been honored by many throughout the music industry, particularly for his trumpeting of new, not yet famous artists, working to give them space in a medium generally reserved for the already successful.

We worked with Tim on artists' rights issues, such as work-for-hire, during my tenure as chairman of the Judiciary Committee. His efforts on behalf of all artists will be remembered.

Looking to boost artists whom he felt deserved more attention, he wrote, ''At its high end, rock 'n' roll can periodically fill in the hollows of this faithless era—especially when the music espouses values that carry the ring of emotional candor.'' I share the hope that true artists who offer a lift to their listeners from the weight of the world will be found by those seeking the joy and inspiration music can offer, and note with sadness the passing of a friend of that cause, as I also join my friends in the music industry in extending our condolences and best wishes at this difficult time to Tim's wife and sons. I trust they will find Tim's legacy a source of pride and solace in the coming months and years.

Mr. SMITH of New Hampshire. Mr. President, I rise to say a few words about human cloning as the Senate will soon be recessing for the month of August. Not only has the Senate failed to ban human cloning altogether, we have not had a meaningful debate on this critical issue.

Let me begin my remarks with an insightful and profound line in the movie ''Jurassic Park,'' delivered by a mathematician played by Jeff Goldblum. AS the creator of the park is praising his scientific team for taking science into uncharted waters, Goldblum's character interrupts him. ''Your scientists were so preoccupied with whether or not they could, they didn't stop to think if they should.'' The Senate needs to stop and think if it should.

In my remarks today, I will outline five reasons why the Senate should vote for the Brownback-Landrieu bill which bans all human cloning. Let me start by saying that there has been a lot of talk about ''the two different kinds of cloning''—that is, reproductive and therapeutic. But let me be clear: All human cloning is reproductive, in the sense that it creates—reproduces—a new developing human intended to be genetically identical to the cloned subject. The difference is that one is intended to be carried to term and the other is intended to be deliberately killed for its cells.

Therapeutic cloning is when scientists clone an embryo solely to utilize its stem cells either to create large ''control groups'' or to attempt mass production of genetically matched stem sells for treatment of diseases. Many of my colleagues believe that only reproductive cloning is immoral, but they are in favor of therapeutic cloning. They say that therapeutic cloning is beneficial because it has the potential to help people with diseases. They don't want a cloned embryo to be implanted in a woman's womb and begin to grow, but they support creating the embryo and then plucking its stem cells until it dies.

The first reason my colleagues should vote to ban all human cloning is that the human embryo is a human life with a soul, whether it is cloned or is conceived naturally, and should be destroyed for any reason. There is not one person in the Senate or on the face of the Earth who did not begin their life as a human embryo.

If we allow the creation of embryos solely for their destruction, we will effectively be discriminating against an entire class of human beings by saying to them: I will destroy your life for the sake of someone else's or my own. If we accept the notion that some lives have more value than others, if we allow scientists or doctors or politicians to play God and determine which lives have value and which do not, then we have demolished the very foundation upon which we have built our freedom. Human embryos are not machines to be used for spare parts, all in the name of ''medical progress.'' We cannot view human life as an exploitable natural resource, ripe for the harvest.

Some base their passion for so-called therapeutic cloning upon the false premise that what is created in the lab is not a human embryo. The facts dispute these unsupported claims. Dr. John Gearhart of Johns Hopkins University, one of the discoverers of human embryonic stem cells, told the President's Council on Bioethics on April 25, 2002, that he thinks the product of cloning is and should be called an ''embryo.'' He said: ''I know that you are grappling with this question of whether a cloned embryo created in the lab is the same thing as an embryo produced by egg and sperm, and whether we should call it an 'embryo', but anything that you construct at this point in time that has the properties of those structures to me is an embryo, and we should not be changing vocabulary at this point in time.''

Even the American Medical Association believes that the clone is fully human. The Senate should also listen to the House of Representatives and the American public. The House passed a strong prohibition on human cloning last summer, and poll after poll shows that the vast majority of American citizens are opposed to all human cloning.

The second reason to ban all human cloning is that there are better and more ethical ways to discover cures for diseases that do not involve the destruction of a human embryo, especially in light of the fact that cloning may not even work!

Almost weekly we read of amazing breakthroughs in the scientific and medical communities using adult stem cells and other noncontroversial tissues and cells to treat human conditions. Adult stem cells are used with success in more than 45 human clinical trials, while embryonic stem cells and stem cells from human clones have not helped a single person. Here are just a few examples of the successes of adult stem cells:

Last July, the Harvard University Gazette reported that mice with Type 1 diabetes were completely cured of their disease using adult stem cells. Additionally, University of Florida scientists reported recently that adult rat liver stem cells can evolve into insulin-producing pancreatic cells, a finding that has implications for the future of diabetes research.

On June 15 of last year, the Globe and Mail reported that Israeli doctors injected a paraplegic with her own white blood cells, and she regained the ability to move her toes and control her bladder.

In December of last year, Tissue Engineering, a medical journal, reported that researchers believe they will be able to use stem cells found in fat to rebuild bone. If this research works, people with osteoporosis and other degenerative bone conditions could benefit significantly.

A researcher at the University of Minnesota has discovered what is being called the ultimate stem cell. The stem cells found in adult bone marrow have passed every test by proving that they can form every single tissue in the body, can be grown in culture indefinitely with no signs of aging, can be isolated from humans, and do not form cancerous masses when injected into adults.

Scientists from Celmed BioSciences reported that adult neural stem cells taken from a patient's own central nervous system have been successfully used to treat Parkinson's disease. Their research suggests this method of using adult stem cells may possibly be useful in treating a variety of other neurological conditions.

Scientists reported success last week in converting skin cells into immune cells. This development has great promise for treating diseases such as diabetes, immune deficiencies, Parkinson's, Alzheimer's and spinal cord injuries. When using cells from the patient's own body, the risk of rejection is overcome.

Researchers found that intravenous injections of cells from human umbilical cord blood improved the neurological and motor function of rats recovering from severe traumatic brain injury. The study appears in the June 6 issue of the journal Cell Transplantation, a special issue that focuses on emerging approaches in neural transplantation and brain repair.

In fact, these ethical approaches to stem cell research are also safer for patients than embryonic stem cell research because embryonic stem cells may cause tumors in patients, and the body may reject embryonic tissues in the same way the immune system rejects transplanted organs. As President Bush has stated: ''the benefits of research cloning are highly speculative. Advocates of research cloning argue that stem cells obtained from cloned embryos would be injected into a genetically identical individual without risk of tissue rejection. But there is evidence, based on animal studies, that cells derived from cloned embryos may indeed be rejected.'' Embryonic stem cells have never been used successfully in a human trial. The haven't even been used to completely cure disease in a rat or a mouse.

With the success of adult stem cells, you do not need to clone human beings. Let's invest in medical research that the entire Senate can support. There is also increasing evidence to indicate that human cloning may not even work! You may disagree with my moral or ethical arguments, and you may not care how successful adult stem cell therapies have been, but I hope you will at least pay attention to this important point. Let me repeat it: There is convincing evidence that human cloning may not even work.

The April 5, 2001, issue of Nature reports that cloning human embryos to harvest their stem cells is being abandoned by many researchers as inefficient, costly, and unnecessary. The article says that ''many researchers have come to doubt whether therapeutic cloning will ever be efficient enough to be commercially viable.'' Noting the short supply of human eggs and the expense and inefficiency of cloning, the article concludes that the prospects for therapeutic cloning have ''dimmed'' and those who still favor it are taking a ''minority view.''

Dr. Stuart Newman of NY Medical College noted in his March 5 Senate testimony that genetically matched cells from cloning may well be useless in treating conditions with a genetic basis such as juvenile diabetes—because these cells will have the same genetic defect that caused the problem in the first place.

Due to these factors, as well as advances in genetically tailoring cells without using cloning, many experts do not now expect therapeutic cloning to have a large clinical impact. In fact, this whole approach is said to be ''falling from favor'' among both British and American researchers.

Last December, Michael West of Advanced Cell Technology predicted that within 6 months, his company would be ready to create 'magic'' cells that would save 3,000 lives per day because he would be able to clone a human embryo. However, it was later revealed that West was unable to garner stem cells from his cloned embryos. Scientists quickly pronounced West's cloning experiment a failure. Dr. Donald Kennedy summarized the study this way: ''This scientific effort did not succeed by any measure.''

Thomas Okarma, the chief executive of Geron Corp., a cell therapy company, has no interest in using cloned embryos to produce customized treatments for disease. According to the L.A. Times, he said the odds favoring success ''are vanishing small,'' and the costs are daunting. He also said that it would take ''thousands of [human] eggs on an assembly line'' to produce a custom therapy for a single person. ''The process is a nonstarter, commercially,'' he said.

Let's review the headlines of what the experts say about cloning: ''Did not succeed'', ''Falling from favor'', ''may well be useless'', ''prospects have dimmed'', ''vanishing small'', ''did not succeed'', and ''nonstarter''. If I were a cloning advocate, I wouldn't want this to be made public.

Writer Wesley J. Smith says human cloning is indeed immoral. But that isn't the reason it will eventually be rejected. He says ''there is increasing evidence that therapies based on cloned embro cells would be so difficult and expensive to develop and so utterly impractical to bring to the bedside, that the pie-in-the-sky promises which fuel the pro-cloning side of the debate are unlikely to materialize. Not only is human cloning immoral but it may have negative utility—in other words, attempting to develop human cloning technologies for therapeutic use may drain resources and personnel from more useful and practical therapies.''

I want to briefly mention another form of hype that ties into the notion of human cloning and its ''boundless potential.'' Let's talk about the much ballyhooed fetal tissue transplantation experiments. It was originally thought of as the ''ultimate cure of the future'' and that interfering with these experiments was to interfere with saving countless lives. Now, after 13 years of private and publicly funded trials, some of the worse case scenarios have come to pass, while nothing of scientific value has been accomplished.

Today there is a thriving market in the sale of baby body parts, which I brought to light a couple of years ago. Also, the methods and timing of abortions are being changed to garner better tissue for research, and the most comprehensive study on the use of fetal tissue to treat Parkinson's showed no overall health benefit. Research described side effects of the treatment as ''absolutely devastating.'' Patients implanted with fetal tissue chewed constantly, writhed and twisted, and one patient had to be put on a feeding tube because his spasms were too severe. Dr. Paul Greene says it best: ''no more fetal transplants.'' Some panacea.

Gene therapy is another example of hype that not only as yielded no results, but is has also been responsible for the deaths of many people and over 1,000 serious adverse effects. A patient's group advocate noted: ''It's hardly gotten anywhere. I have been very disappointed.''

The only thing cloning will do is ''clone'' all the similar hype that has gone before it.

Additionally, trials in animal cloning indicate that 95 to 99 percent of the embryos produced by cloning will die; of those that survive until late in pregnancy, most will be stillborn or die shortly after birth. The rest may survive with unpredictable but devastating health problems. In fact, a review of all the world's cloned animals suggests every one of them is genetically and physically defective.

Four years ago, it took about 270 attempts to clone Dolly, the sheep. Is the Senate willing to go on record to sacrifice 270 human lives in order to successfully produce 1 cloned human being?

The third point I would like to drive home to you is the slippery slope argument. It is interesting to see how this debate has evolved, especially when one considers last year's debate, which was about whether to condone the dissection of embryos that would be destroyed anyway. This year's debate is about whether to destroy embryos that wouldn't have been created otherwise. One of my colleagues, on the subject of killing embryos, had this to say: ''Private companies are creating embryos specifically for stem cells, and I think that's a very bad idea.'' However, he is now sponsoring a bill that would allow what he once opposed: the creation of embryos specifically for stem cell research.

If the debate alone has evolved and is subjective and prone to change and charging down a slippery slope, how much more so the issue of medical experimentation with human beings? Many clonings supporters scoff at the slippery slope argument, but let's look at what is happening with animal experimentation. Already scientists have taken cloned cow embryos past the blastocyst stage, allowed them to develop into fetuses, and reimplanted their tissue back into the donor animal.

If we allow for therapeutic cloning—again, this is cloning where you grow a cloned embryo simply to utilize its cells for medical research—why not allow cloned embryos to further develop until their organs can be harvested for transplantation? If a cloned baby could save or improve the lives of many people, why not sacrifice its organs for the sake of many other people's quality of life? The only distinction, if morality and ethics are not a

consideration, is a few months of time to wait for the embryos to develop.

It is no secret that our society wants to live forever. What would stop a person with financial means from cloning little versions of themselves so that when they get old, they could pluck out a younger version of a failing organ from their clone?

If we are willing to use cloned human embryos to save human lives, why shouldn't we consider sacrificing other ''less important'' people for our own gain? For example, how about taking healthy organs from persons who are in a permanent vegetative state? What about plucking parts from the terminally ill, mentally retarded, or ''old'' people past the age of 60. I know this may sound far-fetched to my colleagues, but let us ask ourselves what the Senators standing in this Chamber a mere 25 years ago would have thought of a debate such as the one we are having here today on human cloning. They would have thought predictions of deliberation on such matters were far-fetched as well.

Once we start down the slippery slope of creating life for utilitarian purposes, there is no definitive line that separates what we ought and ought not to do. There are no ethical boundaries that will keep scientists in check once we accept the premise that the goal of curing diseases outweighs the ethical or moral value of human life. But once we accept the ''anything goes'' philosophy, then ''everything goes.'' When we begin to decide who should live and who should not, we effectively remove God from every area of our lives and our Nation. After the events of September 11, it is clear that this Nation needs God more than ever.

This is to say nothing of the eventual creation of a brave new world. Will genes be modified to give people higher IQs or eliminate the tendency to be overweight? What if we inadvertently introduce disastrous abnormalities into the human race? Will we introduce abnormalities that lead to new diseases that afflict our fellow man? Cloning is just not worth it.

The fourth point to consider is that human cloning represents the commodification and commercialization of human life. Some biotech firms hope to patent specific cloned human embryos for sale for many types of experimentation—just as designer strains of cats, mice, and other animals are already patented and sold as ''medical models.'' These firms are amoral and will pursue whichever path provides the greatest potential for financial gain. They will not regulate themselves. This Congress bears the responsibility of regulating these companies. It is our duty to the American public to hold amoral corporations to a higher ethical standard. These biotech firms are forgetting that human life is not a good to be traded in the marketplace nor a means by which they can profit financially.

The fifth and final reason we should not allow any form of human cloning is that it will be impossible to keep women from implanting cloned embryos into their wombs.

A ban on reproductive cloning will not work because cloning would take place within the privacy of a doctor-patient relationship and because the transfer of embryos to begin a pregnancy is a simple procedure. Would the woman be forced to abort the ''illegal product''? This has been called the ''clone and kill'' approach because you would force the woman to kill her unborn child.

Even the Department of Justice agrees that it is nearly impossible to enforce a bill that allows for the creation of human embryos for research. They said: ''Enforcing a modified cloning ban would be problematic and pose certain law enforcement challenges that would be lessened with an outright ban on human cloning.'' And ''anything short of an outright ban would present other difficulties to law enforcement.''

If you think we will never see an implanted clone, think again. Italian fertility specialist Severino Antinori is now explicitly claiming that three women are pregnant with clones. One of the pregnancies is in its 10th week.

The bottom line is that if we only vote to ban reproductive cloning but allow for therapeutic cloning, at some point we will start hearing stories of women who are pregnant with clones of their dead children, clones of their husband, and clones of themselves. We will have opened up the Pandora's box, and we will bear the responsibility for all that may follow.

Unless humans are seen as created in God's image and endowed by Him with the right to live, there will be no stopping the scientists and doctors from doing whatever they want to do.

We stand here today in an important moment in time. Pro-cloning advocates have promoted the lofty claims of miraculous breakthroughs. They play on the emotions of the ill and those who care about them, which is all of us. But just below the surface there is a dark, frightening premise. They believe that science has the right to play God, to create a lower form of human life to be harvested for medical research. This is ethically and morally wrong. Even science does not back all the hype from the pro-cloning side. There is no proof that sacrificing our ethics and morality to allow human cloning will even help these patients. There are better, ethical solutions.

Today, my colleagues, we must choose. This one decision will protect human life as we know it, or it will open the door to an ethical, medical, and moral wasteland, We can help those suffering with diseases without sacrificing our Nation's core principles. To oppose any form of human cloning is to preserve the sanctity of human life while providing real solutions based on real science. Let us choose what is right. We must ban all human cloning, no matter how it is cloaked. Future generations will judge us based upon what we do today. We must think of the future we want for our children—an ethical world that use sound, moral science to heal, and that respects the dignity of every human life.

Our country stands at a crossroads. I hope the United States will not follow the road taken by God's chosen people many years ago as recorded in the Holy Bible: ''In those days Israel had no king; everyone did as he saw fit.'' (Judges 21:25)

I hope and pray that the Senate will eventually ban all forms of human cloning.

## IRAQ

Mr. HAGEL. Mr. President, I ask unanimous consent to have printed in the RECORD a statement on Iraq that I gave before the Foreign Relations Committee.

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

Mr. HAGEL. I would like to congratulate the Chairman and the Ranking Member for holding these timely hearings on Iraq. I agree with my colleagues that we need a national dialogue on what steps we should take to deal with the threat posed by Saddam Hussein's Iraq. Americans need to be informed about the complexities and consequences of our policies in Iraq.

I look forward to listening to and learning from the distinguished witnesses before us today about the nature and urgency of the threat we face from Iraq, including their evaluations of what the best policy options may be for meeting this threat; the prospects for a democratic transition after Saddam Hussein; and what the implications of our policies in Iraq may be for the stability of the Middle East and our security interests there.

Much of the debate by those advocating regime change through military means have so far focused on the easy questions. Is Saddam Hussein a ruthless tyrant who brutally oppresses his own people, and who possesses weapons of mass destruction that have the potential to threaten us, his neighbors and our allies, including and especially Israel? Yes. Do most Iraqis yearn for democratic change in Iraq? Yes, they do. Can Saddam be rehabilitated? No, he cannot.

In my opinion, complicated and relevant questions remain to be answered before making a case for war, and here is where these hearings will play an important role. What is the nature, and urgency, of the threat that Saddam Hussein poses to the United States and Iraq's neighbors? What do we know about Iraq's programs of weapons of mass destruction? There have been no weapons inspectors in Iraq since December 1998. Is Iraq involved in terrorist planning and activities against the United States and US allies in the Middle East and elsewhere?

What can we expect after Saddam Hussein in Iraq? What do we know about the capabilities of the opposition to Saddam inside Iraq? While we support a unified and democratic opposition to Saddam Hussein, the arbiters of power in a post-Saddam Iraq will likely be those who reside inside, not outside, the country. And these individuals and groups we do not know. Who are they? And where are they? These are the Iraqis we need to understand, engage, and eventually do business with.

What will be the future of Iraqi Kurdistan in a post-Saddam Iraq?

How do we accomplish regime change in Iraq given the complexities and challenges of the current regional environment? The deep Israeli-Palestinian conflict continues; our relations with Syria are proper though strained; we have no relationship with Iran; Egypt, Saudi Arabia, Turkey, and Jordan have warned us about dangerous unintended consequences if we take unilateral military action against Iraq; and Afghanistan remains a piece of very difficult unfinished business, an unpredictable but critical investment for the United States and our allies.

I can think of no historical case where the United States succeeded in an enterprise of such gravity and complexity as regime change in Iraq without the support of a regional and international coalition. We have a lot of work to do on the diplomatic track. Not just for military operations against Iraq, should that day come, but for the day after, when the interests and intrigues of outside powers could undermine the fragility of an Iraqi government in transition, whoever governs in Iraq after Saddam Hussein.

An American military operation in Iraq could require a commitment in Iraq that could last for years and extend well beyond the day of Saddam's departure. The American people need to understand the political, economic, and military magnitude and risks that would be inevitable if we invaded Iraq.

There was no such national dialogue or undertaking before we went into Vietnam. There were many very smart, well intentioned professionals, intellectuals, and strategists who assured us of a US victory in Vietnam at an acceptable cost. Well, eleven years, 58,000 dead, and the most humiliating defeat in our nation's history later we abandoned South Vietnam to the Communists.

Let me conclude by saying that I support regime change and a democratic transition in Iraq. That's easy. The Iraqi people have suffered too long, and our security and interests will never be assured with Saddam Hussein in power. The tough questions are when, how, with whom, and at what cost. I look forward to the testimony of our witnesses over the next two days on these critical questions.

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 16, 2000 in San Diego, CA. Seven teenage boys, ages 14 to 17, attacked five elderly Latino migrant workers. The boys chased, beat, and shot at migrants living in a makeshift encampment in an isolated canyon. Ethnic slurs were used during the attack. The boys were charged with hate crimes, assault, robbery, and elder abuse in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## AFGHANISTAN FREEDOM SUPPORT ACT

Mr. HAGEL. Mr. President, the Afghanistan Freedom Support Act is similar to H.R. 3994, sponsored by the Chairman of the House International Relations Committee, Congressman HYDE. The House of Representatives passed this bill on May 16 by a vote of 390–22.

The Afghan Freedom Support Act comments the United States to the democratic and economic development of Afghanistan. In addition to the economic and political assistance found in Title I of the legislation, Title II seeks to enhance the stability and security of Afghanistan and the region by authorizing military assistance to the Afghan government and to certain other countries in the region, including assistance for counter narcotics, crime control and police training.

The United States must stay actively engaged in helping Afghanistan through a very dangerous and difficult transition to stability, security, and, ultimately, democratic government. We are at the beginning of a long process. We cannot be distracted or deterred from this objective. Our credibility, our word, and our security are directly linked to success in Afghanistan. And there cannot be political stability and economic development in Afghanistan without security.

This legislation authorizes $2.5 billion over 4 years for economic and democratic development assistance for Afghanistan. This amount includes Senator LUGAR's proposal for a $500 million enterprise fund to promote job creation and private sector development. In addition, S. 2712 authorizes up to $300 million in drawdown authority for military and other security assistance.

This legislation includes a Sense of the Congress resolution, at the initiative of Senator BIDEN, which urges the President to commit the full weight of the United States to expand the International Security Assistance Force (ISAF) beyond Kabul. The resolution calls for $1 billion to support ISAF expansion for FY 2003 and FY 2004, if the President makes that call.

The main elements of the Afghanistan Freedom Support Act are as follows:

It authorizes continued efforts to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

It also authorizes resources to help the Afghan government fight the production and flow of illicit narcotics;

It assists efforts to achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan;

It supports strengthening the capabilities of the Afghan Government to develop projects and programs that meet the needs of the Afghan people;

It supports the reconstruction of Afghanistan through creating jobs, clearing landmines, and rebuilding the agriculture sector, the health care system, and the educational system of Afghanistan; and

It provides resources to the Ministry for Women's Affairs of Afghanistan to carry out its responsibilities for legal advocacy, education, vocational training, and women's health programs.

This legislation also strongly urges the President to designate within the State Department an ambassadorial-level coordinator to oversee and implement these programs and to advance United States interests in Afghanistan, including coordination with other countries and international organizations with respect to assistance to Afghanistan.

In general, the Afghanistan Freedom Support Act provides a constructive, strategic framework for our Afghan policy, and flexible authority for the President to implement it.

Let me add that this legislation is explicitly and strongly committed to increasing the participation of women in Afghan politics. One of the ''principles of assistance'' of this bill states that ''Assistance should increase the participation of women at the national, regional, and local levels in Afghanistan, wherever feasible, by enhancing the role of women in decision-making processes, as well as by providing support for programs that aim to expand economic and educational opportunities and health programs for women and educational and health programs for girls.''

We must not allow the Afghan government of President Karzai to unwind. The United States must make the necessary investment of resources to help stabilize and secure Afghanistan in order to support a democratic transition there. This bill addresses an urgent need. It is critical to America's security interest in Afghanistan and Central Asia. If Afghanistan goes backward, this will be a defeat for our war on terrorism, for the people desiring freedom in Afghanistan and in Central Asia, and for America symbolically in the world. This defeat would undermine the confidence in America's word around the world. Afghanistan is the first battle in our war on terrorism. We must not fail.

## TRIBUTE TO MARY JANE SMALL

Mr. BYRD. Mr. President, the work of the Senate would be impossible were it not for the talents and tireless efforts of our staffs. These are the men and women who serve behind the scenes, with few expectations of reward save for the opportunity to make a difference.

I would like to take a moment to acknowledge a member of my staff who has worked for me on behalf of the people of West Virginia for 25 years. Mary Jane Small joined my staff on August 1, 1977. I was Majority Leader at the time.

She came to my office with 6 years of Capitol Hill experience, having worked for Congressman Ed Jones of Tennessee and then-Congresswoman BARBARA MIKULSKI from Mary Jane's own home town of Baltimore, MD.

Over the years, Mary Jane Small has worked in my legislative department, providing a much-valued link between my Washington office and the people of West Virginia. There have been a lot of changes in how Senators correspond with constituents since the time Mary Jane started working for me.

Back in 1977, no one had heard of e-mail. We did not have fax machines. Mary Jane joined my staff before we had computers. She was with me in the days when we produced letters the old-fashioned way—on typewriters—which must seem archaic to the younger generation of Capitol Hill staff.

But despite the lack of telecommunications and high-tech gadgetry, our staffs produced quantity and quality. I am proud to count Mary Jane as one of those staff members who has been with me through so much change. And though times are different, she still shines with the enthusiasm and drive that she had when she first joined my staff.

The work of Senators will be recorded in history. Our names, our speeches, our legislative accomplishments will have been printed in newspaper articles and in the CONGRESSIONAL RECORD. But most of the men and women who have toiled on our staffs will never get any public notice of their devoted service to their fellow citizens. Twenty-five years of Senate service is certainly deserving of recognition.

I thank Mary Jane for her dedication to the people of the State of West Virginia and for the work she has done for our country. And I look forward to the next 25 years with her.

## IN MEMORIAM: HILDA MARCIN

Mrs. BOXER. Mr. President, I take this opportunity to share with the Senate the memory of one of my constituents, Hilda Marcin, who lost her life on September 11, 2001. Mrs. Marcin was 79 years old when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Mrs. Marcin was born in Schwedelbach, Germany. When she was 7 years old, her family emigrated to the United States to escape oppression. Like many immigrants, her family left all possessions behind and came only with the clothes on their backs.

Her family settled in Irvington, New Jersey, where she attended local schools. She worked seven days a week in the payroll department of the New Jersey shipyards during World War II.

A friend arranged a blind date with Edward Marcin and they were married on February 13, 1943. They had two daughters, Elizabeth and Carole. The Marcin family enjoyed participating in school functions, class trips, the PTA, and various church activities. Mr. and Mrs. Marcin were also socially and politically active in Irvington. Mrs. Marcin later worked as a special education teacher's aide.

Hilda Marcin embraced life with enthusiasm and made the most of every minute. She adored her family and her granddaughter, Melissa Kemmerer Lata. She was an inspiration to those she touched, including the special needs children in the school where she worked. Her friends admired her positive attitude and her desire and ability to continue working during the later years of her life. Mrs. Marcin treasured freedom and democracy, and her American citizenship.

At the time of her death, Mrs. Marcin was flying to San Francisco to live with her younger daughter, Carole O'Hare. She is survived by her daughter, Elizabeth Kemmerer and son-in-law Raymond Kemmerer; daughter Carole O'Hare and son-in-law Thomas O'Hare; and granddaughter Melissa Lata and Melissa's husband, Edward Lata.

Mr. President, none of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Hilda Marcin, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

## FISCAL RESPONSIBILITY

Mr. FEINGOLD. Mr. President, I rise to help bring attention back to the issue of fiscal discipline and protecting Social Security and Medicare for the generation to come.

All parents want the best for their children. Parents will scrimp and save so that they can take care of their kids, buy them new clothes, and help them go to school. We do it because we love our children, and because it's the right thing to do.

On a societal level, we are doing exactly the opposite. Rather than saving for the future needs of the next generation, rather than paying down debt to prepare for their future needs, rather than investing in assets now so that we will be better able to provide for the next generation, the Government instead has decided to spend its resources and more on current consumption. And that's the wrong thing to do.

When we can see our children's faces and hear their dreams, we try to do whatever we can for them. But when we act as a society, when we make government policy, we seem unable to control our appetites for current consumption, we seem unable to do anything for the millions of our children's generation. And that is simply, on a moral level, the wrong thing to do.

For when we in this generation choose to spend on current consumption and to accumulate debt for our children's generation to pay, we do nothing less than rob our children of their own choices. We make our choices to spend on our wants, but we saddle them with debts that they must pay from their tax dollars and the sweat of their brow.

On top of that, the demographic wave of the baby boom generation adds another burden on our children's generation. We know now—there is no doubt about it—that our generation will retire in large numbers beginning in the next decade. By the nature of older age, we know that our generation will require increased spending on income support and health in the decade to come and thereafter. And by the nature of the Social Security system, and by the nature of Medicare and Medicaid, we know that the Government will have greatly increased obligations to fund. Even if we as a society choose to provide the baby boom generation with exactly the same benefits that society provided our father's and mother's generation, even if we do not provide for Medicare coverage of prescription drugs—and I believe that we should provide those benefits—we as a society will need to devote greater resources to these important programs.

We could at least in part prepare for those needs by paying down our Government debt now, so that the Government would have greater freedom to borrow in the decades to come. Some suggest that we could at least in part prepare for those needs by accumulating financial assets now, which the Government could sell in the future as an alternative to raising taxes in the future. These actions would be the functional equivalent of saving by the Government.

In the last year and a half, we have done exactly the opposite. We have chosen to do the functional equivalent of binge consumption. The Government has gone on a spending spree.

In February of last year, the Bush administration's Office of Management and Budget started with a baseline projection that the Government would run a surplus of $282 billion in this year, fiscal year 2002. Earlier this month, in contrast, the OMB projected that we will in reality run a deficit of $165 billion this year, a difference of $447 billion between their initial baseline projections and their latest predictions for one year alone. In less than a year and a half, the deficit picture for this year alone has clouded by nearly half a trillion dollars.

The Bush administration's own numbers tell a similar story for the decade as a whole. Last February, the OMB projected baseline surpluses of $5.6 trillion for the 10 years to come. Looking

at the data that the OMB provided the Budget Committees along with the OMB's Mid-Session Review of the Budget, the Center on Budget and Policy Priorities calculated that $3.9 trillion of that 10-year surplus has evaporated, and that the Administration seeks an additional $1.3 trillion in tax cuts and spending increases over the same period. Thus, by the OMB's own numbers, in the past 17 months, we have dissipated nearly all of the surplus for the decade to come.

Putting the receipts of the Social Security Trust Funds aside, last February, the OMB's baseline projections showed the Government running surpluses throughout the decade. This month, the OMB policy projections show the non-Social Security budget running deficits through 2012, and probably for decades thereafter.

Thus, instead of reducing the Federal debt, we are adding to the debt that our children's generation must pay. Instead of saving for the future, we are consuming future resources for ourselves.

The causes and solutions to these circumstances are simple to see, although clearly, amassing the political will to act on them is far less simple to do. Plainly, last year's tax cut was too large, and the Government is spending too much. To meet our obligations to our children's generation, we should address both failings.

By the OMB's own numbers, fully 38 percent of the reduction in surplus over the coming decade results from last year's tax cut. Two-fifths of our problem results from that tax cut.

Now that the fiscal realities have come home to roost, we should reevaluate future tax cuts. This is not to say that we should require anyone to pay higher taxes than they do now. To contribute mightily to our fiscal responsibility, we do not need to raise people's taxes higher than they pay now. If we simply keep future, additional tax cuts that benefit the highest income brackets from taking place, we would go a long way toward balancing the budget.

According to Citizens for Tax Justice, if we simply froze tax rates for the top 1 percent of the income scale, it would save almost half of the loss to the Treasury from the tax cut in future years, once the tax cut is fully phased in. Citizens for Tax Justice estimates that $477 billion of last year's tax cut will go to the top 1 percent of the income scale. That's an average tax cut of $342,000 each for taxpayers in that category, over the decade to come. And while the well-off have received some of those tax cuts already, as have most taxpayers, fully 80 percent of the tax cuts for the top 1 percent are scheduled to take effect in years after this year—most after 2005. There is still time to correct this unbalanced tax cut, without raising anyone's tax rates higher than today's.

Additional discipline is needed not only on the tax side, but also on the spending side. According to OMB's new numbers, spending for this year, fiscal year 2002, is up 11 percent over last year's levels. And as we have not enacted caps for 2003, we are at great risk of continuing these unsustainably large increases in spending into the future.

Some have pointed to the fight against terrorism as reason enough for such spending levels. But we cannot make the fight against terrorism bear the vast weight of the entire Government's spending.

We should not exempt military spending from its due scrutiny, but I do not propose that we constrain military spending alone. We should constrain both military and domestic spending. We need to put some constraint on spending levels, or they will continue to add to the Federal debt.

The Federal Government's budget is obese. We can exercise some willpower now and cut back our consumption, or the doctors will put us on a far stricter diet later. And surely the credit markets and the economy will be a rigorous doctor. We delude ourselves if we imagine that the need to cut back will not come.

As my colleagues are aware, I have twice come to the floor this year to offer amendments to extend the spending caps in the budget law, on June 5 with Senator GREGG and on June 20 with Senator CONRAD. Although neither effort obtained the necessary 60 votes, the Gregg-Feingold amendment received 49 votes, and the Feingold-Conrad amendment received 59 votes. And between the two amendments, 91 Senators have voted for caps of one duration or another.

To paraphrase George Bernard Shaw, we as a Senate have established that we are for caps. We are just haggling over the price.

I assert to my colleagues that caps at any level are better than no caps at all. We must have some restraint, or the Government will grow beyond any limit.

We need to strengthen our budget process, to get the Government out of the business of using Social Security surpluses to fund other Government spending.

That is a goal with a long and bipartisan history. In his January 1998 State of the Union address, President Clinton called on the Government to ''save Social Security first.''

That is also what President George W. Bush said in a March 2001 radio address, that we need to, in his words, ''keep the promise of Social Security and keep the Government from raiding the Social Security surplus.''

We should stop using Social Security surpluses to fund the rest of Government because it is the moral thing to do. For every dollar that we add to the Federal debt is another dollar that our children must pay back in higher taxes or fewer Government benefits.

Our children's generation will not forgive us for our failure of fiscal responsibility. History will not forgive us, if we fail to act.

The task before us is plain. We must restrain future tax cuts, and we must restrain future spending.

The task before us is not too difficult for us to achieve. We saw in the 1990s that when the Government balanced its budget, invested in education, and regulated business sensibly, it combined to lower interest rates, bolster consumer and investor confidence, and help the economy grow. We can do that again.

We are not the first generation who has been asked to live with sacrifice. And the sacrifices that are asked of us are by far not the hardest with which generations have lived.

All parents want the best for their children. Let us act on behalf of our children not just as individuals, but as a generation, as well. Let us return to fiscal discipline. And let us restore to our children's generation the freedom to choose their own future.

## IN MEMORIAM: DEORA BODLEY

Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my young constituents, Deora Bodley, who lost her life on September 11, 2001. Ms. Bodley was a 20-year-old college student when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Ms. Bodley grew up in San Diego, CA. As a high school student, she visited local high schools to discuss HIV/AIDS with her peers. She volunteered with the Special Olympics and a local animal shelter. Chris Schuck, her English teacher at La Jolla Country Day School, recalls ''Deora was always thinking big and going after big game.''

At the time of her death, Ms. Bodley was studying psychology at Santa Clara University. She coordinated volunteers in a literacy program for elementary school students. Kathy Almazol, principal at St. Clare Catholic Elementary, recalls Ms. Bodley had ''a phenomenal ability to work with people, including the children she read to, her peer volunteers, the school administrators and teachers. We have 68 kids who had a personal association with Deora.''

In the words of her mother, Deborah Borza, ''Deora has always been about peace.'' At the tender age of 11 years, Deora wrote in her journal, ''People ask who, what, where, when, why, how. I ask peace.'' A warm and generous person, Deora was a gifted student and a wonderful friend. Wherever she went, her light shined brightly.

Deora's father, Derrill Bodley, of Stockton, CA, feels her life was about ''getting along'' and sharing a message of peace. Her 11-year-old sister Murial recalls Deora taught her many things and says, ''Most of all she taught me to be kind to other people and animals. I cherish the memories of my sister and

plan to work hard in school and in everything I do so she can be proud of me like I was of her.''

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center Towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Deora Bodley, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

## ELECTIONS IN MACEDONIA AND MONTENEGRO

Mr. McCONNELL. Mr. President, the people of Macedonia and Montenegro will participate in parliamentary elections-on September 15 and October 6, respectively. Given recent history in that region, the successful conduct of these polls is in the security interests of both the United States and all of southeastern Europe.

Free and fair elections in Macedonia could serve as the beginnings of a new chapter for that country. It was only last year that ethnic grievances in Macedonia turned violent, resulting in deaths, casualties, and thousands of internally displaced persons and refugees. While on the mend, successful elections could prove to be a critical milestone for both the people of Macedonia and the international community.

A major challenge for the Government of Macedonia and all political parties is to earn the trust and confidence of the electorate before the first ballots are cast. Let me be clear: there is no room for election chicanery and violence.

The Government of Macedonia should be aware that the Foreign Operations Subcommittee, on which I serve as ranking member, increased fiscal year 2003 funding provided to the Assistance for Eastern Europe and Baltic States, SEED, account. The subcommittee has suggested that additional funds be provided to Macedonia—over and above the administration's request, but our continued support will be gauged by the successful conduct of the September polls.

In Montenegro, I am troubled by Parliament's recent amendments to the election and public information laws, and the method by which these changes were made. In the past, Parliament utilized a process of consensus and agreement when deliberating election-related issues, which helped create a democratic and stable framework for contentious polls. Last month, the majority coalition in Parliament disregarded past practices and the technical advice of the international community and muscled through changes to the laws. Such heavy-handedness undoubtedly sours the preelection environment, and raise suspicions and political tensions.

The amendments to the laws are equally troubling, particularly for the ethnic-Albanian community whose reserved seats in Parliament were reduced from five to four. The majority coalition in Parliament empowered themselves to appoint members to national and local election commissions, permitting total and partisan control over the electoral process. Further, changes to the laws prohibit pollwatchers to question or challenge officials on the conduct of the poll on election day, and private media is banned from accepting paid advertising from political parties.

Let me close by strongly encouraging the State Department, along with the OSCE, to take appropriate actions to ensure free and fair elections in Montenegro. I will continue to closely follow developments in that region, as well as the reports and updates issued by the International Republican Institute and the National Democratic Institute.

## IN MEMORIAM: NICOLE CAROL MILLER

Mrs. BOXER. Mr. President, I take this opportunity to share with the Senate the memory of one of my young constituents, Nicole Carol Miller, who lost her life on September 11, 2001. Ms. Miller was a lovely 21-year-old college student when the flight she was on, United Airlines Flight 93, was hijacked by terrorists. As we all know, that plane crashed in a Pennsylvania field, killing everyone on board.

Nicole's memory lives on in the hearts of those she loved. She took great joy in life and exemplified this with her wonderful outlook and tenacious personality. Nicole's radiant smile could light up a room and she energized those around her. She knew how to be an outstanding friend.

Nicole was blessed with two families. Her father and stepmother, David and Catherine Miller of Chico, California and her mother and stepfather, Cathy and Wayne Stefani, Sr., of San Jose, California.

In her father's words, ''She had that sweet baby quality. She could make you smile and forget your troubles for a little bit.'' Friend Heidi Barnes describes Nicole as ''very friendly and welcoming. She had a big heart and it was open to everyone.''

She lived in San Jose, CA, with her mother and stepfather, Cathy and Wayne Stefani, Sr. She attended local schools and graduated from Pioneer High School in 1998. A talented softball player during all four years of high school, Nicole won a college softball scholarship during her senior year. Even though she had never been a competitive swimmer, she tried out for the Pioneer High swim team as a freshman and made the team.

At the time of her tragic death, she was a dean's list student at West Valley College in Saratoga, working part-time and weighing whether to transfer to California State University at Chico or San Jose State University.

Nicole is survived by her mother, Cathy M. Stefani; stepfather, Wayne Stefani, Sr.; father, David J. Miller; stepmother, Catherine M. Miller; and her siblings, Tiffney M. Miller, David S. Miller, Danielle L. Miller, Wayne Stefani Jr., Joshua R.D. Tenorio, and Anthony D. Tenorio.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Deora Bodley, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

Thank you. I yield the floor.

## IN MEMORIAM: ROBERT B. PENNINGER

Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Robert Penninger, who lost his life on September 11, 2001. Mr. Penninger was 63 years old when the plane he was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Robert ''Bob'' Penninger grew up in Chicago, IL. He earned a Bachelor of Science degree in Electrical Engineering at Purdue University and received a Masters Degree in Business Administration from Northeastern University. After graduating from college, he married his wife Janet and they raised their daughter, Karen, in Massachusetts. At the time of his tragic death, Bob was working as an electrical engineer for the defense contractor BAE Systems in Rancho Bernardo, CA, and was returning home from a business trip on September 11.

Mr. Penninger lived life to the fullest and is greatly missed by all who knew him. His wife, Janet, recalls, ''Bob was always willing to help everyone he met. He was a great storyteller and he always had a smile on his face and a cheery hello for all.'' Mr. Penninger enjoyed motorcycle trips with his wife and friends. He also loved taking his 1999 Electric Green Cobra Mustang convertible to car shows, where he won many trophies.

Kit Young lived next door to Penninger for eight years and remarked, ''Bob brought a lot of joy to this neighborhood. He developed a special relationship with my 11-year-old

grandson, Sean. He took my grandson to a car show in Los Angeles and they were planning another outing. A lot of people wouldn't care anything about an 11-year-old kid, but Bob did.''

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Robert Penninger, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.

## ITALIAN BREAST CANCER SEMI-POSTAL STAMP

Mrs. FEINSTEIN. Mr. President, just over four years ago, the U.S. Postal Service began issuing semipostal stamps to raise money for breast cancer research. The breast cancer research stamp is the first postal stamp in our Nation's history to raise funds for a special cause. Since its inception in the summer of 1998, the program has raised over $27.2 million for research.

The stamp is just as strong today as it was 4 years ago when Congress passed legislation I introduced based on a creative idea of my constituent, Dr. Ernie Bodai, and the hard efforts of others, including Betsy Mullen of the Women's Information Network Against Breast Cancer and the Susan G. Komen Foundation.

The price of a breast cancer research stamp recently increased to keep pace with the cost of first class mail, ensuring that breast cancer research will continue to reap the benefits of the stamp's success.

It has also focused public awareness on a devastating disease and provided a symbol of hope and strength to breast cancer survivors, their loved ones, and others who care about eradicating breast cancer as a life-threatening disease.

I am pleased to announce today that the concept of a semipostal breast cancer research stamp has now spread across international borders. The country of Italy recently has followed the United States lead and is issuing a semipostal stamp for breast cancer research.

Breast cancer is not just an American problem, but it is also a global problem. Approximately 250,000 new cases of breast cancer are diagnosed annually in the European Union. Each year, in Italy alone, more than 30,000 women are diagnosed with breast cancer and 11,000 die of this disease.

Modeled after the U.S. version, the Italian stamp is priced above the value of a first class letter with proceeds dedicated to the battle against breast cancer. Converted into U.S. dollars, approximately 20 cents for each letter sent with the new semipostal will be used to fight breast cancer. In total, Italy expects to raise approximately $2.5 million dollars for breast cancer research, education, screening and treatment programs throughout the country.

Italy's new semipostal stamp, which will be available through 2003, commemorates the 50th anniversary of the death of Queen Elena di Savoia, whose philanthropic efforts included funding the first cancer center in Italy. Approximately 12.5 million stamps will be produced.

I am pleased that lessons we have learned from the launch of the U.S. breast cancer stamp are being applied in Italy. I would especially like to commend the Susan G. Komen Breast Cancer Foundation for its efforts to make the Italian stamp the success that it is here in the United States. In the words of Nancy Macgregor, the Komen Foundation's International Director: ''Breast cancer knows no boundaries, and Italy is no exception.''

I wish Italy the same success with its semipostal that we continue to enjoy here in the United States. Working together and building on each other's successes, we increase our strength in the battle against breast cancer.

## NOMINATION OF D. BROOKS SMITH

Mr. LEAHY. Mr. President, I ask unanimous consent that following my statement on July 30, 2002, on the nomination of D. Brooks Smith, located on pages S7553–S7558, that three letters be printed in the RECORD. The letters are: resolution from the City Council of Philadelphia; Monroe Freedman, Professor of Legal Ethics, Hofstra University and; Stephen Gillers, Vice Dean and Professor of Law, New York University.

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

RESOLUTION

Whereas, The nomination of Pennsylvania district court Judge D. Brooks Smith to the Third Circuit Court of Appeals in Philadelphia was voted out of the U.S. Senate Judiciary Committee on May 23, 2002 by a 12–7; and

Whereas, Judge Smith's nomination is opposed by a wide range of public interest organizations. Among the organizations that have formally expressed opposition to Smith's appeals court nomination are People For the American Way, Leadership Conference on Civil Rights, NAACP, Alliance for Justice, National Organization for Women, Community Rights Council, National Women's Law Center, NARAL, Earthjustice, ADA Watch Action Fund, National Partnership for Women & Families, Planned Parenthood, Defenders of Wildlife, National Employment Law Association, Committee for Judicial Independence, NOW Legal Defense and Education Fund, Disability Rights and Education Defense Fund, Feminist Majority, Friends of the Earth, Bazelon Center for Mental Health Law, National Disabled Students Union, and the National Council of Jewish Women; and

Whereas, Judge Smith's membership in a discriminatory club, his failure for ten years—in violation of governing ethical standards—to resign from the club despite his commitment to do so during his district court confirmation hearing, and the contradictory explanations he has offered for his actions all raise serious issues about Smith's judgment, willingness to follow rules, and candor; and

Whereas, Ethical questions have been raised regarding a highly publicized bank fraud case involving millions of dollars of public school money. Judge Smith continued to preside over and issue orders in the case, even though the fraud claims implicated a bank at which his wife was an employee and in which he had substantial financial interests. Several years later, he took on a related case, recusing himself only after he was requested to do so by one of the attorneys in the case, revealing only his wife's involvement and not his own financial interest. On March 14, 2002, after reviewing the facts and the arguments by Smith and his defenders, noted legal ethics professor Monroe Freedman wrote to the Senate Judiciary Committee that Smith committed ''repeated and egregious violations of judicial ethics'' and that Smith had been ''disingenuous before this Committee in defending his unethical conduct.'' Professor Freedman concluded that as a result, Smith is ''not fit to serve as a Federal Circuit Judge''; and

Whereas, Since his appointment in 1989, Judge Smith has been reversed by the court of appeals to which he has been nominated 51 times. This is a larger number of reversals than any of the judges approved and rejected by the Senate Judiciary Committee during this Congress for appellate court posts, including Judge Charles Pickering. More important than the number of these reversals, however, is their nature. Many of these reversals concern civil and individual rights, and reflect a disturbing lack of sensitivity towards such rights and a failure to follow clearly established rules of law and appellate court decisions; and

Whereas, A number of Smith's reversals have concerned discrimination or other claims by employees. For example, in Wicker v. Consolidated Rail Corp., 142 F.3d 690 (3rd Cir.), cert. denied, 525 U.S. 1012 (1998), the court of appeals unanimously reversed Smith's decision to dismiss a suit by Conrail employees who claimed that years of on-the-job exposure to toxic chemicals was making them sick. Smith had concluded that their lawsuit was barred because they had signed a waiver as part of a settlement of unrelated injury claims against the railroad. The appellate court ruled that Smith's ruling was contrary to the Supreme Court's interpretation of federal law; and

Whereas, The Third Circuit unanimously reversed Smith's decision in Ackerman v. Warnaco, 55 F.3d 117 (3rd Cir. 1995), in which he upheld a company's unilateral denial of severance benefits to more than 150 employees after they were laid off; and

Whereas, In Colgan v. Fisher Scientific Co., 935 F.2d 1407 (3rd Cir.), cert. denied, 502 U.S. 941 (1991), the appellate court unanimously reversed Smith for granting summary judgment against an age discrimination claim as untimely by ruling that the statute of limitations began to run not when the employee was terminated, but instead when he simply received a negative performance review; and

Whereas, In Schafer v. Board of Public Educ. of the School Dist. of Pittsburgh, Pa., 903 F.2d 243, 250 (3rd Cir. 1990), the Third Circuit unanimously reversed Smith for dismissing a claim that a school district's family leave policy improperly allowed only women, not men, to take unpaid leave for ''childbearing'' as well as childbirth. Based

on such decisions, the National Employment Lawyers Association has opposed Smith's confirmation, explaining that his record displays ''an attitude inimical to employee and individual civil rights''; and

Whereas, In other reversals involving individuals or other plaintiffs against government or corporations, the Third Circuit has specifically criticized Smith for abusing his discretion or failing to follow the law. For example, in Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 456–457 (3rd Cir. 1996), the appellate court found that Smith had ''abused his discretion'' in refusing to allow a prisoner to amend a complaint contending that he had been repeatedly stabbed while handcuffed and in the custody of police officers who looked on while failing to take any action; and

Whereas, In Metzgar v. Playskool, 30 F.3d 459, 462 (3rd Cir. 1994), three Reagan appointees reversed Smith for dismissing a claim involving death by asphyxiation of a 15-month-old child who had choked on a toy, noting that they were ''troubled by the district court's summary judgment disposition'' of his parents' claims; and

Whereas, In In re Chambers Development Company, 148 F.3d 214, 223–225 (3rd Cir. 1998), concerning a claim against a county utility authority, the Third Circuit took the extraordinary step of issuing a writ of mandamus—an unusual direct command to a judge to rule a certain way—against Judge Smith, who had ''ignored both the letter and spirit of our mandate'' in a prior ruling in the case. As the court of appeals explained, this was a ''drastic remedy'' that is utilized only ''in response to an act amounting to a judicial usurpation of power''; and

Whereas, Judge Smith has also been criticized for rulings not later reversed on appeal. For example, the Washington Post expressed concern about his decision in United States v. Commonwealth of Pennsylvania, 902 F. Supp. 565 (W.D. Pa. 1995), aff'd, 96 F.3d 1436 (3rd Cir. 1996), in which the federal government had sued the state over allegedly substandard conditions in a facility for persons with mental disabilities. As the Post put it, although ''care was, in Judge Smith's words, 'frequently not optimal'—maggots were found in one resident's ear, ants on others' bodies—the judge found these to be 'isolated incidents' '' and concluded there was no constitutional violation. In another case, Quirin v. City of Pittsburgh, 801 F. Supp. 1486 (W.D. Pa. 1992), the National Employment Lawyers Association (NELA) found that Smith had improperly applied the ''aggressive'' standard of ''strict scrutiny,'' which is reserved for claims of racial, ethnic, and religious discrimination, to strike down an affirmative action policy designed to remedy past discrimination against women. As NELA concluded, such rulings ''show a disturbing pattern of disregard and hostility for the rights of minorities and protected classes,'' now therefore,

*Be it resolved by the City Council of Philadelphia,* That we hereby strongly urge the United States Senate to reject the nomination of Judge D. Brooks Smith to the Third Circuit Court of Appeals.

*Further Resolved,* That we hereby urge Pennsylvania Senators Specter and Santorum to withdraw their support for the confirmation of Judge D. Brooks Smith to the Third Circuit Court of Appeals.

*Be it further resolved,* That a copy of this resolution be sent to all members of the United States Senate as evidence of the grave concern by this legislative body.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
*New York, NY, May 17, 2002.*

Hon. RUSSELL D. FEINGOLD,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR FEINGOLD: I am replying to your May 9, 2002 request for my views on three issues surrounding the nomination of Federal District Judge D. Brooks Smith to a seat on the United States Court of Appeals for the Third Circuit. I assume familiarity with your letter and with the facts, many of which have been discussed in testimony and correspondence the Committee has received. I do not know Judge Smith and have no interest one way or the other in whether Judge Smith is confirmed. I take my facts mainly from Judge Smith's testimony or his written submissions and partly from other materials you have sent me and which I cite below. The facts do not seem to be in dispute.

Briefly, my qualifications for giving my opinion on your questions are: I am vice-dean and professor of law at New York University School of Law, where I have taught since 1978. Regulation of Lawyers (''legal ethics'') is my primary area of teaching and research and writing. I have taught this course for a quarter century here and as a visitor at other law schools. I have a leading casebook in the area, first published in 1984 and now in its 6th edition. Legal ethics includes the ethical responsibilities of judges and a chapter of my book is devoted to those issues. I have published in the area in law journals and written extensively on the subject for the popular and legal press. I speak widely on legal ethics before bar groups, at judicial conferences, at law firms, and at corporate law departments.

In summary, my conclusions are:

A. If Spruce Creek Red and Gun Club is in fact a purely social club, and not a venue in which business or professional interests are pursued, then Canon 2(C) of the Code of Conduct for United States Judges would not forbid a federal judge to be a member of the club. On this assumption, the answers to the first two questions under Part A of your letter are ''yes'' (the club is exempt from the prohibition against membership in an organization that invidiously discriminates) and ''no'' (Judge Smith did not violate the Code by maintaining membership for 11 years). My answer to your third question is that Judge Smith had no obligation to seek an opinion from the Advisory Committee on the propriety of his membership in the club. Judge Smith had the responsibility to make sure that the club was and remained a purely social club and that his membership was therefore allowed.

B. A federal judge who is invited to a privately funded judicial education seminar, with expenses paid, has on obligation to identify the source of funding to ensure that acceptance of the gift is proper. This duty is not eliminated because the sponsor of the seminar is a law school or other educational institution that would not itself require the judge to refuse the invitation. Funding for the seminar may come from a person or entity whose generosity the judge should not accept but whose contribution does not appear on the face of the invitation. Consequently, Judge Smith should have inquired of the sponsor of private judicial seminars he attended to learn the source of funding and establish that there was no impropriety in accepting the invitation under the circumstances.

C. Your third inquiry, concerning the timing of Judge Smith's recusal decisions in SEC v. Black and U.S. v. Black, is quite complicated. In sum, I conclude that Judge Smith should have revealed his and his wife's investment in Mid-State Bank or in Keystone Financial, Inc., its holding company (hereafter, collectively ''Mid-State''), not later than October 27, 1997. Having failed to do so, he should have made this disclosure on October 31, when he did recuse himself. Failing to do so then, he should have done so as soon as he knew of Mid-State's financial exposure for Black's frauds so that counsel could, if advised, seek to vacate Judge Smith's rulings based on a violation of the judicial disqualification statute. Whether Judge Smith should have recused himself on October 27 given what he says he knew at the time is a more difficult question, which I address below. However, I conclude that Judge Smith should have recused himself on October 27 based on what he could have known and should have discovered on that day. Judge Smith should have recused himself form United States v. Smith as soon as it was assigned to him.

THE SPRUCE CREEK ROD AND GUN CLUB

Judge Smith promised more than he had to at his 1988 confirmation hearings. The Code of Conduct for United States Judges did not then forbid membership in purely private clubs that had no business or professional purpose. Although the Code was thereafter strengthened, following on amendments to the ABA Model Code of Judicial Conduct in 1992, even as strengthen the Code does not forbid membership in Spruce Creek. This assumes, however, that the club has no business or professional purpose or function. Of course, the opportunity for club members to meet in informal, social situations, to get to know each other in that way, can itself be seen as professionally or commercially advantageous, but that alone does not make the club's discrimination ''invidious.'' Defining the line between clubs that may exclude women (or men, for that matter) and those that may not because they have a business or professional dimension is not always easy. But there is a line and it is rooted in constitutional jurisprudence.

I am assuming that club members sponsor no events or meetings that could be characterized as business-related or profession-related. If my assumptions are wrong, however, if the club is not strictly social, then my conclusion will change. I understand that the Committee has received information that the club did allow its members to host business or professional meetings. If it did, it would not be purely private as I have been using that term, and its discrimination against membership for women would then be ''invidious'' within the meaning of the Code's prohibition. This would be true even if women were allowed to attend some or all business or professional meetings hosted by the club's male members. Since the propriety of Judge Smith's membership depended on the club maintaining a purely social purpose, he had the responsibility of assuming that it has and retained this status.

Judge Smith suggests that he reexamined his obligations under the Code of Conduct in 1992, when it was revised, and concluded that his 1988 promise obligated him to do more than the Code required him to do. As I wrote, the post 1988 amendments actually strengthened the prohibition against membership in discriminatory clubs, but even as strengthened, Spruce Creek does not, on the assumptions made, qualify as a club that ''practices invidious discrimination on the basis of . . . sex'' within the meaning of Canon 2(C).

Two other comments on this issue: First, while Judge Smith could have asked the Advisory Committee to give him an opinion on whether the club's discriminatory policy was ''invidious,'' I know of no rule imposing a duty to do so. Second, I realize that Judge Smith made a promise to the Committee in 1988 and then seems to have concluded that

he had promised more than the Code required. Whether and to what extent the Committee should be influenced by Judge Smith's failure to keep his promise notwithstanding this later conclusion, or by the Judge's failure to inform the Committee that he did not intend to keep his promise because of this conclusion, is not properly a question for me.

JUDICIAL EDUCATION SEMINARS

As you know, expense-paid seminars for judges has been a challenging issue. The gap between judges' reactions to criticism of these events and the perspectives of the critics does not seem to be shrinking. Many judges are annoyed that anyone would think they would compromise their objectivity because of an invitation (or many invitations) to a privately funded judicial seminar. Critics, on the other hand, argue that only certain groups of litigants have the wherewithal to support these seminars and that it diminishes the appearance of justice when judges attend them at luxury resorts to hear programs designed by those who can afford to sponsor them. Unfortunately, we have little in the way of guidance, mainly Opinion 67 of the Advisory Committee and several judicial opinions, including Judge Winter's opinion in In re Aguinda, 241 F.3d 194 (2d Cir. 2001). Judge Winter wrote: ''[A]ccepting something of value from an organization whose existence is arguably dependent upon a party to litigation or counsel to a party might well cause a reasonable observer to life the proverbial eyebrow. . . . Judges should be wary of attending presentations involving litigation that is before them or likely to come before them without at the very least assuring themselves that parties or counsel to the litigation are not funding or controlling the presentation.'' Judge Winter cites In re School Asbestos Litigation, 977 F.2d 764 (3d Cir. 1992), another leading case from Judge Smith's Circuit. the judge there was disqualified after attending a conference without ascertaining the source of funding for it. The source made the judge's attendance improper.

The authorities agree that before attending an expense-paid judicial seminar, a judge should learn who is picking up the tab for the judge's travel and housing. This indeed is what Opinion 67 says: ''It would be improper to participate in such a seminar if the sponsor, or source of funding, is involved in litigation, or likely to be so involved, and the topics covered in the seminar are likely to be in some manner related to the subject matter of litigation. If there is a reasonable question concerning the propriety of participation, the judge should take measures as may be necessary to satisfy himself or herself that there is no impropriety. To the extent that this involves obtaining further information from the sponsors of the seminar, the judge should make clear an intent to make the information public if any question should arise concerning the propriety of the judge's attention.''

Obviously, there would be room for much mischief if a judge invited to an expense-paid judicial seminar could rely on the non-profit nature of an apparently neutral sponsor to immunize the judge's attendance. Judge Smith is therefore wrong in his assumption, in reply to your follow-up question 6a, when he wrote that because ''George Mason's sponsorship of LEC was apparent from the face of the materials I received regarding the seminars, I conclude that no further inquiry into sources of funding was required.'' If was required.

SEC V. BLACK

Conflicts in the Black cases arise from the fact that the Smiths owned stock in Mid-State or Keystone. How much is uncertain. I understand that Judge Smith's financial disclosure form In 1997 revealed between $100,000 and $250,000 in stock in Keystone. The form also indicated that his wife had a 401(k) account with Mid-state, where she was an officer. Her account ranged between $100,000 and $250,000, but Judge Smith's financial disclosure form did not say where the money was invested. In answers to recent questions you posed (question 14), Judge Smith wrote: ''At the time in question [October 1997], my wife and I held stock in Mid-state and she was employed by the company.'' So now we do know that Mrs. Smith also held stock in Mid-State, but we don't know how much. As a result, we do know the amount of the Smiths' joint holdings in Mid-State or Keystone in October 1997 and thereafter or what percentage of their wealth it represented.

Anoter basis for a possible conflict in the Black matters was the fact that Mrs. Smith was an officer in Mid-State. However, Judge Smith recently responded to your written quesiton1 7 by stating that his wife ''was a corporate loan officer for Mid-state, a position far removed from those parts of the bank that had dealings with John Gardner Black.''

In this answer,I will assume that the Smiths had a substantial financial interest in Mid-State or Keystone or both (it was between $100,000 and $500,000) and that that interest represented a signficant portion of their wealth. No submission offered by or on behalf of Judge Smith has asserted otherwise and the record we have supports this conclusion.

*a. October 27, 1997*

I want now to focus on October 27, 1997 and the weeks immediately preceding:

On October 24, ''all investment funds were removed from Mid-State Bank'' by the Trustee. Letter of Mark A. Rush, 2/22/02, at 2, Judge Smith knew this because the fact is recited in an order he issued October 27. Letter of Douglas A. Kendall, 2/20/02, at 5.

In the chambers conference with the Trustee and his counsel on October 27, Judge Smith was told ''that information, although in its very early developmental phases, was being uncovered which may change Mid-State-Bank's involvement in the case from that of merely a depository of funds.'' He was advised ''of only a developing but not confirmed suspicion by the Trustee that Mid-State Bank's role may be more than a depository.'' Rust letter at 2, 3.

In September and October, the press in Pennsylvania reported the possibility that defrauded school districts would sue Mid-state. Kendall letters, 5/10/02, at 4 and exhibits. Certainly, the possibility of bank liability, or at least exposure to litigation, would have been apparent to any lawyer. Suits were in fact filed, starting as early as October 31, 1997. Id at 4. The suit was reported in the press the next day. Id.

Papers before Judge-Smith suggested that the bank prepared reports to the school districts showing the market value of their account at $157 million, while reporting to Black that the market value of these accounts was only $86 million. This information was in a footnote that was in an exhibit to an exhibit in the papers before Judge Smith, who apparently did not recognize its significance or did not see it. Reply to your follow-up question 8. However, the discrepancy was reported in the local press on October 31. Id. at 3.

In the October 27 chambers conference, Judge Smith told the Trustee and his counsel ''of his wife's employment in an unrelated division of Mid-State Bank.'' And the Judge ''indicated an intention to consider recusing himself based on the potential for a future appearance of a conflict.'' Rush letter at 3. Judge Smith did not then reveal the Smiths' financial interest in Mid-State or Keystone.

The information Judge Smith knew on October 27 required him to reveal his family's financial interest before ruling on the applications before him. So far as the Trustee and his counsel knew, the only basis for recusal was Mrs. Smith's employment in an ''unrelated division'' of the bank. That is all they were told. Understandably, they did not see that as a fact that required recusal or further discussion. (More on this below.) But had Judge Smith revealed the Smiths' financial interests in Mid-State on October 27, then the Trustee and his counsel, and counsel for the school districts seeking to unfreeze money held by Black in non-Mid-State banks, would have been able to provide the Judge with information (already in the press) about Mid-State's and Keystone's potential future liability for Black's frauds. Then, the footnote in the exhibit to the exhibit in the papers before Judge Smith could have surfaced and its import explained. Then, too, the public discussion about the possibility of legal action against Mid-State could have surfaced. The Trustee and counsel would then have had reason to be more expansive about their statement in chambers that ''Mid-State Bank's involvement in the case [may change] from that of merely a depository of funds.''

In fact, had Judge Smith revealed not merely his wife's employment in an ''unrelated division'' of the bank on October 27, but also his family's substantial financial investment in the bank, it would have been incumbent on counsel to reveal all they knew about the bank's legal exposure and to explore with the Judge whether what they knew, but did not see any need to elaborate, and what Judge Smith knew, but did not reveal, required recusal under Section 455(b)(4), which disqualifies a judge if the judge or the judge's spouse has ''any . . . interest that could be substantially affected by the outcome of the proceeding.'' Based on what parties collectively knew at the time, this exploration should have led to Judge Smith's recusal on October 27, before he ruled on the school districts' effort to unfreeze non-Mid-State accounts in Black's control (totalling about $175 million). Once Judge Smith learned of the probable lawsuits against Mid-State, he would have had to step out of the case. By failing to reveal his family's financial interest, however, Judge Smith effectively prevented the entire inquiry and led to a ruling he was disqualified from making because a bank in which his family had a substantial investment had an interest in the ruling, as discussed further below.

Although I focused above on the particular ruling Judge Smith made on October 27, that ruling is incidental to a more imposing fact. Even if there were no application for a ruling on October 27, Judge Smith should still have recused himself based on information that he could and should have discovered on that date. That information revealed the enormity of Mid-State's potential liability. As stated above, and as reported in the press in October, Mid-State's own documents showed a potential shortfall of $71 million in school district funds that Black had deposited with Mid-State. So I want to stress that it was this exposure, and not alone the ruling Judge Smith was asked to make on October 27, that required recusal by that date if not sooner. In short, Judge Smith should not have been sitting in a matter when, as he could have and should have known, a bank in which he had a substantial investment faced financial liability in tens of millions of dollars. As we now know, Keystone eventually paid $51 million to settle depositor claims.

*b. October 31, 1997*

On October 31, Judge Smith recused himself citing only his wife's employment. He has explained to the Committee that he did so because he foresaw the possibility that the bank might be a source of evidence in the case. Letter of 2/25/02, at 2. As stated, Judge Smith has acknowledged that his wife was in a ''position far removed from those parts of the bank that had any dealing with John Gardner Black.'' It is hard to understand why Mrs. Smith's position caused Judge Smith to recuse himself, even assuming that Mid-State officials might be deposed or that Mid-State might be the source of documents. At this point Judge Smith believed that the bank was merely a ''depository.'' If that were all it was, it should make no difference that officers or employees, from a part of the bank ''unrelated'' to the one in which his wife worked, might be deposed or that the bank might be a source of documents. In fact, Judge Smith does not appear to believe that he even had to recuse for this reason. In his answer to your question 13, he wrote that he had no ''legal obligation'' to recuse when he did, but did so ''out of an abundance of caution.'' (See also the answer to your question 14.) Judge Smith acknowledges in his answer to question 18 that there was a possibility that his wife might herself be a witness. By failing to reveal the Smiths' investments on October 31, Judge Smith denied the litigants information that they could have used to overturn on October 31, Judge Smith denied the litigants information that they could have used to overturn his October 27 ruling refusing to unfreeze half the money (about $77 million) that Black maintained in non-Mid-State accounts.

A ruling by a judge who should have been disqualified may be vacated. This is true even if the judge, when ruling, was unaware of the basis for the disqualification. Liljeberg v. Health Services Acquisition Corp., 486 U.s. 847 (1988) Judge Smith's rulings in SEC v. Black, and in particular his ruling on October 27 refusing to unfreeze all of the non-Mid-State funds in Black's control, could have been challenged based on the Smiths' financial interest. However, because Judge Smith did not reveal the Smiths' financial interest in Mid-State on October 27, or on October 31 when the Judge did recuse himself, or thereafter, parties to the proceedings before him, including the school districts that sought to unfreeze all of their non-Mid-State funds, could not use this interest as a basis for vacating the Judge's rulings. While it is true that a judge may recuse without giving any reason, where there are reasons for recusal that could retroactively affect the legitimacy of orders already entered, the judge must reveal that information so that the parties can determine whether to challenge the judge's orders on this basis. Id. at 867. The fact that a judge might not believe that a particular fact would suffice to warrant recusal, or to warrant an order vacating a ruling, is not a justification for failing to make the disclosure. A judge should not, through silence, be the ultimate arbiter of his or her own disqualification. If a fact could reasonably support disqualification or an effort to overturn a ruling, as is true here, that fact should be revealed so that counsel may argue it or bring it to the attention of another judge or an appellate court. Id.

*c. Events after October 31, 1997*

Even if Judge Smith continued to believe on October 31 that the bank's role was solely as a prospective witness in its capacity as depository, it shortly thereafter became apparent, when lawsuits were filed, that this was not so, and that in fact the bank would be exposed to financial liability. At that point, at least, Judge Smith should have revealed the Smith's financial investment in Mid-State. While it is true that Judge Smith no longer had jurisdiction over SEC v. Black after October 31, he did not need jurisdiction to make financial information known. So even assuming Judge Smith did not realize the bank's financial exposure as of October 31, which I do assume, and even assuming (which I do not) that he had no duty even to explore the possibility of the bank's financial exposure with counsel on October 27, Judge Smith should nevertheless have revealed his family's financial interest in the bank once its potential civil liability became evident, as it did soon after October 31.

Those appealing Judge Smith's order would have benefited from knowledge of the facts and amounts of the Smiths' Mid-State investment because that investment meant Judge Smith should not have ruled on any issue that could affect Mid-State's financial exposure. The effort to unfreeze the non-Mid-State money is such an issue because the more money available from other sources to compensate school districts with Mid-State accounts, the smaller would be Mid-State's exposure. In other words, if money in non-Mid-State banks could be used to compensate districts whose funds were in Mid-State accounts, Mid-State could be benefited. So could the Smiths as substantial investors.

In Liljeberg, supra, Judge Collins ruled in a case even though at the time, he was a fiduciary of a non-party (Loyola) that stood to gain financially from the ruling. At the time he ruled, he did not know of Loyola's interest in the matter, although he previously knew of it and learned of it again later. The Court agreed that Judge Collins could not have recused himself when he lacked knowledge of the disqualifying fact. A ''judge could never be expected to disqualify himself based on some fact that he does not know, even though the fact is one that perhaps he should know or one that people might reasonably suspect that he does know.'' 486 U.S. at 860. The Court then went on to hold that ''[n]o one questions that Judge Collins could have disqualified himself and vacated his judgment when he finally realized that Loyola had an interest in the litigation.'' Id. at 861. Doing so might ''promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible.'' Id. at 865. Judge Collins ''silence,'' once he recalled Loyola's interest, ''deprived respondent of the basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal.'' Id. at 867. So, too, here.

Judge Smith no longer had jurisdiction of the case after October 31, and therefore could not recuse himself or vacate his orders, as the Supreme Court ruled Judge Collins could have done. But once he learned of the bank's exposure, Judge Smith could have taken the lesser step of informing counsel of his family's financial interests in the bank. He should have done this because he should have realized that the following facts, once publicly known, would undermine confidence in the judiciary and create the appearance of impropriety. These facts are:

(1) Judge Smith was told on October 27 that the bank may be more than a mere depository:

(2) papers before Judge Smith on October 27 showed a substantial discrepancy between what the bank was telling depositors and what the bank was telling Black;

(3) the press in Pennsylvania was reporting on the prospect of lawsuits against the bank;

(4) the Smiths had a substantial financial interest in the bank:

(5) three days prior to October 27, as Judge Smith knew, the Trustee had removed all of the school district funds from the bank and placed it in another institution;

(6) on October 27 Judge Smith made a ruling that an objective observer could view as beneficial to Mid-State by keeping frozen monies that might be available to compensate school districts that had accounts in Mid-State;

(7) despite the information available to him on October 27, Judge Smith made no effort to conduct a further inquiry of counsel into the possible financial exposure of Mid-State or reveal his family's investment in Mid-State.

The upshot of this is that even if we assume that as of October 31 Judge Smith thought of Mid-State as merely a depository whose personnel might be witnesses, nonetheless, in retrospect, Judge Smith should have realized from the facts itemized above that his conduct threatened confidence in the impartiality of the courts and that he had to take steps to correct that, Liljeberg, quoting the lower court's opinion, states: ''The goal of Section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the Judge is pure in heart and incorruptible. The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality. Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge.'' Id. at 860 (internal citations omitted). See also In re School Asbestos Litigation, 977 F.2d at 784, quoting some of the same language from Liljeberg. It is hard to fathom Judge Smith's silence after October 31 even if one accepts his explanations for his conduct until that time.

UNITED STATES V. BLACK

This brings me to United States v. Black, the criminal case against Mr. Black, assigned to Judge Smith in 1999, when Mid-State's financial exposure was apparent. Judge Smith kept the case for five months, until a motion to recuse him was made and granted. Again judge Smith cited his wife's employment as the basis for granting the motion. I don't understand why, if an ''abundance of caution'' caused Judge Smith to recuse himself sua sponte in SEC v. Black because of the prospect of testimony from bank personnel, or because the bank might be a source of documents, he did not recuse in United States v. Black immediately. Be that as it may, for other reasons Judge Smith should never have accepted United States v. Black. First, Third Circuit precedent directly on point prohibited Judge Smith from accepting the case. ''We adopt the view that a judge who owns a substantial interest in the victim of a crime must disqualify himself or herself in the subsequent criminal proceeding because the strict overarching standard imposed by §455(a) requires that the appearance of impartiality be maintained.'' United States v. Nobel, 696 F.2d at 231, 235 (3rd Circuit 1982). This is a holding of the case and cannot be more explicit. The court went on to conclude that on the particular facts disqualification had been waived under §455(e). But the court would not have had to consider waiver unless it had first found that the judge, as an investor in the defrauded institution (''INA''), was disqualified from sitting in judgment of the man accused of defrauding that institution.

The facts here are even stronger than the facts in Nobel. Nobel also held that §455(a) would have required disqualification of the trial judge even though ''by the time of the criminal trial a settlement had been effected which called for defendant to repay INA for substantially all of the funds which defendant received as a result of the fraud.'' Id. at 234. Since INA had recovered its lost money in Nobel, no ruling in that case could have affected the size of the investing judge's loss. Not so here. Mid-State was either the victim of Black's misconduct or civilly liable for facilitating it (or perhaps both). In either event, unlike INA, it stood to lose or have to pay a lot of money (as in the end it did) in part as a result of Black's acts. Obviously, it was in the bank's interest to minimize the amount it would lose or have to pay, and in furtherance of that goal it would want to shift as much blame to Black as possible. It was in the interest of the Smiths as Mid-State investors to achieve the same objectives. It should have been apparent that these objectives might be furthered by rulings in Black's criminal case and by limiting any monetary sanction against Black, as next discussed. Judge Smith's defense (in answer to your question 20) that Nobel is inapposite because Mid-State was not a ''victim'' in the same way that INA was a victim entirely misses the purpose of the disqualification statute and the reasoning of Nobel.

Judge Smith should have realized that decisions he might make in Mr. Black's criminal case could affect the civil actions then pending against Mid-State. This could happen in at least two ways. First, Judge Smith would be called upon in Black to make evidentiary rulings that could lead to the revelation, or to the concealment, of information that might affect the course of the civil litigation against Mid-State. Second, I understand that in the event of a conviction, Black would have been subject to monetary sanctions. Obviously, the more money Black had to pay as a criminal sanction, the less money he would have available to compensate the school districts allegedly harmed by Mid-State and Black. Consequently, Mid-State would have an interest in Black retaining as much money as possible so that his wealth could be used to offset depositor losses. If somehow Judge Smith did not appreciate that his family's Mid-State investments required recusal, he should have revealed this information to counsel so they, and the defendant, could decide whether to act on it.

In sum, assuming that Judge Smith did not know of Mid-State's financial exposure on October 27, 1997, and did not therefore recognize a need to recuse himself in SEC v. Black, still there was sufficient information before him to warrant both further inquiry and revelation of his family's investments in Mid-State. Inquiry and revelation at this point would have resolved the issue and made disqualification immediately necessary. As stated above, a federal judge does have a duty to be forthcoming with facts that could support a request for recusal. Once Mid-State's financial exposure became apparent, as early as press reports of the first lawsuit on November 1, Judge Smith's continued silence is inexplicable. His order of October 27 was being challenged and his family's financial investment would have provided the challengers with strong arguments to vacate it, perhaps more quickly. Just as Judge Collins in Liljeberg should have immediately revealed his reawakened knowledge of Loyola's interest in a litigation before him, Judge Smith should have revealed his family's financial interest in the bank immediately on learning that the bank had financial exposure in the events underlying SEC v. Black.

For the reasons given above, Judge Smith should never have accepted United States v. Black. Rulings in that case have affected the amounts of money Mid-State would eventually have to pay and therefore the value of the Smiths' investment. Even if they could not, Circuit precedent required his recusal.

I hope I have answered your questions. Please don't hesitate to ask if I can be of further assistance.

Sincerely,

STEPHEN GILLERS,
*Vice Dean.*

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HOFSTRA UNIVERSITY,
SCHOOL OF LAW,
*Hempstead, NY, May 21, 2002.*

Re nomination of Judge D. Brooks Smith.

Hon. RUSSELL D. FEINGOLD,
*Committee on the Judiciary, Hart Senate Office Building, U.S. Senate, Washington, DC.*

DEAR SENATOR FEINGOLD. This letter is in response to your letter to me of May 9, 2002, requesting my opinion on ethical issues that have arisen in connection with the nomination of United States District Judge D. Brooks Smith to the United States Court of Appeals for the Third Circuit. These issues related to (A) Membership in the Spruce Creek Rod and Gun Club; (B) Attendance at Judicial Education Seminars; and (C) Judicial Disqualification Requirements.

*(A) Membership in the Spruce Creek Rod and Gun Club*

I had originally concluded that Judge Smith's membership in the Spruce Creek Rod and Gun Club was not a ground for denying him a judgeship on the Court of Appeals. In reaching that conclusion, I was relying in significant part on the opinion expressed in the letter to Senator Orrin G. Hatch of April 23, 2002 by Professor Ronald D. Rotunda, for whom I have considerable respect. Subsequent research has convinced me, however, that Professor Routunda's analysis in this instance is seriously flawed, that his conclusion is clearly wrong, and that Judge Smith's membership in the Club is a serious violation of his ethical responsibilities as a judge.

I was troubled from the outset, of course, that Judge Smith's membership in the Rod and Gun Club violates the plain meaning of Canon 2C of the Code of Conduct for United States Judges. That provision forbids a judge to hold membership in an organization that ''practices invidious discrimination on the basis of . . . sex. . . .'' Since the bylaws of the Rod and Gun Club arbitrarily restrict membership to men, and since Judge Smith held membership in the Club for eleven years while he was a federal judge, his violation of Canon 2C appears to be obvious.

Nevertheless, two aspects of Professor Rotunda's letter persuaded me that this plain-meaning reading was not the final word. First, I accepted Professor Rotunda's assertion that the Club is a ''purely social'' organization with no formal business or professional activities. In this regard, Professor Rotunda may well have been misled by Judge Smith himself, who has repeatedly mischaracterized the Club to the Judiciary Committee as a ''purely social group'' that does not conduct any business or professional activities. In any event, I now understand that the crucial factual premise is false, because professional meetings are in fact held at the Rod and Gun Club.

Of equal importance to my original judgment is the fact that I accepted Professor Rotunda's statement regarding §2.14(b) of the Code of Conduct for United States Judges, Compendium of Selected Opinions (2002). In Professor Rotunda's words, that section holds that: ''[T]he Masonic Order, which limits full membership to males does not practice 'invidious' sex discrimination because it does 'not provide business or professional opportunities to members.'' Frankly, I have difficult with the notion that important business and professional contacts are not made at a club where business and professional men interact and bond with each other and with important political figures and judges. Moreover, I was troubled that this exception for the Masons—as stated Professor Rotunda—would effectively swallow up the rule against discrimination on grounds of sex. Nevertheless, for purposes of forming an opinion about Judge Smith's compliance with the Code of Judicial Conduct, I accepted Professor Rotunda's representation that such a distinction has been made in the Compendium of Opinions.

However, the full summary of the opinion regarding the Masons in §2.14(b) of the Compendium is not based simply on the premise that the organization does not provide business or professional opportunities to members (which is a factual premise that, in any event, is inapplicable to the Rod and Gun Club). Rather, the summary refers only once to the absence of business or professional opportunities, but refers twice to the religious purposes of the Masons. Compare, then, the actual summary set forth in §2.14(b) with Professor Rotunda's rendering of that summary, which is quoted supra: ''Masonic Order, represented to be fraternal organization devoted to charitable work with religious focus and not providing business or professional opportunities to members, is not consider to be an organization practicing invidious discrimination although women are not permitted to be full-fledged members. Organization is considered to be dedicated to the preservation of religious and cultural values of legitimate common interest to members. Commentary to Canon 2C.'' Because of this reiteration in §2.14(b) of the Masons as being ''devoted'' and ''dedicated'' to the preservation of religious values through charitable work, the exception for the Masons does not swallow up the proscription of Canon 2C against discrimination on grounds of sex. Instead, the Masons' exception becomes a limited one that respects the First Amendment's guarantee of freedom of religion.

Contrary to Professor Rotunda's abridged version of §2.14(b), therefore, the full text of §2.14(b) does not support the conclusion that the Spruce Creek Rod and Gun Club's discrimination against women is permissible. Accordingly, Judge Smith was clearly in violation of Canon 2C for most of the eleven years that ''dragged on'' while Judge Smith was on the bench and remained a member.

Finally, with respect to the specific questions that you raised on this issue in your letter to me:

1. Judge Smith is incorrect in asserting that revisions to Canon 2 of the Code of conduct exempt clubs like Spruce Creek from the ban on membership in discriminatory organizations. Indeed, that assertion is fanciful, on a plain-meaning reading of Canon 2C: ''A judge should not hold membership in any organization that practices invidious discrimination on the basis of . . . sex . . .'' Moreover, the exceptions in the Comment reinforce the conclusion that the Rod and Gun Club falls within this plain language. For example, the Comment exempts an organization that is ''dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members [like the Masons], or that is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.'' Obviously, neither clause in that exception describes the Spruce Creek Rod and Gun Club.

2. Judge Smith violated ethical standards by remaining a member of the Spruce Creek

Rod and Gun Club for eleven years—or, at least, for most of those years—while serving as a federal district judge. The 1998 Code reiterates the language of the 1992 Code in allowing a judge a maximum of two years to make immediate and continuous efforts to change the club's policy before resigning. Since Judge Smith claims to have made such efforts beginning in 1988, he should have resigned at least by 1992, when he knew that four years of efforts had already been unavailing.

3. If Judge Smith somehow believed after 1992 that he could ethically remain a member of the Club (a conclusion that is difficult to credit) he should at least have consulted with the Advisory Committee on Judicial Conduct before continuing his membership. Apart from that, having given his word to the Judiciary Committee that he would resign from the Club if it did not change its discriminatory bylaw, Judge Smith should have informed the Committee of his intention to break his word and his reasons for doing so.

*(B) Attendance at Judicial Education Seminars*

In answer to your specific question, Judge Smith is not correct in asserting that under existing ethical standards, he was not required to inquire into the identity of corporate financial supporters of an organization like the Law and Economics Center at George Mason University.

As noted in the Comment to Canon 2A, the appearance of impropriety depends on the appearance to a reasonable person who has ''knowledge of all the relevant facts that a reasonable inquiry would disclose.'' Thus, if a reasonable inquiry would reveal the source of the funding, the source of the funding is relevant to determining whether there is an appearance of impropriety and, thereby, whether the judge has committed a violation of the standard. In order to conform his conduct to the rule, therefore, the judge must at least make the same reasonable inquiry that the hypothetical reasonable person would be making into the source of the funds for the seminar.

It is important to address here Professor Rotunda's disparaging comments on the appearance of impropriety as a standard in judges' and lawyers' ethics. Professor Rotunda is correct in saying that some authorities have rejected the appearance of impropriety as a standard. That has come about, however, for reasons that have nothing to do with the merits of the standard. Moreover, the views of those authorities could not overrule either the Due Process Clause of the Constitution or the Code of Conduct for United States Judges.

In fact, the appearance of impropriety is central in judges' and lawyers' ethics, and, specially, in the Code of Conduct for United States Judges. Moreover, a fundamental principle of constitutional due process of law is that ''any tribunal permitted by law to try cases and controversial not only must be unbiased but also must avoid even the appearance of bias.'' That is, ''to perform its high function in the best way, justice must satisfy the appearance of justice.''

As recently as 1998, the Judicial Conference of the United States reiterated its commitment to avoiding the appearance of impropriety on the part of judges. As stated in the Comment to Canon 2A:

''Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and the appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome of the ordinary citizen and should do so freely and willingly. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code.'' Then, directly addressing Professor Rotunda's complaint that the appearance of impropriety is ''too vague to be a standard,'' the Comment explains precisely what is meant by the standard of an appearance of impropriety: ''Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.''

Thus, the Code tells us, that an appearance of impropriety is one that would cause a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, to believe that the judge has violated a specific provision of the Code, or has violated the law, or has violated court rules, in such a way that impairs the judge's impartiality.

Consistent with that definition, the appearance of impropriety with regard to the judicial seminars is the appearance that a party is buying special access to the judge, both by financing an expert to express ex parte opinions to the judge, and by making a gift to the judge to induce the judge to pay special attention to the expert's ex parte opinion. Thus, judge Smith's conduct violates Canons 2, 2B, and 6, and appears to violate Canon 3A(4), as explained below.

As a general matter, there is nothing in the Code of Conduct for United States Judges that would forbid a judge from attending a privately-sponsored judicial seminar. Also as a general matter, there is no limitation—nor should there be—on the ways in which judges engage in continuing legal education.

However, a specific rule of critical importance in Canon 3A(4), which forbids a judge to consider ''ex parte communications on the merits * * * of a pending or impeding proceedings.'' This rule goes so far as to forbid a judge to receive the ex parte advice even of a ''disinterested expert'' on the law applicable to a proceeding before the judge, unless the judge gives nothing to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Also relevant is Canon 6, which provides that a judge may not receive reimbursement of expenses to judicial seminars ''if the source of such payment * * * give[s] the appearance of influencing the judge in the judge's judicial duties or otherwise give[s] the appearance of impropriety.''.

I understand that Judge Smith has attended seminars in which experts addressed legal issues that appeared to be the same as the issues that were presented in matters that were then before him. In addition, it is entirely possible that one or more of the speakers discussed those issues in informal contacts with the judge at those seminars.

Your letter refers, for example, to Gerber v. Medtronic, Inc. This was a products liability case that Judge Smith was adjudicating when he attended a seminar at Hilton Head. At the seminar, experts discussed ''Risk, Injury, and Liability.'' In the Center's words, this seminar ''demonstrates the superiority of a legal system that assigns liability to those best able to avoid injury over a system that seeks only to spread losses by assigning them to the 'deepest pockets.'''. Also, one of the lecturers at the seminar published a paper the same year arguing for federal preemption of state tort claims involving pharmaceuticals subject to federal regulation.

Upon returning home, Judge Smith granted summary judgment in favor of Medtronic—the party that had provided financial support to the Law and Economics Center, which had sponsored the seminar. The ground for Judge Smith's decision was federal preemption of the state tort claims.

On those facts, there is an appearance that Judge Smith violated Canon 3A(4) by receiving ex parte communications on issues then before him in the Medtronic case.

Under the language of Canon 3A(4), of course, it is irrelevant whether the seminars were funded by a party appearing before the judge. However, the fact that a party before the judge was providing financial support for a seminar at an expensive resort, the fact that the judge stayed at the resort without cost, and the fact that the expert's ex parte presentation was also financed in part by the party, would all heighten the appearance of impropriety. Specifically, the appearance is that the party is buying special access to the judge, both by making a gift to the judge and by financing an ex parte communication by an expert.

In addition, Judge Smith's attendance at the seminar violated Canon 6 because of the source of the reimbursement of the judge's expenses ''give[s] the appearance of influencing the judge in the judge's judicial duties or otherwise give[s] the appearance of impropriety.''

*(C) Judicial disqualification requirements*

Your final question to me is whether there is anything in Judge Smith's answers to your written questions that changes the opinion in my letter to the Committee of March 14, 2002 (which I adopt here by reference).

The answer is no. Judge Smith's written answers like his testimony before the Committee, consist of obfuscation and disingenuousness. In addition, those answers confirm the conclusion stated in my earlier letter that Judge Smith has committed repeated and egregious violations of judicial ethics; that to this day he has failed to inform himself of his obligations under the Federal Judicial Disqualification Statute; and that he has been disingenuous before this Committee in defending his unethical conduct.

For example, in answer to your Question 7a, Judge Smith says: ''Starting on October 27th, I began to develop concerns that MidState's involvement in SEC v. Black might, in the future, require it to play a more prominent evidentiary role in the litigation. I may have told the Trustee and his lawyer that I would consider recusing myself based on the potential for a future appearance of impropriety...'' In those two sentences, Judge Smith displays either an ignorance of the nature of conflict of interest law or a desire to confuse the issue with meaningless verbiage (''the potential for a future appearance of impropriety'').

First, all conflicts of interest are concerned with potentials—that is, with the risk of substantive ethical violations that might arise in the future. As explained by the Restatement of the Law Governing Lawyers, ''conflict of interest'' refers to whether there is a ''substantial risk'' that a substantive violation of one's ethical obligations will arise in the future. (With regard to a judge, this would refer, e.g., to the risk that the judge's impartiality might come to be impaired in the course of the litigation.) To be ''substantial,'' the risk must be ''more than a mere possibility.'' However, it need not be

''immediate, actual, and apparent.'' On the contrary, as explained in the comment to Restatement §121, a risk can be substantial, within the meaning of the rule, even if it is ''potential or contingent,'' and despite the fact that it is neither ''certain or even probable'' that it will occur. The ultimate test is that there be a ''significant and plausible'' risk of adverse effect on one's ethical responsibilities.

When Judge Smith said, therefore, that on October 27th he ''began to develop concerns that Mid-State's involvement in SEC v. Black might, in the future, require it to play a more prominent evidentiary role in the litigation,'' he was acknowledging that he had a conflict of interest that required him immediately to recuse himself. That is, he was acknowledging that there was a ''significant and plausible risk''—even if it was not ''certain or even probable''—that he would find himself adjudicating a case in which he had a substantial financial interest.

Moreover, Judge Smith reiterates that ''Mid-State Bank was not a party to the litigation before me.'' As a Federal Judge for fourteen years, Judge Smith should be familiar with the leading Supreme Court case of Liljeberg v. Health Services Acquisition Corp. He should know, therefore, that it is immaterial whether the Bank had been a party. In Liljeberg, for example, Loyola University was not a party and, indeed, the judge had forgotten that Loyola had any possible interest in the outcome of the case. Nevertheless, simply because the judge had been a trustee of Loyola, the Supreme Court vacated the judgment under the Federal Disqualification Statute (28 U.S.C. §455).

For all of the reasons in my earlier letter and in this one, therefore, I continue to believe that Judge D. Brooks Smith should not be honored with advancement to a distinguished Federal Circuit Court.

Respectfully submitted,

MONROE H. FREEDMAN,

*Lichtenstein Distinguished Professor of Legal Ethics.*

## TRIBUTE TO ROY S. ESTESS

Mr. COCHRAN. Mr. President, one of my State's finest Federal Government officials, Roy S. Estess, announced last week his retirement from the National Aeronautics and Space Administration.

Mr. Estes had served as Director of the Stennis Space Center in Mississippi since January 20, 1989. He has been responsible for managing the center and overseeing the Center's role as the lead center for rocket propulsion testing and the lead center for implementing commercial remote sensing applications. Prior to becoming Director, he had been the Deputy Director of the Center for nine years. He had played a pivotal role in having the Mississippi Test Facility selected as the test site for the Space Shuttle main engine.

Roy graduated from Mississippi State University with a degree in aerospace engineering, and he also completed the advanced management program at the Harvard Graduate Business School.

Roy has held various engineering and management positions during his 42 years of Government service. Thirty-seven of those years have been spent with NASA. His wide ranging experience with NASA included service as a special assistant in NASA Headquarters in Washington, DC, for two consecutive NASA Administrators. Roy also served temporarily as acting director of the Johnson Space Center in Houston, TX.

Among the numerous awards and honors he has received over the years are: the Presidential Distinguished Service Award—twice—and Meritorious Senior Executive Award; NASA's Distinguished Exceptional Service, Equal Opportunity and Outstanding Leadership Medals; the National Distinguished Executive Service Award for Public Service; and Alumni Fellow of Mississippi State University; as well as Citizen of the Year in his home town of Tylertown, MS.

We will truly miss having the benefit of the thoughtful, intelligent leadership of Roy Estess.

He has been a great friend and a trusted source of good advice and counsel for me throughout my career.

I commend Roy Estess on his truly outstanding career and I wish for him much satisfaction and happiness in the years ahead.

## PHARMACEUTICAL RESEARCH AND DEVELOPMENT

Mr. HATCH. Mr. President, I rise to speak on a subject related to the debate that we concluded yesterday—at least for the time-being—and that subject is pharmaceutical research and development.

Yesterday, the Senate was unable to reach consensus on the appropriate structure and scope of the much-needed Medicare prescription drug benefit. This was unfortunate for millions of senior citizens across America, including thousands of Utahns.

It is my hope that after the August recess it will be possible for the Senate to match the success of the House of Representatives and pass a Medicare drug bill. I know that we sponsors of the tripartisan proposal will not give up. Senators BREAUX, JEFFORDS, GRASSLEY, SNOWE, and I will redouble our efforts to build support for our plan.

It was also unfortunate yesterday that the Senate adopted S. 812, the Greater Access to Pharmaceuticals Act.

This is the legislation that was originally introduced by Senators MCCAIN and SCHUMER and virtually re-written in the HELP Committee in the form of an amendment sponsored by Senators EDWARDS and COLLINS.

Let me be clear. I am supportive of reasonable changes to the Drug Price Competition and Patent Term Restoration Act, commonly referred to as Waxman-Hatch, or Hatch-Waxman.

I do not oppose amending the Act. However, I do oppose the way in which it was amended, both in the HELP Committee and here on the floor.

I have spoken at some length about the deficiencies of this bill—that appeared only the day before the mark-up on July 10th, and was rocketed straight to the Senate floor the next week. While it was pending for over 2 weeks, it is accurate to say that the central matter under consideration was the Medicare drug benefit issues and that there was relatively little focus on the specifics of the underlying bill.

Despite the lopsided vote yesterday, I have explained why I thought, and still think, that it would have been preferable to hold hearings on this potentially important but largely un-vetted bill.

As ranking Republican member of the Senate Judiciary Committee, I have made known my objections to the manner in which the HELP Committee has acted to usurp the jurisdiction of the Judiciary Committee. When all is said and done, S. 812 is fundamentally an antitrust bill colored by civil justice reform and patent law considerations.

We all know that S. 812 became the floor vehicle for the Medicare drug debate for one major reason the Democratic leadership recognized that if the regular order were observed and a mark-up were held in the Finance Committee, it was almost certain that the tripartisan bill would have been reported to the floor.

I would point out to my colleagues that have just secured final passage of the conference report to accompany the omnibus bipartisan trade package. This bipartisan bill—perhaps the most important economic legislation of this Congress and a bill that will have lasting impact for years to come—came out of the Finance Committee.

I think most would agree that the Finance Committee has a long track record of reaching bipartisan consensus on major issues facing our country.

Perhaps if the Democratic leadership had given the Finance Committee the opportunity to do its job, the great success of the trade legislation would have been duplicated with respect to the Medicare drug benefit.

Instead, we come to the August recess without a Senate Medicare drug benefit bill to conference with the House.

We also come to August, almost as punishment for failing on the Medicare drug benefit issue, with the flawed HELP Committee substitute to S. 812 now adopted by the full Senate.

We could have held hearings on the actual language of the substitute.

We could have taken time to study the facts and recommendations of the major Federal Trade Commission report of the very provisions of law that S. 812 amends.

We could have learned why the Patent and Trademark Office opposes the language of the bill.

We could have learned what the Food and Drug Administration and Department of Justice, and the Office of the United States Trade Representative had to say about the bill.

But we did not.

Instead of taking the time for a careful evaluation of a potentially important change in the law, for the sake of

short-term political tactics in an election year, we brought this bill to the floor in a poisonous atmosphere designed in part to vilify one segment of the pharmaceutical industry.

While S. 812 completely revised most of the McCain-Schumer language and made several significant steps in the right direction, there are significant problems in several of the new features that so mysteriously found their way into the bill on the day before the mark-up.

Since I have done so in some detail previously, I will not catalog these problems again today.

And even though I still oppose various aspects of key provisions of the bill that passed the Senate in the denouement of the Medicare debate yesterday, I want to congratulate Senators MCCAIN, SCHUMER, KENNEDY, EDWARDS, and COLLINS for the substantial vote yesterday.

Nevertheless, I hope that our colleagues in the House will study the Senate legislation, and consult with experts in the Administration, including the FTC, PTO, DOJ, FDA, and USTR, and other affected parties as they decide how best to address the matters taken up by the still barely three weeks' old language of the HELP Committee substitute to S. 812.

Again, let me reiterate that I do not oppose legislation in this area. I concur with the majority of the HELP Committee and the Senate that changes need to be made. They just need to be made in a more measured fashion, taking into account the latest recommendations of the Federal Trade Commission.

I plan to continue to participate in this debate as action moves to the House. I will work with the House, the administration, and others with a stake in the outcome of this legislation.

Frankly, my first impression is that the FTC report provides some critical information and thoughtful recommendations for legislation. I was, of course, pleased that the FTC's first major recommendation—allowing only one 30-month stay for all patents listed with FDA at the time that each particular generic drug application is filed with the agency—was precisely what I have advocated.

The Senate-adopted version of S. 812 goes way beyond this policy. Why?

I am also supportive of the FTC's second, and final, major recommendation, to require that any potentially anticompetitive brand name-generic agreements be submitted for FTC review. This is consistent with the suggestions I made to Chairman LEAHY in connection with his bill, the Drug Competition Act, S. 754.

I am still studying the three minor FTC recommendations that aim to promote price competition and hinder the type of collusive arrangements that on a few but very unfortunate occasions have grown out of the 180-day marketing exclusivity provisions of the law.

Taken together these three recommendations appear to promote a very aggressive version of the use-it-or-lose-it policy I have advocated. Not that I pretend to understand the very complicated exclusivity, forfeiture, and transfer provisions of section 5 of the Edwards-Collins Amendment—and a review of the transcript of the mark-up suggests that I am not alone in my confusion—the HELP Committee adopted quasi-rolling exclusivity policy triggered only by an appellate court decision appears to be significantly at odds with where the FTC and I come out on this issue.

It is very unfortunate that the rushed timing brought about by the tactically convenient decision to mesh S. 812 with the volatile politics of Medicare acted to minimize the value of this over-a-year-in-the-making, but still only 2 days' old, FTC study. As was demonstrated over the past two-and-a-half weeks, the charged atmosphere of election year Medicare debates on the Senate floor is not conducive to fine-tuning of complex and nuanced matters of antitrust and patent law.

As co-author, with my House colleague, HENRY WAXMAN, of the statute that S. 812 seeks to amend—the Drug Price Competition and Patent Term Restoration Act of 1984—I have a longstanding interest in legislation affecting pharmaceutical research and development and the continued growth of the generic drug sector.

A key principle of the 1984 Hatch-Waxman Act is balance between the interests of developing the next generation of new medicines and making available generic copies of existing drugs. For reasons I have spelled out over the last two weeks, I am unable to conclude that this principle of balance has been observed in the bill the Senate adopted yesterday.

No law as complex of the 1984 Act is so perfect that it cannot be improved as it measures up to the tests of time and changing conditions. In my view, there have been several unintended and unanticipated consequences of the 1984 law and other changes in the pharmaceutical sector that bear attention by Congress.

I would like to spend a few minutes today to outline several issues beyond the 30-month stay and the 180-day marketing exclusivity rule that, along with the manner in which the drafters attempt to codify FDA's current bioequivalence standards, have dominated the recent Hatch-Waxman reform debate.

On any number of occasions, I have heard proponents of S. 812 cite as their rationale for this legislation the need to restore the old balance and original intent of the Waxman-Hatch Act.

I am afraid that—not only does the legislation fall short on the balance test but this misdirected attempt to look backward to the intent of 1984 may result in missing important opportunities to facilitate the future of drug discovery and increasing patient access to these new medicines.

If you do not ask the right question, you will get the wrong answer.

I wish to share my perspective on how the science of drug discovery and the pharmaceutical marketplace are changing.

Historians will record the recently-completed mapping of the human genome as a major achievement in the history of science.

Each day, progress is made on new avenues of biomedical research. For example, developments proceed apace in the field of nanotechnology—the precise manipulation of molecules at a sub-molecular level. Similarly, there is great excitement related to proteomics—the study of the structure and function of proteins and the interaction among proteins. We know that genes regulate proteins and, as our understanding of human genes becomes more complete, we will spend more and more time and effort on learning about the relationship between genes and proteins and how proteins carry out these assigned roles.

As has been debated on this floor earlier this year and will undoubtedly be debated again this fall, there is great interest in the promising field of stem cell research. While there are a host of ethical issues that need to be addressed in this area, many leading scientists tell us that stem cell research may one day virtually revolutionize the practice of medicine. The nascent field of embryonic stem cell research may succeed in bringing forth the knowledge that will yield new diagnostics and treatments for a host of currently incurable diseases.

We know that many, including more than 40 Nobel Laureates and virtually all leading science organizations, have concluded that the highly promising, emerging science of regenerative medicine will be advanced by the use of human somatic cell nuclear transfer as a method to develop stem cells.

I mention this to comment on how our almost exponential growth in biomedical knowledge is affecting the pharmaceutical industry.

Looking at all these developments compels me to make the following observation:

When we adopted the 1984 Hatch-Waxman law, we were in an era of small molecule medicine and large patient population blockbuster drugs. Times have changed.

It appears that we are rapidly entering an era of large molecule medicine and small patient population drugs. Some believe that we may be entering an age of literally single patient, person-specific drugs and genetic therapies.

We are already in something of a transition away from old-fashioned chemical-based drug products to futuristic biologicals. This will not occur overnight and there will always be a place for old-style drugs in the therapeutic armamentarium. Experts remind us that this new wave of therapeutic protein molecules are more

complex than the type of drugs developed in the past. To cite but one example, the molecular weight of Prozac is 345 daltons, compared with the biologic, EPO, which is 30,400 daltons and about 10 times the size of many common old-line drugs.

Over the next decade and into the future, a great deal of inventive energy will be concentrated on developing biological products.

The list of 66 approved medications using cloned recombinant DNA will almost certainly expand. The future of the pharmaceutical industry may one day be dominated by biological products.

As we enter this new era of drug discovery, certain policy questions should be considered by Congress:

Are our intellectual property laws relating to pharmaceuticals adequate to promote the large molecule, small patient population medicine?

For example, currently under Waxman-Hatch, process patents are not eligible to receive any patent term restoration. Why should this be the case? If targeted patient populations get smaller and smaller and the production process patents become relatively more important than composition of matter patents, should we make process patents eligible for Waxman-Hatch partial patent term restoration?

Is it possible that one day in the future there will be more drugs intended for patient populations under the 200,000 patient limit established by the Orphan Drug Act or even patient-specific biological cocktails and gene or protein therapies? If so, would it be appropriate to re-think and re-design any of our intellectual property laws?

Unfortunately, S. 812 as passed by the Senate appears to give less value to patents and treats them more as targets for litigation than valuable insights to be respected.

Another key question is whether Hatch-Waxman, as a general matter, adequately values pharmaceutical intellectual property relative to other fields of discovery?

The American Inventors Protection Act which passed with a broad bipartisan consensus in 1999 permits all patents to be restored up to 17 years of patent life if there is undue administrative delay at the PTO. The 1984-adopted Hatch-Waxman law caps patent term restoration for drug patents due to FDA delay at 14 years. Moreover, most patent applications are reviewed by PTO in one and one-half to two years, so that the effective patent life for most products is actually 18 to 18.5 years.

When all is said and done, most patents run appreciably longer than patents related to drugs due to the 14-year Waxman-Hatch cap. We must ask why time lost at PTO should be treated differently than time lost at FDA? Why should the proverbial better mousetrap be treated better under the patent code than a life-saving drug?

Similarly, the Hatch-Waxman Act provides for five years of marketing exclusivity for all new chemical entity drugs, independent of patent protection. In contrast, it is my understanding that most European nation's and Japan have adopted a 10-year data exclusivity rule. Why not consider harmonizing and move to the European standard for this important information which, but for Hatch-Waxman, would be considered proprietary information?

I want to commend Senator LIEBERMAN, with whom I am working, for his advocacy of an aggressive set of intellectual property incentives in his bioterrorism legislation, S. 1764, that are designed to stimulate the private sector to direct its inventive energies and financial resources to develop the necessary measures to counter biological, chemical, or nuclear terrorism. I will continue to work with Senator LIEBERMAN as he refines his legislation, which among other provisions, provides for day-for-day-patent term restoration for time lost at FDA.

The Senator from Connecticut understands the value of intellectual property incentives in facilitating biomedical research. We should all look closely at this approach in the area of bioterrorism and consider applying these principles to other important areas of medical research.

Another major issue will be whether the current lack of Waxman-Hatch authorization for the review and approval of generic biologicals is sound public policy?

Although the Senate failed to adopt a Medicare drug benefit this week, I remain hopeful and committed to working toward the day when we will get the job done for America's seniors.

Part of the impetus behind the McCain-Schumer bill and other efforts for Hatch-Waxman reform is to help seniors reduce the sometimes staggering out-of-pocket costs of their prescription drugs.

Given the enormous costs associated with providing only limited pharmaceutical coverage under Medicare, that for catastrophic expenses last year estimated by CBO to cost $368 billion over 10 years it is absolutely essential for policymakers to explore enacting regulatory pathways for biological products to enter the market once patents have expired.

As we learned in the 1980s when Congress first passed, than unceremoniously repealed, a law which included Medicare drug coverage, the cost-estimates of providing this benefit will only go in one direction: ever higher and higher, and upward and upward.

According to CBO's March 2002 estimates, those seniors who will spend greater than $5,000 in annual prescription drug costs amount to 10 percent of all Medicare beneficiaries. Astonishingly, they account for 38 percent of total prescription drug spending by Medicare beneficiaries today.

By 2012, CBO estimates that these numbers will skyrocket. Fully 80 percent of all spending for drugs by Medicare beneficiaries will go to those 38 percent of the total Medicare beneficiaries with greater than $5,000 in annual prescription drug spending. This will represent the lion's share of total projected Medicare beneficiary prescription drug spending of $278 billion just ten years from now.

We know that biological products are likely to be more expensive than old-line drug products. Sooner or later, we must face up to the generic biologics challenge. We literally cannot afford to continue avoiding this issue.

Now that the HELP Committee has finished, for the time being at least, its foray into antitrust policy, patent law, and civil justice reform, perhaps it could find the time to hold hearings on matters that are actually within the committee's jurisdiction, such as the legal, scientific, and policy issues related to the FDA review of generic biologics.

As far as I am concerned, the sooner we change the law, the better. As more and more biologics come onto the market, we will face transitional products issues and carve out requests that will greatly complicate the legislative process. I speak from experience—I lived through the so-called pipeline issues in 1984 and it was not pretty.

Congress simply cannot, and should not, attempt to enact and sustain over time a Medicare drug benefit unless we seriously explore what steps must be taken to end an FDA regulatory system that acts as a secondary patent for biological products. Patient safety must never be jeopardized. The task will not be easy.

In this regard I must cite an article by Lisa Raines, published in The Journal of Biolaw & Business in 2001 entitled, ''Bad Medicine: Why the Generic Drug Regulatory Paradigm is Inapplicable to Biotechnology Products.'' Lisa was a special friend to all of us interested in biotechnology. She had experience both in the public sector—at the old Congressional Office of Technology Assessment—and in the private sector—with the Biotechnology Industry Organization and Genzyme. One of the many tragedies of September 11 was that Lisa was among the passengers on the plane that was crashed into the Pentagon. We all miss her indomitable spirit and friendship.

Let me stipulate, as the article points out, that it will be difficult to manufacture generic equivalents of biologicals. However, I do not think it is an impossible task. As we attack this problem we will need to adopt one of the mottos of the Marine Corps: the difficult we do immediately, the impossible takes a little longer.

I think it would be wise to charge an expert organization such as the United States Pharmacopeia to convene a group of experts, in alliance with the FDA, to begin to identify the technical issues that need to be addressed in order to bring about bioequivalent generic biologicals, including clinical trials if necessary.

Some will argue that generic biologics cannot be manufactured, but unless we try to invent a fast track approval process for biologics, I do not see how we will ever know how to overcome the technical obstacles.

It seems to me that one of the highest priorities of the next Commissioner of Food and Drugs will be to make certain that the leadership of FDA's Center for Biologics is committed, in partnership with the private sector and academic researchers, to identifying the issues and attempting to find solutions to the many issues that need to be resolved in order to make generic biologics.

I want to acknowledge that Senator ROCKEFELLER has introduced a legislative proposal in this area although I have problems with his study and automatic pilot features.

The last overarching issue that I will raise today is how the structure and strength of the research-based segment of the American pharmaceutical industry has changed since 1984.

On the one hand, we have seen substantial growth in the biotechnology industry. There are now some 1,400 U.S. biotech firms, although only 41 of these biotech companies have any revenues from FDA-approved products.

On the other hand, I think that Congress should consider whether there are any appropriate actions we can, or should, take today to make sure that America retains a vibrant research-based large-firm pharmaceutical sector. I have nothing against the several new consolidated multinational drug firms but we must never allow our national leadership in biomedical research to erode. I suggest my colleagues review the transcript of the March Commerce Committee hearing on the McCain-Schumer legislation and examine the thoughts of Senator WYDEN related to the financial health and status of the product pipeline of the large drug firms.

Senator WYDEN, with his long ties to consumer groups like the Gray Panthers, is certainly no patsy of the drug industry. But the Senator from Oregon clearly understands that while we politicians always want to focus on how to help distribute the golden eggs—the new medicines—to our constituents, we also need to pay attention to the health of the goose. It is true that the pharmaceutical industry has had a great run of success since about 1994 when the Clinton health care plan was rejected. But today's dry pipelines presage problems tomorrow.

The fact is that the drug discovery business is a high risk, high reward endeavor and Congress can do real, and perhaps irreversible harm, to some firms if we choose the wrong intellectual property policies. We need to discuss if there are appropriate ways to increase our nation's biomedical research capacity, such as the set of proposals set forth in the Lieberman bill.

We should not be so quick to vilify the research-based pharmaceutical industry as was done repeatedly for the last three weeks. We know what happened. Political and tactical considerations led some to believe there needed to be a villain in this Medicare debate. In a sense, history repeated itself as some took a page right out of the Clinton Administration play book.

Here is how the book, The System, authored by David Broder and Haynes Johnson, two highly respected journalists, described the tactics of the Clinton White House in trying to pass its too grand health care reform plan in 1993 and 1994:

> . . . Clinton's political advisers focused mainly on the message that for ''the plain folks it's greed—greedy hospitals, greedy doctors, greedy insurance companies. It was an us-versus-them-issue, which Clinton was extremely good at exploiting.''
>
> Clinton's political consultants—Carville, Begala, Grunwald, Greenberg—all thought ''there had to be villains'' . . . at that point, the insurance companies and the pharmaceutical companies became the enemy.

Unfortunately, that strategy reappeared over the last few weeks and we lost an opportunity to debate in a more reasoned fashion the complex set of issues and delicate balance required in pioneer-generic issues that I have just described. Nor did we do any great justice in delving beyond the surface and into the substance of the issues addressed in S. 812.

I have made it clear that my vision and preference for Waxman-Hatch reform is to help facilitate a constructive dialogue among interested parties. We all could benefit by a fair exchange of viewpoints on a broad range of innovator/generic firm issues, including the matters I have just outlined.

The issues that are addressed in the HELP Committee Substitute to S. 812 are important issues. So are the notice provisions contained in Senator LEAHY's bill, S. 754.

Unfortunately, the politics of Medicare prevented the debate over S. 812 from unfolding in a manner that encouraged a thoughtful discussion of even these narrower set of issues, let alone the initiation of a public dialogue of the broader—and perhaps more significant in the long run—Hatch-Waxman reform issues that I have just described.

I wanted to take this opportunity to set forth these ideas for the future consideration of my colleagues and other interested parties.

I look forward to debating these issues in the future and to working with the House and other interested parties to further perfect the Senate-passed version of S. 812.

## THE EFFORTS OF STUDENTS AT MONTELLO MIDDLE SCHOOL AND HIGH SCHOOL

Mr. FEINGOLD. Mr. President, I would like to take a moment to recognize a group of students from Montello, WI, who have reached out to show their support and appreciation for the U.S. Navy sailors on duty in the North Arabian Sea. In support of Operation Enduring Freedom, 168 students from the Montello Middle School and High School have dedicated tremendous time and effort to showing their support for our sailors on board the USS *Seattle* and the USS *Detroit*. Their appreciation for the work our sailors and military personnel are doing overseas should be an inspiration to every American.

This group of students, led by their teacher Catherine Ellenbecker, sent 35 boxes of snacks and cookies to the crew aboard these ships. They also collected 18,892 golf balls for the sailors and were given a donation of 100 golf clubs by B&G Golf in Appleton, WI.

By sending these gifts, the students greatly improved the morale of those on board. As one Navy Captain wrote, ''Your gifts and many good wishes have helped to bring home a little closer today.'' A total of 116 students continue to correspond with the USS *Detroit* and 52 other students have pen pals on the USS *Seattle* through both emails and letters.

I applaud these students for their thoughtfulness, their diligence, and above all for their support of our men and women in uniform. These students recognize that we are safe here at home thanks to the hardworking men and women of the U.S. military. It gives me great pride to know that students from my home state of Wisconsin have done so much to support these sailors. I commend the students from Montello Middle School and High School for their efforts.

# ADDITIONAL STATEMENTS

## IN MEMORIAM: MARI-RAE SOPPER

• Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Mari-Rae Sopper, who lost her life on September 11, 2001. Ms. Sopper was a 35-year-old lawyer and gymnastics coach when the flight she was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Ms. Sopper was a native of Inverness, Illinois and attended William Fremd High School in Palatine, Illinois. At the age of 15 she set the goal of becoming a champion gymnast. She succeeded, becoming all-American in four events, the school's Athlete of the Year and the State's Outstanding Senior Gymnast of the Year.

Larry Petrillo, her high school gymnastics coach, remembers her as brash and committed. ''One thing she taught me is, you never settle for less than you are capable of. We should never accept limits. We should always fight the good fight. She was a staunch supporter of gymnastics and what's right,'' he recalls.

Upon graduating from Iowa State University with a degree in exercise science, Ms. Sopper earned a master's degree in athletics administration

from the University of North Texas and a law degree from the University of Denver. Ms. Sopper was an accomplished dancer and choreographer and continued to coach at gymnastics clubs.

Ms. Sopper practiced law as a Lieutenant in the Navy's JAG Corps, focusing on defense and appellate defense. She had left the Navy JAG Corps and was an associate with the law firm Schmeltzer, Aptaker & Sheperd, P.C. when she found her dream job: to coach the women's gymnastics team at the University of California at Santa Barbara.

It was a one year appointment and Ms. Sopper was looking forward to the challenge. Her mother, Marion Kminek, says Mari-Rae was excited about the opportunity. ''I said go for it. Life is too short. It was something she had always wanted to do and she was so happy and excited,'' recalls Kminek.

At the time of her death, Ms. Sopper was moving to Santa Barbara to begin her appointment. Her close friend, Mike Jacki, recalls ''This was to be a new adventure for Mari-Rae, and an opportunity to get back into the sport she loved. We have lost a very special person. She was prepared to make her dream come true, and in an instant it was gone.''

Mari-Rae Sopper is remembered for her loyalty, strong values, excellent work ethic and spirit for life. She is survived by her mother, Marion Kminek and stepfather, Frank Kminek, her father Bill Sopper, sister Tammy and many loving friends.

None of us is untouched by the terror of September 11th, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Mari-Rae Sopper, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.●

## IN RECOGNITION OF SISTER ROSA ALVAREZ

● Mr. CARPER. Mr. President, I rise today to recognize Sister Rosa Alvarez for her commitment to social service for Delaware's immigrants. She has dedicated her life to opening doors to families that otherwise might have been closed by language and cultural barriers. In doing so, she has become a lifeline for Georgetown's Hispanic community.

In the last decade, Latino immigrants have flooded Georgetown, transforming the ethnic and cultural backdrop of southern Delaware. Sister Rosa has helped the community overcome language barriers so that they can start healthy families and lead productive lives.

Sister Rosa has been present for hundreds of area births. Known as ''la abuelita,'' or ''little grandmother,'' Sister offers help to Georgetown's mothers and children, particularly those mothers who are children themselves. Placing heavy emphasis on prenatal care, she helps young mothers make doctors appointments and provides transportation if necessary, to make sure they get to them. She successfully campaigned for vitamins for the community's pregnant mothers, and actively mentors parents who need assistance.

Sister Rosa works with La Esperanza, a community center for Sussex County's Latino population doing fantastic work in its own right, to provide social services for thousands of immigrants faced with inaccessible healthcare, domestic violence, reduced education and legal complications.

Working alongside Mark Lally and Marjorie Biles in my Georgetown office, Sister Rosa helps the downstate Hispanic community navigate the maze of paperwork often required to get work visas, Medicaid benefits and housing. She helps Spanish-speaking immigrants fill out English language forms and devotes time every week to helping families translate and pay their bills.

At some point, all of us need to look back and take stock of where we have been and where we are going. Have we lived our lives in the service to others, or merely for ourselves? At the end of the day, can we say with confidence that we did our best and worked to our fullest potential?

I had the pleasure of meeting Sister Rosa at La Red, a Hispanic health center in Sussex County, DE, earlier this year. I was struck by her boundless energy and kind heart. She offers people hope. Her dedication intensifies the work of others, and pushes us to take an introspective look at the purpose of our own lives.

Mahatma Ghandi, one of Sister's idols, said in the 1920s, ''If we are to reach real peace in this world, we shall have to begin with the children.'' Today his sentiments are seen in her actions.

At a time when the face of our Nation is in constant flux and the call to service rings louder than ever, it is individuals like Sister Rosa who leave me feeling hopeful about our country's future. It is she who brought many in the community to my office for assistance, she who is empowering community leaders, she who is making a difference with her infectious smile.

I rise today to honor and thank Sister Rosa for her selfless dedication to the betterment of others. She is a remarkable woman and a testament to the community she represents.●

## IN CELEBRATION OF EAST SIDE CHARTER SCHOOL

● Mr. CARPER. Mr. President, I rise today to celebrate the East Side Charter School in Wilmington, DE. Five years after opening their doors to some of the State's most economically and educationally disadvantaged children, they have amassed a record of meeting and exceeding expectations. The achievement gap is narrowing in the First State, and the East Side Charter School is leading the way.

Located in the middle of what is called the projects, in properties managed by the Wilmington Housing Authority on the east side of Wilmington, East Side Charter School is home to low-income students in grades K–3 who face unique challenges.

Over 80 percent of the students at East Side Charter School live in poverty. Most of the children live with only one parent, few of whom completed any college education. Many live in neighborhoods with high incidence of violence and crime, and some are without proper nutrition and health care.

But at this school, kids can come early and stay late. They have a longer school year. They wear school uniforms. Parents sign something akin to a contract of mutual responsibility. Teachers and administrators are given freer reign to innovate and initiate. The attendance rate is nearly perfect. Parents are given a better chance to help children fulfill their potential.

At this school the halls are filled with talented faculty, skilled supervisors, and dedicated staff. Principal Will Robinson challenges students and empowers them to meet those challenges.

When the East Side Charter School started 5 years ago, the odds were stacked against its success. The school has flourished though, in spite of the daunting statistics. One of almost 200 public schools in the State of Delaware, from the wealthiest to those struggling the most, East Side Charter School was the only one in the last few years where every student tested met or exceeded our State's standards in math.

As Governor of Delaware, and now as Senator, I have shared with people across America the story of East Side's incredible success. I tell them about the teachers like Barbara Juraco, who daily demonstrate unparalleled commitment and patience, the support staff that's there when needed, the students who again and again exceed expectations, and the parents and family members who understand they have an obligation to be full partners in the education of their children. Together, they serve as an inspiration and an example to communities across the country.

Delaware is a small State, but we are building a growing record of achievement in public school education. Statewide, scores have again increased in all

grades and across ethnic lines for reading and math, proving that we are closing the achievement gap.

Much of what we have accomplished in Delaware, and at the East Side Charter School, serves as a model for our Nation.

I rise today to offer my full support as future generations of students and educators at East Side Charter School ready to face the challenges of the 21st century and overcome them.●

## IN RECOGNITION OF LTC JOHN BURKE'S RETIREMENT

● Mr. CARPER. Mr. President, I rise today in recognition of LTC John Burke upon his retirement from the U.S. Air Force. John is the longest certified C–5 pilot in the history of the U.S. Air Force, and has served his country with distinction for 32 years.

Since 1995, Lieutenant Colonel Burke has served as Chief Pilot for the 709th Airlift Squadron at Dover Air Force Base. Assigned to overseas mission support, joint service exercises, humanitarian relief, Presidential movement and aircrew training, he has been indispensable to his squadron's success.

In his latest position, Lieutenant Colonel Burke was responsible for evaluating procedures and techniques that ensured the safety and efficacy of the C–5 in its strategic airlift missions, as well as evaluating its pilots.

As you may know, the C–5 is the Air Force's largest cargo aircraft, capable of quickly moving large numbers of men, women and materiel to troubled areas around the world.

The C–5 will ensure our military readiness for generations to come, as will Lieutenant Colonel Burke's legacy of leadership and heroism.

Lieutenant Colonel Burke is a well-rounded, seasoned officer with a record for consistently combining effective leadership and professionalism. He leads by example—motivating people, making key decisions, producing results and maintaining high morale. He has amassed an impressive 7,400 flight hours and frequent accolades.

Throughout his distinguished career, Lieutenant Colonel Burke flew in vital missions and earned numerous decorations. In a career that spans three decades, Lieutenant Colonel Burke has served in significant military campaigns, such as Nickel Grass, Desert Shield and Desert Storm, Operation Enduring Freedom, and Operation Just Cause.

On May 30, 1972, barraged by anti-aircraft fire flying over Southeast Asia, Burke landed in Song Be to deliver much needed fuel and ammunition to allied troops fighting hostile forces, earning the Distinguished Flying Cross. Additionally, he has garnered numerous other medals and commendations, including the Meritorious Service Medal, the Aerial Achievement Medal, the Humanitarian Service Medal, the Air Force Longevity Service Award Ribbon, and Republic of Vietnam Gallantry Cross.

Military service runs in the New York native's blood. Lieutenant Colonel Burke's father was a World War II Army Air Force navigator and bombardier, and his mother was an Army nurse. Joining the U.S. Air Force in 1970, Lieutenant Colonel Burke carried on the family tradition of military allegiance.

LTC John Burke marked his career with consistent, exemplary leadership in service to his Nation, earning a reputation for loyalty, dedication, integrity, and honesty. Upon his retirement he leaves a legacy of commitment to freedom that generations will follow. I commend him for his remarkable service and wish him the best in his future endeavors. He is a patriot in every sense of the word.●

## NATIONAL GUARD COUNTER DRUG STATE PLANS PROGRAM

● Mr. GRAHAM. Mr. President, I rise today to commend the National Guard and urge my colleagues to support the National Guard Counter Drug States Plan Program.

The National Guard role is to provide counterdrug and drug demand reduction support as requested by local, State, and Federal law enforcement agencies and community-based organizations with a counterdrug nexus. The National Guard provides this support in consonance with the Office of National Drug Control Policy and Department of Defense guidance.

The mission of the National Guard Counter Drug Program is to assist and strengthen law enforcement and community-based organizations in reducing the availability of, and demand for, illegal drugs within the State and Nation through professional military support. The principal elements of counter-drug military support include highly skilled personnel, specialized technology, facilities, and diverse types of military training and skills. Operationally, this translates into port security assistance, operating non-intrusive inspection devices, aerial and ground reconnaissance, technical support, general support, community anti-drug coalition support, youth drug awareness programs, and use of training facilities.

The National Guard offers numerous military-unique skills to the counterdrug mission. These include linguist and translator support, investigative case and analyst support, communications support, engineer support, diver support, marijuana eradication support, transportation support, maintenance and logistical support, cargo and mail inspection, training of law enforcement and military personnel, surface reconnaissance, and aerial reconnaissance. In addition, the National Guard provides command, control, communications, computers, and information, C4I, integration; logistics planning; tactical and strategic operational and intelligence planning; the ability to support around-the-clock operations; liaison skills with civilian authority and interagency cooperation; resource integration; force protection training; operational security enforcement; communications security enforcement; and risk management skills.

We must fully fund the National Guard Counter Drug States Plans Program. The National Guard's success in interdicting drugs and other contraband contributes to the security of the Nation as a whole. Using my home State as an example, Florida has valid support requests from law enforcement and community-based organizations that would require approximately 250 personnel. Under the constraints of the estimated fiscal year 2003 budget, the National Guard was able to field 111 personnel, resulting in unfunded requests for 139 personnel and an unfunded requirement of 99 personnel based on an optimal program size of 210 personnel. In fiscal year 2002, the State of Florida fielded 148 personnel, and unfunded personnel requests totaled 102.

I am also a great believer in a balanced counterdrug program, both interdiction and demand reduction. The National Guard does some of the finest demand reduction work in the country. Young people look up to these citizen-soldiers and listen to what they say.

Counterdrug personnel assigned to perform drug demand reduction activities utilize numerous military skills including command, control and communication skills, tactical and strategic planning, liaison skills and training design and implementation skills. These assist communities with work plans, realistic time lines and assigned responsibilities. This support is essential for many community-based organizations in order to mobilize and sustain their efforts.

Additionally, the military value system and discipline instilled in all counterdrug personnel creates a significant demand to serve as role models and mentors supporting a wide array of prevention activities. Community based prevention organizations rely on National Guard personnel to incorporate this unique military orientation into activities such as youth camps, ropes challenge courses, high adventure training, high school drug education, Drug Education for Youth, mentoring, and other prevention and skill training activities.

The National Guard also provides unique facilities and equipment such as armories, training sites, obstacle courses, aircraft and wheeled vehicles in support of community prevention strategies. These facilities and equipment are often the only resources available to conduct youth camps, coalitions meetings or experiential learning initiatives. The leadership skills and military values embedded within our youth hopefully provide a morale foundation for future generations, as well as conveying to many thousands of youth the value of military service.

The National Guard Counter Drug States Plan Program benefits not only the States, but also the Department of Defense. The primary benefit is increased combat readiness, as well as significant Guard experience in Military Operations Other than War, MOOTW, within the continental United States and abroad. Service in the counterdrug program also provides members with joint experience and inter-service cooperation skills for immediate response to national emergencies. The National Guard, in many communities, is the only real connection the public has to our armed services. The visibility of uniformed National Guardsmen provides a deterrence to the smuggling of drugs, arms, explosives, weapons, aliens, and other contraband, as well as direct support for interdiction operations.

I can not say enough good things about what the National Guard does for the State of Florida and the Nation. I am grateful that it appears we have avoided personnel reductions for fiscal year 2003, which we struggled through in fiscal year 2002, but I am concerned that we may have a funding shortfall and personnel reductions in fiscal year 2004. I urge my colleagues to review the great merits of the National Guard Counter Drug State Plans Program, given the National Guard's integral role in both the National Drug Control Strategy and Homeland Defense Strategy. Please help us fully fund and deploy the National Guard for the protection of our United States.●

## WELCOMING BOETTGER BABY

● Mr. CRAPO. Mr. President, I rise today to announce the birth of a fine young lady, Emily Copeland Boettger. Emily is the first child of Scott and Sally Boettger, and was born on May 8, 2002. Scott and Sally live in Hailey, Idaho, and are active in natural resources and environmental issues in the state. Scott serves as the Executive Directory of the Wood River Land Trust, and Sally serves as the Director of Development of The Nature Conservancy in Idaho. I have spent time in the Boettger's home and enjoyed their expertise and experience in outdoor activities. I'm happy to report that mother, father, and baby are doing well, although Scott and Sally are probably getting used to fewer hours of sleep.

Emily is the granddaughter of Cherry and William F. Gillespie, III, of Wilmington, DE, and Doug and Gail Boettger of Spring City, PA. I know they join with me in sending best wishes and welcome greetings to young Emily.

It is always a joyous event to bring a new family member into the world. Emily has been much-anticipated and has held a place in the hearts of her parents and family for many months now as they have awaited her arrival. As the father of five myself, I know that Scott and Sally are in for a most remarkable, frustrating, rewarding, and exciting experience of their lives. Emily will make certain of that. Our best wishes go out to the Boettger family on this most auspicious occasion.●

## IN MEMORIAM OF BRIAN HONAN, COUNCILLOR, BOSTON CITY COUNCIL

● Mr. KERRY. Mr. President, Tuesday evening the Boston City Council lost one of its most capable and well-liked members, Councillor Brian Honan. I rise today to join with his family, constituents and staff in mourning the loss of this universally loved man. His brief time with us proved that politics can make a difference in people's lives, that the values of a small neighborhood can help guide a city, and that integrity and humility can transcend disagreements and carve out common ground.

You don't have to search far to see what Brian stood for. There are two structures in the Allston neighborhood of Boston that stand as the pillars of his dedication and commitment he brought to public service. The West End Boys and Girls House sits on the opposite side of Ringer Park from Mary and Patrick Honan's home on Gordon Street, and together these two buildings symbolize the values of family and community that guided Brian through the public life he led and loved.

Prior to being elected to the Boston City Council in 1995, Brian served as a Suffolk County Assistant District Attorney for six years under District Attorney Ralph Martin. Brian coordinated the prosecution of 15,000 cases a year in the Roxbury District and through his dedication and tenacity rose to be a supervisor in both the Roxbury and Dorchester District Courts. Motivated by a fierce instinct to bring violent criminals to justice, Brian created fast-track prosecutions for domestic violence and gun-related crimes and helped bring swift justice to those who put our families and communities in danger.

Once sworn-in to the Boston City Council in 1996, Brian served with distinction as Chair of the City Council's Committee on Banking & Community Investment and the Committee on Residency. Through these committees, Councillor Honan co-sponsored an order to provide relief from costly prescription drug costs for Boston's seniors and helped increase housing and commercial opportunities by increasing much-needed capital improvement funds. Brian also fought for the Living Wage Amendment, sponsored legislation to preserve affordable housing for seniors, and co-sponsored the Domestic Partnership legislation.

It is on the streets and in the homes of Allston-Brighton where Brian's most lasting achievements can be seen. After becoming a member of the West End House when it first opened its Allston Street location in 1971, Brian stood with his older brother Kevin as its most passionate advocates and defenders. As a councillor, he helped Allston-Brighton build a shining new library in Allston and a brand new Oak Square YMCA facility in Brighton, which will stand as two enduring symbols of the dedication he brought to elected office. As a leader on such initiatives as the Allston-Brighton Area Planning Action Council and the Allston-Brighton Healthy Boston Coalition, Brian demonstrated his enduring commitment to helping children, seniors and families have an enjoyable and productive life.

From the classrooms of St. Patrick's High School to Boston's courtrooms, Brian demonstrated a quiet strength that makes his premature departure all the more painful. Together with my constituents across Boston, I treasure the time we shared with him. I join with his family and friends in mourning his passing.●

## RECOGNITION FOR THE NATIONAL HEALTH CENTER WEEK 2002

● Mr. JOHNSON. Mr. President, I recognize the National Health Center Week that will be celebrated from August 18, to 24, 2002. Health centers provide services to over ten million people living in under-served areas throughout the United States, with about 50 percent of the users being from rural areas such as South Dakota. It gives me great pride to have been selected for the National Association of Community Health Centers' ''2002 Community Super Hero'' award which was presented to me earlier this year.

Community health centers have a long-standing history of providing quality primary health care services to medically under-served populations. Providing care to one of every 12 rural Americans, health centers provide medical attention to those who would otherwise lack access to health care. For less than one dollar per day, these health centers provide care to both individuals and families. Today, there are 23 community health centers serving 31,0000 individuals across my State and I am working, along with the President and my colleagues in Congress, to greatly increase the number nationwide. I am pleased, as a member of the Senate Appropriations Committee, to have recently voted to increase funding by $190 million for a total of $1.53 billion for the Nation's community health centers next year. This funding level represents a $76 million increase over the President's Fiscal Year 2003 budget request.

A unique aspect of community health centers allows them to individualize their center to met the specific needs of a particular community. By partnering with community organizations, schools and businesses, health centers are able to best meet the health care needs of individuals in each respective community.

Let me also pay special recognition to John Mengenhausen, Chief Executive Officer of Horizon Health Care in

Howard, South Dakota and the National Association of Community Health Care Center's Board Chair, Scot Graff, Executive Director of the Community Health Care Association in South Dakota, and all of the staff at the association for the fine work they do on behalf of South Dakota. Furthermore, I want to commend all of the dedicated health care professionals in the health centers throughout South Dakota who work day in and day out devoting their lives to delivering critical health care to those most in need.

Once again, it gives me great pleasure to recognize the National Health care Center Week on behalf of the South Dakota Community Health care Association and the many thousands of South Dakotans who may continue to benefit through this important program.●

## CHILDREN, YOUTH AND GUN VIOLENCE

● Mr. LEVIN. Mr. President, ''Children, Youth and Gun Violence,'' a report released last month by the David and Lucille Packard Foundation, questions the effectiveness of programs to train children and young people to stay away from guns, or behave responsibly around guns. The report states parents should instead focus their efforts on keeping guns away from kids, except under supervised circumstances. The problem of kids gaining access to guns is not small. According to statistics compiled by the Packard Foundation, each year in the United States more than 20,000 children under age 20 are killed or injured by firearms of which more than 3,000 are killed.

These figures emphasize the need to do all we can to keep kids from gaining unsupervised access to guns. I cosponsored Senator DURBIN's Child Access Prevention Act because I believe it is a common sense step in this direction. Under this bill, adults who fail to lock up loaded firearms or an unloaded firearm with ammunition could be held liable if a weapon is taken by a child and used to kill or injure him or herself or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. I support this bill and hope the Senate will act on it.

The Packard Foundation study brings to light the importance of common sense gun safety legislation. It also offers nine recommendations to policymakers and parents to prevent easy access to guns. I ask unanimous consent that the nine recommendations included in the Packard Foundation report, entitled ''Children, Youth and Gun Violence,'' be entered into the RECORD.

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

RECOMMENDATIONS

RECOMMENDATION 1

Congress and federal health agencies should set a goal of reducing youth gun homicide to levels comparable to those of other industrialized nations, engaging in a comprehensive effort to identify the causes of youth gun homicide and reduce its prevalence in American society.

RECOMMENDATION 2

Federal and state public health agencies should make youth gun suicide a central focus of their gun violence prevention and suicide prevention activities, developing and assessing methods for keeping guns away from youth at risk of suicide.

RECOMMENDATION 3

Federal, state, and local public health and law enforcement agencies should make a commitment to collecting better data about gun-related fatalities and injuries by supporting development of a national system for reporting violent deaths and injuries and a system for tracing all guns used in crimes.

RECOMMENDATION 4

Policymakers, mental health professionals, and educators should develop, implement, and evaluate treatment programs that help youth exposed to gun violence cope with trauma.

RECOMMENDATION 5

Federal and state policymakers, in conjunction with public health experts and educators, should initiate creative public awareness and educational efforts—and evaluate existing approaches—to encourage stronger parental monitoring of children's exposure to guns and safe storage of guns in the home.

RECOMMENDATION 6

Federal, state, and local policymakers should develop and evaluate comprehensive, community-based initiatives to reduce youth gun violence—partnering with schools, faith communities, community service programs, parents, and young people.

RECOMMENDATION 7

Police should complement their existing efforts to deter youth gun carrying by developing and evaluating law enforcement approaches that include extensive police-community collaboration.

RECOMMENDATION 8

Congress should extend the jurisdiction of the Consumer Product Safety Commission or the Bureau of Alcohol, Tobacco and Firearms to regulate guns as consumer products, establish regulations requiring product safety features on guns, and evaluate the effectiveness of product safety interventions. State governments should extend similar authority to their consumer product safety agencies.

RECOMMENDATION 9

Congress and state legislatures should institute tighter restrictions on gun sales so that fewer guns illegally end up in the hands of youth. A variety of approaches should be implemented and evaluated—in particular, closer oversight of licensed dealers, regulation of private sales, and mandated licensing of gun owners and registration of guns.●

## TRIBUTE TO MAJOR GENERAL JOE G. TAYLOR, JR.

● Mr. INHOFE. Mr. President, today I pay tribute to a great Army officer, and a great soldier. This month, Major General Joe G. Taylor, Jr. will depart the Pentagon to assume new duties as the Commanding General, U.S. Army Security Assistance Command in Alexandria, VA. For over two years, he has served as first the Deputy then the Chief of Army Legislative Liaison where he has proven himself to be a trusted advisor to the Secretary of the Army and the Chief of Staff.

During his tour as the Chief of Army Legislative Liaison, he guided the Army's relationship with Congress, wielding a deft and skillful touch during a period of tremendous change. Throughout this period, Joe Taylor ably assisted the Army's senior leadership in dealings with Members of Congress and their staffs in helping them to understand the needs of the Army as it faces the challenges of a new century. His leadership resulted in cohesive legislative strategies, responsiveness to constituent inquiries, well-prepared Army leaders and a coherent Army message to Congress.

Joe Taylor's career has reflected a deep commitment to our Nation, which has been characterized by dedicated selfless service, love for soldiers and a commitment to excellence. Major General Taylor's performance over twenty-seven years of service has personified those traits of courage, competency and integrity that our Nation has come to except from its Army officers. The Pentagon and the Army Secretariat's loss will be the Army Security Assistance Commands gain, as Major General Taylor continues to serve his country and the Army. On behalf of the United States Senate and the people of this great Nation, I offer our heartfelt appreciation for a job well done over the past two years and best wishes for continued success, to a great soldier and friend of Congress.●

## RETIREMENT OF ADMINISTRATOR JANE GARVEY FROM THE FEDERAL AVIATION ADMINISTRATION

● Mr. ROCKEFELLER. Mr. President, a little more than 5 years ago, the Commerce Committee held a hearing to test the mettle of a nominee to head the Federal Aviation Administration. The nominee came to Washington from her long-time home of Massachusetts to serve in the Federal Highway Administration, and her years of experience in various modes of transportation—primarily highways and airports—made her a strong candidate for the FAA position.

At the time, Jane Garvey sat before us as the first nominee to be appointed to a fixed, 5-year term to head the FAA. For years, the position of chief of the FAA had served as a revolving door—with many well-qualified people, but few able or willing to stay. The lack of continuity left its mark on many projects—the headlines, often from Congressional sources or the General Accounting Office, usually read ''delayed and over budget.'' That changed when Jane Garvey took the reins of the FAA on August 4, 1997.

We knew that the FAA faced a daunting task in rebuilding and modernizing our air traffic control system

and expanding our nation's airports. Over these last 5 years, we have watched and learned as Administrator Garvey testified countless times before numerous committees about the needs of the agency and her future vision of the FAA.

The FAA Administrator's job is one of the toughest in government. When things go right, no one notices; but when things go wrong, everyone knows—and that is when the finger-pointing starts. Jane Garvey has handled this pressure with tremendous grace and an uncommon resolve to improve on the FAA's core commitment to safety.

Every day, over 35,000 commercial flights travel across our skies—safely and efficiently. During the last several years, safety-related tragedies have been the exception, not the norm. Through Administrator Garvey's leadership and the dedicated staff of the FAA, we have come a long way to revamping the FAA's mission, its organization, and its future.

Today, there are major airport expansion construction projects across the country, as we make room for an expected 1 billion annual passengers by 2013. Thousands of new pieces of equipment have been tried, tested, and installed to increase the reliability and capacity of the air traffic control system.

Jane Garvey has worked tirelessly with all of us—the various segments of the aviation community and the employees of the FAA—to improve the performance of the FAA. In fact, Government Executive magazine's privately run Federal Performance Project Team gave the FAA high scores in its 2002 report card for improving in all five management areas that it grades. Since its last report card 3 years ago, Government Executive noted Administrator Garvey's vast improvement of human resources management at the agency, and her significant progress in technology upgrades and creating tools for accountability.

Administrator Garvey's tenure has been marked by a tremendous improvement in labor relations at the FAA. Her commitment to the 49,000 employees of the FAA is well recognized, and has contributed significantly to the productivity and achievement of the agency as a whole. She has established a better working relationship with the nation's 20,000 air traffic controllers than at any point over the past 20 years. Indeed, the president of the National Air Traffic Controllers Association recently identified her as the ''finest administrator in the history of the FAA.''

Since Jane Garvey took over at the FAA in 1997, I have had the opportunity to see her in action, and it has been a pleasure to work with her on a number of issues of importance to West Virginia and the nation. Her ''can-do'' spirit is infectious and has resulted in an agency that strives to improve on past performances and does not blindly accept shortcomings as inevitable. Through her tireless support of many of the important initiatives that we have worked on together, she has proven to be not just a good administrator, but a good friend.

Five years seems like along time in Washington, but perhaps it is too short, for we will miss the strength and character of Jane Garvey. Our country owes her a great debt of gratitude for profound dedication to our aviation system.

Finally, I would like to submit for the record some excerpts from a speech Administrator Garvey recently delivered before the Aero Club of Washington. Her remarks offer valuable perspective and direction for all of us who work in and care about aviation policy.

Today, you could say that our nation's economic engines run on jet fuel. The economic impact of aviation is so big it's almost beyond measure. Revenues generated by airports like Chicago, O'Hare, Dallas/Fort Worth, and Hartsfield Atlanta run in the billions. U.S. aerospace industries have become America's leading exporter in the manufacturing sector. And as we were reminded so painfully after September 11, tourist travel, which depends on the airlines, accounts for one out of seven jobs in America, and is among the top three employers in 29 states.

In this era of globalization, technologies like cable modems and cell phones make vital connections—still, they're virtual connections. If you really want to reach the rest of the world, you've got to board a plane. Simply put, there is no globalization without aviation. That's why, on any given day, as many as 1.9 million Americans take to the skies on one of 33,000 commercial flights. Internationally, each year, that number is as high as 1.6 billion—more than one-fourth of the people on this planet.

We chart our progress by numbers like these—billions of passengers, billions in revenue, millions of tons of cargo, minutes (at most!) of delay. But, of course, it's not just numbers that count. It's people. It's the men, women and children who board our planes every day—to attend a daughter's wedding; to leave for college for the first time; to attend an important meeting on the other side of the world; or to visit a new grandchild just a short flight from home.

As I said in 1997, our first and most important priority was to make the world's safest skies even safer, in the face of dynamic industry growth, expanding demand, and public concerns. And we had to modernize the nation's air space system in a timely and cost effective way. From my first days in office, these have been my goals. Just as important, they have been yours as well. I believed then—and believe even more strongly today, after the experience of these past five years—that the only way to meet these challenges is to face them together, government and industry, pilots and air traffic controllers, labor and management the FAA and Congress.

Collaboration isn't just a management style; consensus isn't just something to strive for. In aviation, they are essential elements in any real plan for progress. As the pilot Lane Wallace has written: ''In one sense we are all alone, whether in an airplane or on the ground, and we have final responsibility for whatever path we take through life or the sky . . . [But] we understand that while we may fly solo, we are also all connected, and we need each other in order to survive.''

That's true not only for pilots, but also for controllers, technicians, mechanics, flight attendants—and the FAA Administrator. We've stopped defining ourselves by our competing interests and started applying ourselves to our common goals. Those goals haven't changed: we're focused, as ever, on safety, efficiency, and adding capacity. But the way we pursue our goals has been evolving. We now pursue them as a community. We acknowledge—even embrace—our interdependence. And that, in my view, has made all the difference these past five years.

It's certainly made a difference in the accident rate. Working together, we reduced the accident rate for U.S. airlines by 29 percent over our baseline last year. We did so by agreeing on an unprecedented strategic plan for safety—Safer Skies. We now base our priorities on what the data, not the headlines, say. Through new partnerships like ASAP, the Aviation Safety Action Program, and by sharing data, we can identify early warning signs, intervene in targeted ways, and track the effectiveness of our efforts. I'm proud that we've met every annual target in the accident rate, and I'm confident that by 2007, we'll reach our greater goal: reducing the commercial accident rate by 80 percent.

Over the past five years, we have met many other imperatives of modernization with the same determination. Since 1997, we've completed more than 7,100 projects, installing new facilities, systems, and equipment across the U.S. and integrating them into the National Airspace System. We've done more than 10,000 upgrades of ATC hardware and software. Today, you can visit every one of our centers in America and won't find a single piece of hardware that's been around longer than I've been in this job (it only feels like a long time).

With the FAA's commitment to RNP—which takes advantage of the aircraft's capabilities—we're taking crucial steps in our transition from a ground-based to a satellite-based system, and toward safely handling more aircraft in less airspace.

I think the way we achieved all this is not less remarkable that what we've achieved. You know, it seems sort of obvious that when you're designing new technological tools, you ought to consult the people—controllers, technicians, pilots—who are going to use them. For too long, that just wasn't the case. When new equipment arrived at the loading dock, it was a little too much like Christmas Day—no one knew what was inside the box; the instructions were near impossible to follow; and batteries were not included.

Today, everyone knows what to expect—and how to use it. When we develop new products and programs, we do it not only with the users in mind, but at the drawing board.

With all this new hardware and software, delays due to equipment are down 70 percent from this time last year. A Eurocontrol report shows that the productivity of U.S. controllers is about twice as great as in Europe—and that our air traffic management is about twice as efficient. It's true: you just don't hear about outrages anymore. Instead, you hear about more direct routes, lower fuel consumption, and—let us not forget—better service for the men, women, and children who entrust us with their air travel. Of course, they're less concerned with who's using what technology than with getting to their destination safely, swiftly, and affordably. These new efforts help them to do so.

It is this clear progress in air traffic management that is so critical for aviation's recovery from the one-two punch of the terrorist attacks and last year's recession. After an inevitable decline—in traffic, yields, revenue—we expect to see traffic returning to pre-recession levels next year.

Those one billion annual passengers we've been projecting may not be in the departure lounge just yet, but they're on the way. Demand will continue its historic rise—and we're determined to meet it. Transportation Secretary Norm Mineta talks frequently about closing the gap between demand for air travel and the capacity of our infrastructure. Whether or not we build it, they will come. And as Phil Condit reminded us in recent speech. ''Economic growth follows infrastructure.''

That's why the government and the aviation community reached agreement last year on the Operational Evolution Plan, which, as you know, is the centerpiece of the FAA's efforts to build and expand infrastructure over the next decade. The OEP includes new runways, new technologies, and new procedures. It's not a wish list; it's a set of marching orders—clearly setting out the responsibilities of the FAA, airlines, and airports. These ideas are meant for action. And we're already seeing what action can achieve.

Look at Detroit. Detroit's new runway opened last December. Overnight, the number of flights per hour that Detroit Metro can handle jumped from 146 to 182 in good weather—a 25 percent increase. We've targeted our efforts toward the worst bottlenecks in the system. The controllers among you have told me that conflict probe, now in use at four en route centers, is the biggest improvement in the en route environment they've seen in their entire careers. It cuts costs even as it cuts emissions.

With results like this, I am more confident than ever that we are going to meet our goal: increasing capacity by up to 30 percent over the next ten years. We are already looking at how we can accelerate initiatives and reach for more capacity.

The critical question—which we are already tackling with industry—is, ''What's next?''

All of this progress flows directly from one source: our spirit of community. It is incredible to behold. I have seen it in so many ways on so many occasions during my five years in office. And in all that time, the spirit of community was never stronger than on September 11. Among the countless acts of heroism on that terrible day, history will record the way the aviation community pulled together, in the worst of circumstances, to bring the planes down quickly and safely—and bring the system back up smoothly in the weeks that followed.

We have realized more and more the potential of flight. We have mitigated more of its risks. But in many ways, we've only begun.

Moving forward, our mission must be to build on this foundation—and create a legacy worthy of our children. The next Administrator will face many challenges—some I've just discussed, and surely many new ones. One of the greatest will be the challenge of staying focused on modernization and safety, in the face of new security pressures.

For obvious reasons, security concerns will continue to command the headlines. They demand our attention and deserve our vigilance.

The FAA's mission is just as important as ever. Not only the new administrator, but also all of us, must keep our focus on that. The industry faces an additional challenge in providing a higher and higher level of service to its customers. I do not want to leave office without saying how grateful I am to Presidents Bush and Clinton, and Secretaries Mineta and Slate, for entrusting me with this awesome responsibility. And I am grateful to you for helping me, to the best of my abilities, to fulfill it.

I took office on the cusp of a new century; and depart with those new horizons, and the new possibilities we foresaw, a little closer in reach. It is you who made it so; you who created this moment of opportunity; you who will carry us forward. Every time I visit a control facility or an airport, or talk to a pilot, or see the launch of a new technology, I am impressed anew by your dedication and professionalism. I am uplifted by your commitment to our mission.

I know my successor will count on your insights and energies just as much as I have. Because if one thing is clear to me as I leave office, it is that our roles, like our lives, are interdependent; our goals are interconnected. Modernization, for example, is dependent on the financial health of the industry. Safety depends not only on new technology but also on the century-old concern of labor relations. Efficiency in the air has a lot to do with security provisions on the ground. And so on. None of us is flying solo.●

## RETIREMENT OF GENERAL JOHN A. SHAUD

● Mr. ENZI. Mr. President, as a Senator from Wyoming and Chairman of the Senate Air Force Caucus, one aspect of my public service that I truly enjoy is the opportunity to work with remarkable people who are more like family than coworkers and colleagues. On Capitol Hill, we all know each other and we all feel each other's sorrows and share in each other's joys and triumphs.

This is one of those occasions that brings both a touch of joy and sadness as we say congratulations and thank you at the same time that we bid farewell to someone who has devoted his life to the service of his country in the military and on the Hill, where he has made many friends among the staffs of our offices.

We were fortunate that General Shaud served as the Executive Director of the Air Force Association. Before his acceptance of that post, he had amassed quite an impressive military career that began when he was commissioned into the United States Air Force in 1956.

In his 50-year career General Shaud has served in the field and at U.S. Air Force headquarters in Washington. His later Air Force assignments included Chief of Staff for Personnel for the U.S. Air Force, Commander of the Air Training Command at Randolph Air Force Base, and Chief of Staff of Supreme Headquarters Allied Powers Europe. He led and inspired those under his command and excelled while gaining greater responsibilities.

I would be remiss if I did not point out that during his military career General Shaud was able to complete the requirements for a Master of Science degree, which he received from George Washington University—my alma mater. He also has a doctorate from Ohio State University and has served on the faculty of Air Command and Staff College.

Over the years, General Shaud has amassed more than 5,600 flying hours and piloted several dozen different aircraft. He was awarded the Distinguished Service Medal, the Legion of Merit with Oak Leaf Cluster, the Distinguished Flying Cross and several other awards and citations for his outstanding service and leadership.

For General Shaud, his retirement from the U.S. Air Force was just the end of one career and the beginning of another. General Shaud moved on to take on the responsibilities of the Air Force Aid Society and then later, the Air Force Association, from which he will now be retiring. Through it all, he has continued to impress with his leadership, creativity, personality, and ingenuity. He has been a role model for many and he will no doubt continue to inspire those with whom he comes into contact.

I would also point out that without him, Congressman Cliff Stearns and I would have had a far more difficult time in our work to establish the Air Force Caucus.

Now it is time for General Shaud to move on to another adventure in his life. I do not know what he will be doing, but I know he will be changing direction and heading off to face other challenges in the years to come.

Good luck, General Shaud, and God bless. May you have many years of an enjoyable retirement and the good health to enjoy each day to the fullest.●

## IN RECOGNITION OF THE LIFE OF ALTON ARA HOVNANIAN

● Mr. TORRICELLI. Mr. President, a promising young life that began in New Jersey just 14 years ago was tragically cut short these few weeks past in a freak boating accident on my State's otherwise-beautiful northern shore. Alton Hovnanian only 14 was a rising and stellar member of the latest generation of a great and good New Jersey family whose legendary hard work in the real estate industry created an American business enterprise of remarkable size and stature.

Now, sadly, in the cruelest alteration of fate, this same good family suffers the greatest loss of all, the death of a child. And I would put before this Chamber today that this is a shared loss felt within these Senate walls not only because this kind of suffering is too great for any family to bear alone, but that the untimely death of this young man represents the loss of the optimistic spirit and positive energy of a young American mind.

Not preoccupied with self, often characteristic of this age, Alton Hovnanian had an interest in and concern for others, a deep interest and concern for the workings of the U.S. Government, and perhaps surprisingly, for those of us in this room. As a child of only 14, he was largely unknown to us, but Alton Hovnanian was a bright, good citizen of my State and this country who I am sure many of my colleagues would have been delighted and inspired to know. Alton was certainly interested in us and knew many of our names, our expertise, our committees and concerns. Isn't this an honor for us to now know

that a 14-year-old New Jersey boy sat before his family room television set in Monmouth County and chose to turn the channel, not to a game show or sitcom, but to C-Span, the History Channel, and CNN in order to learn yet more about us and the work we do. How many young men and young women, boys and girls are there today, tuning in, attentive, and eager to learn more about this Nation's leadership and work? Unknown to us, Alton Hovnanian was watching and I am honored by his attention. If any of us wonder why it is we get up in the morning, remember this: there are 14-year-olds like Alton watching us, and they care. How powerfully inspiring it is for us to remember the reach of the work afforded by our office.

Alton Hovnanian was not a head of state or a captain of industry, though he seemed certainly well on his way, as the achievements in his young life were many. Indeed, Alton set the standard in his age group. With a lifelong love of boating and the water, especially the New Jersey coastline near his home, Alton earned the rights and privileges of a full captain license and the highest scuba diving accreditation. He was the recognized leader in community service outreach efforts at the Rumson Country Day School and was voted the ''Most Likely to Succeed'' by his peers at that excellent institution at its middle school graduation just weeks ago. Having traveled extensively with his family throughout much of the world, Alton was comfortable in many different nations and maintained an active curiosity about other countries, cultures, traditions and cuisine. He brought home, however, an ironclad insistence that things be right here at home, with concern for the comfort and care of our less fortunate citizens, and in the proper order of things within this Nation.

Alton Hovnanian represented the best of young America. He wanted the best for this Nation and for those around him. He was a loving son, a good citizen, a student of history and government and a responsible leader among his peers. He has honored all of us with his life.

May we always remember him as his father would, ''Good sailor, brave captain, dear friend, let your gentle spirit fill our sails.''●

## THE BIG QUARTERLY

● Mr. BIDEN. Mr. President, each year on the last Sunday in August, a commemorative festival is held in Wilmington, DE. Known as the Big Quarterly, or the August Quarterly, the festival celebrates the heritage of the independent black church movement, and the continuing importance of the movement's cultural, political and social, as well as religious, influence.

For us in Delaware, as for our Nation as a whole, the history is both proud and painful. The first fully independent black church was founded in Wilmington in 1813; originally called the Union Church of Africans, it is now known as the African Union Methodist Protestant, AUMP, Church. It was founded by a former slave, Peter Spencer, and was built on land purchased with the help of Delaware's Quaker community, which notably included the station-master of the Underground Railroad, Thomas Garrett.

Affectionately known as ''Father,'' and formally as Bishop, Peter Spencer believed in the ''twin'' forces of education and religion to empower and to liberate African-Americans. The movement toward religious freedom was closely linked with the anti-slavery campaign, just as predominantly black churches in more recent times have provided leadership in the civil-rights movement and in the ongoing work toward equality of opportunity.

The Big Quarterly, also initiated in 1813, commemorates the founding of the Mother AUMP Church, and honors Peter Spencer's visionary leadership. The festival combines worship with a cultural celebration and a sprit of reunion, of renewing ties with family, friends and with a history of activism that continues to inspire us all.

The history and spirit represented by the Big Quarterly are important to our identity and character as a community and as a nation. It is an event that both reminds us of what has been overcome, and challenges us to complete the journey.●

## TRIBUTE TO HARRY QUADRACCI

● Mr. FEINGOLD. Mr. President, I pay tribute to a Wisconsinite who died tragically this week, but whose life and work will be long remembered.

Harry Quadracci was many things: an entrepreneur, an innovator, a community leader, a committed philanthropist, and a dedicated husband and father. Harry lived an extraordinary and exemplary life. The founder and president of Quad/Graphics, Harry started from scratch, building a printing business which has become a dominant force in the industry and the largest privately held business of its kind in North America. He brought thousands of jobs to Wisconsin and was renowned as an outstanding employer.

As a community leader, Harry leaves a tremendous legacy to the Milwaukee area and to the entire State of Wisconsin. He and his wife Betty Quadracci pledged $10 million toward the beautiful new addition to the Milwaukee Art Museum. They also gave generously to many other causes, including the Milwaukee Repertory Theater and the restoration of St. Josaphat's Basilica in Milwaukee.

Harry Quadracci's passing is a great loss to all those who knew him and all those whose lives were touched by his many good works. I am deeply saddened by his passing, but I know that his leadership and generosity have left a lasting mark on our State. He will be remembered for many years to come.●

## TRIBUTE TO BG JAMES D. HITTLE, USMC (RET.)

● Mr. WARNER. Mr. President, I rise today to pay tribute to BG James D. Hittle, USMC (retired) who was buried at Arlington Cemetery on July 24, 2002.

I was privileged to serve with this distinguished military office and public servant in the Navy Secretariat during the Vietnam war years. His main responsibilities were naval manpower and reserve affairs, but his wisdom was sought not only by me as the Under Secretary of the Navy bust also by Secretary of the Navy John Chafee and Secretary of Defense Melvin Laird. He remained my friend and valued adviser throughout his life.

I ask that the tribute to a great American General Don Hittle which was delivered at his funeral by General Paul X. Kelly, USMC (retired), the 28th Commandant of the Marine Corps be printed in the RECORD.

The tribute follows:

### A TRIBUTE TO BRIGADIER GENERAL JAMES D. HITTLE, USMC (RETIRED)

Brigadier General James Donald Hittle—devout Christian—great American—Marine officer—gentleman and gentle man—loving husband—caring father—always a friend in need!

Commissioned a Marine Second Lieutenant in 1937, Don Hittle was a ''plank owner'' when Major General Holland Smith activated the 1st Marine Division for World War II—was D–4 for the 3d Marine Division under Major General Graves Erskine on Guam and at Iwo Jima—and after the war commanded 2d Battalion, 7th Marines, in the Occupation of North China.

After serving his Corps for 23 years, Don Hittle's future life could easily qualify him as a quintessential ''Renaissance Man.''

He was Director of National Security and Foreign Affairs for the Veterans of Foreign Wars; syndicated columnist for Copley News Service; commentator for Mutual Broadcasting System; Special Counsel for both the Senate and House Armed Service Committees; a founder and Director of the D.C. National Bank; Assistant Secretary of the Navy for Manpower and Reserve Affairs; Senior Vice President for Pan American Airways; consultant to the President of the Overseas Private Investment Corporation; advisor to several Secretaries of the Navy and Commandants of the Marine Corps—and the list goes on and on and on.

Colonel Don Hittle came into my life during the summer of 1956, when Major General Jim Riseley dragged me kicking and screaming from a cushy tour in what was then the Territory of Hawaii to the labyrinthian corridors of Headquarters Marine Corps. As many of those here today will recall, this was the long, hot summer of Ribbon Creek, and Don Hittle was Legislative Assistant to Randolph McCall Pate, our 21st Commandant. I was a young, eager, starry-eyed Captain, very naive in the arcane world at the Seat of Government—but, I was soon to learn. My first lesson was a negative one—that a junior officer should never ask the Legislative Assistant to the Commandant for a description of his duties and responsibilities. With that said, I did notice that every time Colonel Hittle came charging into General Riseley's office he closed the door behind him. While I readily admit to not being a ''rocket scientist,'' I did surmise that there were some ''big time'' discussions underway. But, as the saying goes: ''Nothing succeeds quite like success.'' I was soon to learn that

by working closely with the Congress, where Members and their staffs knew him, respected him, and trusted him, Don Hittle had effectively minimized the repercussions from Ribbon Creek. One senior member from the House of Representatives was heard to say: ''Don Hittle is the best damned Legislative Assistant the Marine Corps has ever had.''

One could go on for hours, perhaps days, about Don's myriad contributions to his Country and his Corps. As an example, I could tell you how he more than any other saved the Army Navy Club from extinction. Senator John Warner, who is here with us today, could tell you that when he was Secretary of the Navy he never had a more imaginative and dedicated Assistant Secretary. Joe Bartlett, the former House Reading Clerk and a retired Marine Corps General, could tell you how Don Hittle was responsible for the creation of the dynamic Congressional Marine Club. Incidentally, Jim Lawrence, who is also with us today, once said of this organization: ''Congress created the Marine Corps—Congress has sustained the Marine Corps—Congress has mandated the mission of the Marine Corps—through this organization we are now bonded to each other forever.''

In the end, however, all of his many other contributions to his Country and to his beloved Corps pale by comparison to what he accomplished as a member of the renowned ''Chowder Society'', that elite group of brilliant Marine officers who, in the aftermath of World War II when the very life of our Corps was threatened, insured that our existence, our roles, and our missions were written into law. Don's critical role in the survival of his Corps was best described by General Merrill Twining when he inscribed his book, No Bended Knee, ''To: Don Hittle, Who saved our Corps.'' There can be no doubt that our Corps we have today, with three active divisions and wings written into law, owes an enormous debt of gratitude to Brigadier General James D. Hittle, USMC (Retired).

Isn't it ironic to remember that fifty-five years ago certain groups, whose objectives were inimical to the survival of our Corps, were attempting to relegate us into insignificance. Today, with a lion's share of the credit for making it possible going to Don Hittle, we have just heard that Jim Jones, our 32d Commandant, is soon to be the Supreme Allied Commander in Europe. Our congratulations go to Jim—his Corps is very proud—Don Hittle is very proud!

Several years after my retirement, Don asked me to join him for lunch at his Army Navy Club. His purpose was to ask if I would give his eulogy. I was honored beyond belief, but did not look forward to the day when it would become a reality.

Before closing, let me share with you a story that Joe Bartlett told me last week.

Jinny and Joe are members of a Bible class at their church. As a gesture of their love and caring for those who are terminally ill, the class prepares an audio tape for their listening. On one side they include the patient's favorite hymns, and, on the other, a medley of their favorite tunes. During Don's last days with us—a time when he was under heavy sedation—Joe swears that Don's body stiffened to attention every time the Marines Hymn was played.

In closing, let me remind you that Don lived by two simple words—words which have given inspiration to our Corps for over 200 years—Semper Fidelis—always faithful.

Don Hittle was always:
Semper Fidelis to his God.
Semper Fidelis to his Country.
Semper Fidelis to his Family.
Semper Fidelis to his Corps.
And, Semper Fidelis to his fellow man.

In Don's memory, then, let us share these meaningful words with each other as we leave this holy place—and let us pray that one day we can live in a world where all of its citizens are Semper Fidelis to each other. Don Hittle would like that.●

## RECLAMATION OF LA SIERRA PARK

● Mrs. BOXER. Mr. President, I rise to share with the Senate a very special and important story about a few hometown heroes who changed the face of an entire neighborhood.

La Sierra Park is in the heart of the La Sierra neighborhood in Riverside, CA. Two years ago, gangs came to frequent the park, transforming this small treasure into a place of crime and fear. Playful interaction among children was replaced with drug dealing. Residents were robbed and could not use the park unless they paid gang members an entrance fee. However, when a woman was raped in the park in late 2000, local residents decided to fight back.

Marisol Ruiz and Araceli Moore, cofounders of Friends of Myra Linn, led a growing number of neighbors in the effort to take back the park. They passed out flyers, held Neighborhood Watch meetings and attended City Hall meetings. They did everything they could to gather support.

This project turned into ''Operation Safe Park.'' City workers got volunteers to help transform the park back into the treasure it once was. Volunteers augmented police patrols at the park, increased lighting and trimmed the foliage so criminals had nowhere to hide. Soon, residents were enjoying a soccer game and school dance performance held at the park. It is clear that the park was back in the hands of the community.

The story of ''Operation Safe Park'' shows what a neighborhood can do when it comes together for community improvement. I applaud Marisol Ruiz, Araceli Moore and all those who worked so hard to make a difference in this neighborhood. In taking back this park, these people made their neighborhood a safer and better place for now and for future generations. Their exemplary dedication and commitment serve as an inspiration to us all.●

## TRIBUTE TO BRIAN HONAN

● Mr. KENNEDY. Mr. President, on Tuesday, Boston lost one of its greatest public servants, City Councilor Brian Honan. Brian was raised in a family that held public service in the highest regard. He learned early in life the value of community and the strength of working together on a common goal. In his brief life, Brian touched so many people in countless ways. The true measure of Brian's contribution to Boston and Massachusetts may never be known, but the life he lived and the love he gave will live on in the hearts of his friends, his family and the city of Boston for years to come.

In his years of service to his community, in the District Attorney's Office or as a City Councilor from Allston and Brighton, Brian never forgot his principles and ideals, never forgot those he served and the city he loved so well, and never forgot the need to fight for those who are unable to fight for themselves. There is no greater example of willingness to serve his fellow man than the life and legacy of Brian Honan.

A bright light in the Boston community was lost to us all on Tuesday but the strength and power of that light lives on in Brian's legacy, and is a powerful reminder to us all about what public service is all about. He will be dearly missed.●

## APPRECIATION FOR AMBASSSADOR MALEEHA LODHI

● Mr. BIDEN. Mr. President, on behalf of myself and my colleagues I would like to place in the record a bipartisan statement of appreciation for the outgoing Ambassador of Pakistan, Dr. Maleeha Lodhi.

Ambassador Lodhi has served her country with exceptional distinction. Her prior experience as both an academic and a journalist has proved to be a great advantage: she has always articulated her government's positions with the precision of a scholar and the persuasive reach of a news analyst.

Perhaps most significantly, Ambassador Lodhi has served as a cultural bridge. She has played an invaluable role in harmonizing the various goals shared by Pakistan and the United States, goals ranging from advancing the international war on terror to de-escalating tensions in South Asia. Moreover, Ambassador Lodhi has- by both her words and her personal example- helped bridge the chasm of misunderstanding between the United States and the Islamic world.

Ambassador Lodhi's mission has been to serve the people and nation of Pakistan, and she has fulfilled that mission superbly. But at this critical juncture, Ambassador Lodhi has also been a great asset in furthering the common interests not only of Pakistan and United States, but of many voices of moderation, tolerance and progressive thinking all across the Muslim world. Her presence here in Washington will be sorely missed, and we wish her all the best on her return home.''●

## KING BISCUIT TIME

● Mrs. LINCOLN. Mr. President, ever since it hit the airwaves one lunchtime fifty-six years ago this November, ''King Biscuit Time'' has profoundly influenced the development and popularity of the blues. As the oldest and longest-running blues program on the radio, it helped promote the careers of bluesmen who pioneered this musical style and later brought it from street corners and juke joints in the South to an international audience. And today,

KFFA and Helena are even ''must see'' stops for Japanese and European tourists who want to learn about the cultural roots of the blues.

''First things first,'' recalls Sonny ''Sunshine'' Payne, the program's host for over eleven thousand broadcasts; King Biscuit Time started when guitarist Robert Junior Lockwood and harmonica player Sonny Boy Williamson were told they would have to get a sponsor to get on the air.'' That was 1941, when Payne was a teenager cleaning 78 rpm's and running errands at KFFA. ''They came to the station one day and I showed them in to station manager Sam Anderson . . . he sent them over to the Interstate Grocery Company and its owner Max Moore who had a flour called ''King Biscuit Flour . . .''

Lockwood and Williamson became the show's original King Biscuit Entertainers who advertised flour and corn meal in Helena and the surrounding Delta region; and after a lucky break, Sonny Payne took over as program host when the announcer lost his script while on the air. The program was a smash hit, thanks mostly to the playing and on-air presence of harp player Williamson. He became so popular that the sponsor named its product ''Sonny Boy Corn Meal'' and he was, and still is, pictured, smiling and with his harmonica, on a burlap sack of his own brand of meal.

Williamson was a musical pioneer in his own right. He was one of the first to make the harmonica the centerpiece in a blues band. His unique phrasings, compared by many to the human voice, influenced countless harp players.

His partner, Robert Junior Lockwood, stepson of the legendary Robert Johnson, also influenced the blues style. A fan of big band jazz, he incorporated jazzier elements into the blues, often playing the guitar with his fingers.

As years passed, the duo expanded into a full band, including piano player ''Pine Top'' Perkins, Houston Stackhouse and ''Peck'' Curtis, and musicians who played on the show also advertised local appearances that gave them more work.

With the success of ''King Biscuit Time,'' Helena soon became a center for the blues. It was a key stopping off point for black musicians on the trip north to the barrooms and clubs of Chicago's South and West sides. Already, in the thirties, the town had seen the likes of pianist Memphis Slim and Helena native Roosevelt Sykes, as well as guitarists Howlin' Wolf, Honeyboy Edwards, and Elmore James. And when the program went on the air, it helped shape the early careers of many an aspiring musician. ''Little Walter'' Jacobs and Jimmy Rogers, who later played with Muddy Waters, came to live and learn in Helena in the mid-1940's. Muddy Waters also brought his band to Helena to play on KFFA and in bars in the area. Teenager Ike Turner first heard the blues on KFFA around that time, and King Biscuit pianist ''Pine Top'' Perkins gave him lessons in his trademark boogie woogie style.

The program also influenced other stations to put the blues on the radio. Its initial popularity convinced advertisers that the blues had commercial potential. ''It was a major breakthrough,'' explains folklorist Bill Ferris, director of the Center for the Study of Southern Culture at Ole Miss; ''King Biscuit Time was a discovery of an audience and a market . . . that hitherto radio had not really understood.'' Across the Mississippi River from Helena, radio station WROX put the South's first black deejay, Early Wright, on the air spinning blues and gospel records in 1947. Upriver in Memphis, station WDIA the next year became the first southern station with an all-black staff, including a young musician named Riley ''B. B.'' King, who got an early break as a deejay. And, in Nashville in the late forties, station WLAC reached nearly half the country with its late-night blues and R&B shows. All of these programs and stations owe an enormous debt to ''King Biscuit Time.''

And today, the legacy of the show continues, with blues programs heard on radio stations across the U.S., the recordings of the many ''King Biscuit Entertainers,'' and the yearly King Biscuit festival in Helena celebrating the city's cultural heritage and significant role in developing and promoting the blues.●

## IN RECOGNITION OF CALIFORNIA STATE SENATOR JIM COSTA FOR TWENTY-FOUR YEARS OF PUBLIC SERVICE.

● Mrs. BOXER. Mr. President, I rise today to bring to the Senate's attention the exemplary achievements and outstanding service of State Senator Jim Costa of Fresno, California.

Senator Jim Costa will retire this year after twenty-four years of service in the California State Legislature. I am pleased to honor Senator Costa for his outstanding leadership and service and add my voice to the special recognition and the outpouring of admiration from throughout California.

In his many years of public service, Senator Costa has been dedicated to serving the Central Valley. Senator Costa is also well known for his sense of honor, purpose and teamwork that made him so effective in the California State Legislature.

I am honored to congratulate him on his many accomplishments over more than two decades of service. I wish Senator Costa the best in his future endeavors. I know he will continue to make outstanding contributions to the people of California. I ask that excerpts from the Fresno Bee Editorial from July 24, 2002 be printed in the RECORD:

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

[From the Fresno Bee, July 24, 2002]

CALLING IT A CAREER

JIM COSTA'S VALUABLE SERVICE IN THE STATE LEGISLATURE COMING TO AN END.

Democrat Jim Costa will make his political curtain call next month at a testimonial dinner that is expected to draw some of California's most powerful politicians. It will be a fitting send-off recognizing a 24-year legislative career that began with youthful exuberance and is ending with a record of accomplishments that you'd expect from a seasoned veteran.

The dinner on Aug. 25 at the Fresno Convention Center will bring together four of the state's five living governors, along with San Francisco Mayor Willie Brown, the former speaker of the Assembly. Costa has worked with all of them, gaining their respect even when they were at political odds. Dinner proceeds will benefit the Kenneth L. Maddy Institute at California State University, Fresno.

Costa understands better than most politicians the independent nature of Valley's voters. First in the Assembly and then in the state Senate, he balanced the political interests of the region as well as any legislator. He has championed the needs of agriculture and has fought to improve the Valley's business climate. He also battled to improve the plight of the region's many impoverished communities.●

## THE RETIREMENT OF RIVERSIDE COUNTY SHERIFF LARRY SMITH

● Mrs. BOXER. Mr. President, I rise to reflect on the distinguished career of Riverside County Sheriff Larry Smith, who will retire later this year. Sheriff Smith is also the immediate past president of the California State Sheriff's Association. The people of Riverside County, his colleagues and admirers will celebrate his career on August 9.

During Sheriff Smith's extraordinary 36-year record of service to law enforcement, he has held numerous positions and has achieved many important accomplishments. He served as Riverside County's Search and Rescue Coordinator and commanded the Department's SWAT team before working as chief deputy sheriff. Thanks to Sheriff Smith's leadership and vision during his tenure as chief deputy sheriff, the Riverside County Corrections system is one of the largest in the United States.

Sheriff Smith was elected to serve as Riverside County Sheriff in 1994 and was reelected to serve a second term in 1998. During Sheriff Smith's tenure, Riverside County saw a dramatic decrease in crime. Sheriff Smith was instrumental in the creation of the Ben Clark Public Safety Training Center. He collaborated with federal, state and local legislators to establish the facility, which provides valuable training for law enforcement officers, firefighters and paramedics. As I have seen for myself, it is truly a model for public safety training centers throughout the nation.

In addition to his tremendous commitment to his career, Sheriff Smith is an exemplary community leader. He has been active in the American Heart Association, the United Way of the Inland Empire and the Debbie Chisholm

Memorial Foundation, an organization dedicated to improving the quality of life for terminally ill children.

I am proud to add my words of commendation to the praise and recognition Sheriff Smith has received throughout his respected career. I extend to him my sincere congratulations for his countless contributions to the force and to the broader community. Riverside County is a safer and better place because of his fine leadership. Although Sheriff Smith will be greatly missed, his work continues to benefit Riverside County. I wish him a wonderful retirement.●

## IN MEMORIAM: MARGARET WAHLSTROM

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of Mary Alice Wahlstrom, who lost her life on September 11, 2001. Mrs. Wahlstrom was 78 years old when the flight she was on, American Airlines Flight 11, was hijacked by terrorists. As we all know, that plane crashed into the World Trade Center, killing everyone on board.

Mrs. Wahlstrom and her daughter, Carolyn Beug, were traveling together on that tragic day. They were returning to their homes after having settled Mrs. Beug's twin daughters at the Rhode Island School of Design. This American family lost two dearly beloved women on September 11. ''The one thing those terrorists cannot destroy is love. They cannot destroy the love we have in this family, and the love people have for each other,'' says Margaret Wahlstrom, daughter-in-law of Mrs. Wahlstrom.

Mary Alice Wahlstrom was traveling throughout Europe as a young socialite until she met, and fell in love with, Norman Wahlstrom, Senior. He was a World War II hero and like most Air Force families, they moved many times. They raised five children together, finally settling in Utah, where Mary Alice became a loan officer.

Mrs. Wahlstrom shared a zest for life with those around her. She is remembered as a vibrant, exuberant woman. One neighbor called her, ''dynamic, with a wonderful outlook on life.'' She loved to laugh. Mrs. Wahlstrom exercised daily, played the piano and volunteered as an usher at Temple Square. She enjoyed reading, traveling, debating current events and going to the movies. ''She was a ball of fire. She was 78 when she died, but she could have lived another 25 years. I have no doubt about it,'' says her son Scott Wahlstrom.

During the opening ceremonies of the 2002 Olympic Games, her son, Norman Wahlstrom, Jr., carried the Olympic torch in Ogden, Utah, in honor of his mother. ''As with every boy that ever lived, my mother was a shining example of hope and promise. She had a wonderful, perpetual smile and contagious laugh,'' says Wahlstrom.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to an American who perished on that awful morning. I want to assure the family of Mary Alice Wahlstrom, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.●

## IN RECOGNITION OF THE CITY OF VISALIA AND THE COUNTY OF TULARE'S SESQUICENTENNIAL ANNIVERSARY

● Mrs. BOXER. Mr. President, I rise today to commemorate the 150th Anniversary of the City of Visalia and Tulare County, California. The City and the County are celebrating their official anniversaries together on September 7, 2002 at historical Mooney Grove Park.

The City of Visalia and the County of Tulare were both organized in 1852. The State of California was two years old.

Visalia started as a small, creekside settlement and has grown into the dynamic community it is today. Commonly referred to as ''Jewel of the Valley'' and ''Gateway to the Sierra,'' Visalia is now home to more than 92,000 residents. It is renowned for its great Valley Oaks that grace its neighborhoods, reminders of the natural heritage of which its residents are so proud.

Tulare County, anchored on the east by spectacular Sierra Nevada peaks, Giant Sequoia groves and fertile plains, which make it the number one agricultural county in the world, is also one of the largest counties in the great San Joaquin Valley. It is home to Sequoia and Kings National Park and the Giant Sequoia National Monument. Its residents range from its Native Americans to dozens of nationalities from all corners of the globe, making its communities diverse and proud of their shared heritage.

Both the City of Visalia and County of Tulare have thrived since their early beginnings. I have had the distinct pleasure of visiting both the city and the county over the years. Both are truly valuable assets to the State of California.

I am honored to serve the people of Visalia and Tulare County and wish them all a wonderful sesquicentennial anniversary celebration. I encourage my colleagues to join me in wishing the City of Visalia and Tulare County many more years of prosperity.

I yield the floor.●

## IN MEMORIAM: CAROLYN BEUG

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Carolyn Beug, who lost her life on September 11, 2001. Mrs. Beug was 48 years old when the plane she was on, American Airlines Flight 11, was hijacked by terrorists. As we all know, that plane crashed into the World Trade Center, killing everyone on board.

Carolyn Beug and her mother, Mary Alice Wahlstrom, were traveling together on that tragic day. They were returning to their homes after having settled Mrs. Beug's twin daughters at the Rhode Island School of Design. This American family lost two dearly beloved women on September 11th. Their story is one of a commitment to love conquering hate, even in the face of unimaginable sorrow and loss. ''The one thing those terrorists cannot destroy is love. They cannot destroy the love we have in this family, and the love people have for each other,'' says Margaret Wahlstrom, Carolyn Beug's sister-in-law.

Mrs. Beug, the daughter of an Air Force colonel, was a citizen of the world. She grew up in many places, including Pennsylvania, South Korea and Utah. Carolyn Beug was a successful accountant, CFO, and real estate developer. She was a music industry executive, music video producer and director. Mrs. Beug helped establish a center for underprivileged children in Los Angeles and won the 1992 MTV Video of the Year award for directing a video by the rock group Van Halen. She was the wife of John Beug and mother of Lauren, Lindsay and Nicky. In 1998, Mrs. Beug left the music industry to write a book and to devote more time to her family.

When her daughters joined the Santa Monica High School Track Team, Mrs. Beug became actively involved as the team mother. She was affectionately known as ''Momma Bunny'' and she attended every meet, cheering on the team and purchasing new shoes, uniforms and sweats when needed. At the end of every season, she hosted the team banquet at the Beug family home. ''She always called the kids on the team ''my little bunnies,'' recalls her husband, John.

''Such an electric and peripatetic personality leaves an impression wherever she goes, whether that's a corporate boardroom, a movie studio, a children's shelter, a high school stadium, or a home on a quiet tree lined street. The impressions she left, a bright smile, a heartfelt belly laugh, a nugget of wisdom, an odd take on a song, a whispered secret, a motherly embrace are permanent,'' adds John Beug.

None of us is untouched by the terror of September 11th, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center Towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of 51 Californians who perished on that awful morning. I want to assure the family of Carolyn Beug, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers, and sisters will not be forgotten.●

## IN MEMORIAM: CHRISTOPHER CAIRO NEWTON

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Christopher Cairo Newton, who lost his life on September 11, 2001. Mr. Newton was 38 years old when the plane he was on, American Airlines Flight 77, was hijacked by terrorists. As we all know, that plane crashed into the Pentagon, killing everyone on board.

Mr. Newton's life was filled with many wonderful and impressive accomplishments. He was a successful businessman and world traveler who loved the performing arts and music, the game of golf, and any home improvement project he could find. He became an Eagle Scout at 14, graduated from Cal Poly San Luis Obispo with high marks and earned his CPA. After completing his MBA at UCLA's Anderson School, he was named President and CEO of Work/Life Benefits.

Close family friend Steven Falk said there was nothing in the world that Christopher cared more about than his children. Christopher, his wife Amy and two children Michael and Sarah had recently moved from Southern California to the Virginia suburbs outside of Washington, DC. He was in the process of relocating company headquarters to Virginia, a move that would put the company closer to key customers and allow Christopher to spend more time with his family. Christopher loved to attend school functions, coach his son's little league team, or just have a quiet dinner at home with his wife and children.

Mr. Newton was also close to his parents and siblings. His father Michael said ''He was very bright. An avid golfer, a great skier, a champion Scrabble player. He never gave us a moment's trouble in his life.'' His brother Stephen says that ''Chris taught me to be patient and hopeful and to always play by the rules.''

It is clear that Mr. Newton was serious, intense and committed to his responsibilities. Yet he was always able to laugh at himself. A quote from a friend says it best. ''He was confident with no airs, loving with no expectations, giving with no greed, funny with no offense.''

Christopher is survived by his wife Amy, their two children Michael and Sarah, his parents Michael and Barbara Newton, sister Ann-Elisabeth, brother Stephen, an aunt, cousins, nieces, a nephew and a close circle of friends.

None of us is untouched by the terror of September 11, and many Californians were part of each tragic moment of that tragic day. Some were trapped in the World Trade Center towers. Some were at work in the Pentagon. And the fates of some were sealed as they boarded planes bound for San Francisco or Los Angeles.

I offer today this tribute to one of the 51 Californians who perished on that awful morning. I want to assure the family of Christopher Cairo Newton and the families of all the victims, that their fathers and mothers, sons and daughters, aunts and uncles, brothers and sisters, will not be forgotten.●

## TRIBUTE TO JOHN E. BREWER

● Mr. JOHNSON. Mr. President, I rise today to pay tribute to John E. Brewer of Rapid City, SD, on the occasion of his retirement as president of Rushmore Bank and Trust in Rapid City. The people of the Rapid City area share my pride in John's accomplishments, and I know they join me in congratulating him on his retirement after a distinguished 32 year career in the banking industry.

Throughout his career, John has worked to provide financial opportunities for South Dakotans. For the past 16 years, John has guided Rushmore Bank and Trust in new and innovative directions. John has also helped guide the entire banking profession in South Dakota by serving as a past president of the South Dakota Bankers Association. John came to South Dakota in the same year I was first elected to Congress. During my years in Congress and now as the Chairman of the Senate Banking Subcommittee on Financial Institutions, I have relied on John's vast experience and knowledge of the banking industry to help guide my decisions on important policy matters.

In addition to his professional dedication, John is a true leader in the Rapid City community and has earned the respect and friendship of so many of us fortunate to spend time with him. John has served as the chairman of the Rapid City Area Chamber of Commerce, president of the Children's House Society, and president of the Mount Rushmore History Association. John represents the goodness and diligence that we find in so many South Dakotans, and I wish him well for a long and happy retirement.●

## HONORING KASDIN MILLER ON HER ELECTION AS PRESIDENT OF GIRLS NATION

● Mr. SESSIONS. Mr. President, last week I had the honor of swearing in the American Legion Auxiliary Girls Nation president. I am proud to announce that Kasdin Miller of Montgomery, Alabama, was elected president by the other participants in this fine program. Three of the last six presidents of Girls Nation have come from my home State of Alabama. Girls Nation celebrated its 56th year this year, and 96 teenage girls from 48 states participated. These teenagers were selected through their participation in the American Legion Auxiliary's Girls State program. I would also note that Alabama Girls State celebrated its 60th anniversary this year, making its program one of the oldest in the country.

The Girls State and Girls Nation programs of electing senators and creating state legislatures and local governments is an extraordinary learning process. Participants in Girls State and Girls Nation, and their counterparts in Boys State and Boys Nation, gain firsthand experience in how our laws are made. Each summer, some 20,000 enthusiastic young women participate in Girls State sessions across the nation, where they study local, county, and state government processes. These young people are our leaders of tomorrow, and I salute them for their interest in government. Former participants in Girls State include three current members of the U.S. House of Representatives-Barbara Cubin of Wyoming, Connie Morella of Maryland, and Jennifer Dunn of Washington. Perhaps one day we may see Kasdin and other Girls Nation participants on the floor of the Senate and House.

Kasdin, a rising senior at the Montgomery Academy, also had the high honor of being elected Governor of the Alabama YMCA Youth in Government program. I enjoyed meeting her when she came to Washington as Alabama's Youth Governor in June. She has been a leader on her school's debate team and earned a spot in the national tournament this year. She excels in the classroom as well. Kasdin is an intelligent young lady who has a bright future, and she is to be commended for her achievements. Indeed, I congratulate all of the participants in both Girls Nation and Boys Nation for their accomplishments and encourage them to continue to prepare themselves to be America's future leaders.●

## APPRECIATION FOR A JOB WELL DONE

● Mr. SESSIONS. Mr. President, I would like to just take a brief moment of the Senate's time to commend the interns who have worked in my office this summer and express my heartfelt gratitude and appreciation for their dedication to public service.

Therefore I would like to commend: David Abroms; Matt Anderson, Peyton Bean, Rebecca Beers, Gabe Bonfield, David Burkholder, Katie Cassady, Robin Cooper, Mary Alise Cosby, Emily Costarides, Mary Katherine Davis, Lyle Dubois, Will Dumas, Beth Fanning, Ben Ford, Jonathan Hooks, Jonathan Macklem, Molly McKenzie, Christy Olinger, Blake Oliver, Matt Peterson, Craig Pittman, Jr., Melanie Rainey, Walker Rutherfurd, Anna Smith, Austill Stuart, Jason Wells.

All of my interns worked very hard and produced great work products, and I just wanted to take a minute of the Senate's time to thank them for their

service and their parents for providing them the opportunity to come up here and serve their country.●

## TRIBUTE TO ASTRONAUTS WALZ AND BURSCH OF ISS EXPEDITION 4

● Mr. VOINOVICH. Mr. President, I rise today to recognize and pay tribute to Astronauts Colonel Carl E. Walz and Captain Daniel W. Bursch for their significant contributions and record-setting accomplishments as part of the International Space Station's Expedition 4 Crew.

Astronauts Walz, Bursch, and Expedition Commander and Russian cosmonaut Yuri Ivanovich Onufrienko departed from Kennedy Space Flight Center on December 5, 2001, for what became a 6½ month stay aboard the International Space Station. The crew of three spent 196 days in space, with Carl Walz and Dan Bursch establishing a new U.S. space flight endurance record. The previous U.S. record belonged to Astronaut Shannon Lucid, who spent 188 continuous days in space aboard the Russian Mir Space Station. With four previous flights and his Expedition 4 mission, Astronaut Walz also established a new U.S. record for the most days in space, with a total of 231 days, surpassing Dr. Shannon Lucid's record of 223 days.

We look to our Nation's space program to improve life here on Earth and explore the unknown. We also look toward the future, to the time when we will extend life beyond the bounds of Earth. On February 20, 2002, while aboard the International Space Station, the Expedition 4 crew spoke with Ohio's former Senator and NASA pioneer, John Glenn, who was the first American to orbit the Earth 40 years ago.

We have come a long way in the U.S. space program, and our future discoveries are limited only by our imagination and commitment. We must give special recognition to our Astronauts whose personal and professional commitment to live and work in space continues to break barriers and thresholds.

While on the International Space Station, in addition to maintaining, operating and performing research experiments, the Expedition 4 crew installed the S-zero truss segment. The S-zero truss forms the backbone of the Station which will eventually hold the four solar array ''wings'' of the U.S. segment. The crew tested the new Quest Airlock and performed the first spacewalk from it without the Space Shuttle present. The crew also was the first to use the Space Station Robotic Arm as a ''cherry picker,'' maneuvering space walkers ''flying'' on the end of the arm during spacewalks.

After an extended, U.S. record-setting stay on the International Space Station, the crew returned to Earth with Shuttle Endeavor, landing at Edwards Air Force Base, California, on June 19, 2002.

Astronaut Carl E. Walz, a Colonel in the U.S. Air Force, was born in Cleveland, OH. He and his wife, the former Pamela J. Glady, have two children. Walz has received numerous Distinguished Service medals, including the Defense Superior Service Medal, three NASA Space Flight Medals, and the NASA Exceptional Service Medal.

Astronaut Daniel W. Bursch, a graduate of the U.S. Naval Academy and a Captain in the U.S. Navy, considers Vestal, NY to be his hometown. He and his wife, the former Roni J. Patterson, have four children. Captain Bursch also has received recognition for distinguished service, including the Defense Superior Service Medal and NASA Space Flight Medals. Bursch has over 3,100 flight hours in more than 35 different aircraft and has logged a noteworthy 227 days in space.

On behalf of my colleagues on both sides of the aisle, I thank astronauts Carl Walz and Dan Bursch for their courage, commitment and contributions in service to the United States of America.●

## IN RECOGNITION AND APPRECIATION OF THE EFFORTS OF SOUTH DAKOTA'S COMMUNITY FIRE DEPARTMENTS TO CONTAIN THE GRIZZLY GULCH AND LITTLE ELK CREEK FIRES

● Mr. JOHNSON. Mr. President, I want to recognize the heroic efforts of over 60 South Dakota community fire departments and the State of South Dakota's Wildland Fire Suppression Division in responding to recent forest fires in the Black Hills. Their work was heroic, professional, and saved several Black Hills communities from complete devastation.

On Saturday, June 29, 2002, a forest fire broke out in Grizzly Gulch, south of the town of Lead, SD, and near the town of Deadwood. Steep, rugged hills and unstable terrain crisscross the Black Hills impeding efforts to control the early stages of a forest fire. By Saturday evening, fire had crept within a few hundred yards of the historic city of Deadwood and in some instances flames literally touched the sides of houses. Ninety-degree temperatures, high winds, and low humidity levels fueled the fires run up ridges and engulfed thousands of acres in a matter of hours. If it had not been for the quick reaction and professionalism of the South Dakota Wildland Suppression Office and the men and women who established a fire line between Deadwood, the city could have witnessed a catastrophic fire.

Within a few hours Joe Lowe, the Grizzly Gulch Incident Commander, had marshaled over 250 personnel, including several hand crews, 7 heavy air tankers, and pieces of heavy earth-moving equipment to keep the fire from approaching Deadwood. By the Fourth of July the number of personnel fighting the fire swelled to over 670 with an influx of U.S. Forest Service crews under the authority of Paul Hefner, fire commander for the Grizzly Gulch blaze. As fire crews battled flareups and constructed fire lines to control the fire, high winds kept crews alert for what firefighters refer to as slop-over, flames jumping the line and burning out ahead of the fire line.

South Dakotans responded. Volunteer firefighters from 60 community fire departments from as far away as Sioux Falls descended on the region. After the fires were contained, Deadwood sponsored a night of festivities to thank the hundreds of firefighters who battled the Grizzly Gulch fire and saved the town of Deadwood. The town's round of applause and appreciation spoke for the entire State's gratitude for the bravery of our community firefighters.

At the fire's peak, over 900 firefighters fought the Grizzly Gulch fire, putting themselves in harm's way to save the towns of Lead and Deadwood. Through their selfless action, the community and State firefighters of South Dakota reaffirmed that during a crisis South Dakotans speak with one voice. I would like to add my voice and say thank you to the men and women who served us so proudly last month.●

## TRIBUTE TO VADAM THOMAS R. WILSON, USN

● Mr. WARNER. Mr. President, it is with great pleasure that I rise today to pay tribute to a great sailor, patriot, husband and father, VADM Thomas Ray Wilson. By the time we return from our August recess, this great sailor will have officially retired from active service on August 30, 2002, having faithfully and loyally served his country around the globe for over 33 years. Admiral Wilson ends his active service having served at the pinnacle of military intelligence as the 13th Director of the Defense Intelligence Agency.

Born in Columbus, OH, Admiral Wilson is a 1968 graduate of Ohio State University. He joined the Navy at the height of the Vietnam conflict, and received his commission as an ensign in March 1969, following completion of Navy Officer Candidate School in Newport, RI.

Throughout his extraordinary military career Admiral Wilson distinguished himself as a candid innovator, a patient, creative teacher; and a great leader. His early assignments included watch officer and analytical and command briefing positions in the Taiwan Defense Command in Tapei, Taiwan, and in the Defense Intelligence Agency. Subsequent duties ashore and afloat included assignment on the USS *Kitty Hawk*; as the operational intelligence officer with the Iceland Anti-submarine Warfare Group; duty with Carrier Air Wing Three embarked in USS *Saratoga*; and force intelligence officer for Commander, Patrol Wings Atlantic in Brunswick, ME.

Recogizing his potential to serve the Navy and the Nation in positions of

great responsibility, the Navy selected Admiral Wilson to serve as Commander, Task Group 168.3 in Naples, Italy, where, under his leadership, this unit earned the Navy Meritorious Unit Commendation. After this successful tour, Admiral Wilson moved on to Yokuska, Japan, where he served as the Fleet Intelligence Officer and Assistant Chief of Staff for Intelligence, U.S. Seventh Fleet, embarked in U.S.C. *Blue Ridge*.

After returning to the United States, Admiral Wilson served in a variety of senior positions in Washington, DC, and the Norfolk, VA area, including Director of Fleet Intelligence, U.S. Atlantic Fleet, and as Director of Intelligence, J2, U.S. Atlantic Command, where he was deeply involved in the planning and execution of operations to re-establish freedom and democracy in Haiti in 1994.

Admiral Wilson has served in the most senior military intelligence positions in our Government since 1994, including Vice Director for Intelligence, J2 on the Joint Staff in the Pentagon; as the Associate Director of Central Intelligence for Military Support within the Central Intelligence Agency; and, as the Director for Intelligence, J2 on the Joint Staff in the Pentagon. In these positions Admiral Wilson was intimately involved in the planning and execution of virtually all U.S. military operations around the world in the past 8 years. In the process, he has gained the personal respect and confidence of two Presidents, three Secretaries of Defense, four Chairmen of the Joint Chiefs of Staff, and countless Members of Congress. As Admiral Vern Clark, Chief of Naval Operations, who was Director of the Joint Staff when Admiral Wilson was the J2, noted at Admiral Wilson's retirement ceremony recently, ''When Tom Wilson spoke, we listened.'' In conversations I have had with colleagues in the Senate and with numerous Defense officials who interacted with Admiral Wilson, there was uniform consensus—his analysis was thorough, his judgment was clear and his instincts were flawless.

In July 1999, Admiral Wilson moved on to his last and most challenging active duty post as the 13th Director of the Defense Intelligence Agency and, symbolically, the chief of military intelligence for all of our Armed Forces. His 3-year tenure at the Defense Intelligence Agency was marked by the same innovativeness, commitment to excellence and selfless service to Nation that characterized his entire military career. He reshaped the Agency to ensure that it was meeting the 21st century demands of our senior military and civilian leaders and that it was postured to respond to the rapidly evolving challenges our Nation will face in the years ahead.

Admiral Wilson's outstanding leadership qualities were never more apparent than during the Defense Intelligence Agency's most difficult hour—the September 11 attack on the Pentagon. His crisis management abilities were critical in the hours that followed—both in accounting for members of the Agency, and in positioning the Agency to provide critical threat data in the immediate aftermath of the attack. The Defense Intelligence Agency lost seven members in the Pentagon attack, with five others seriously injured. Admiral Wilson's personal contact with each family who lost a loved one, and with the five surviving members in the days and weeks that followed was most appreciated and highlighted the selfless concern for others this remarkable sailor has always demonstrated. His concern for family members and his outreach to the workforce were critical to holding the Agency together as it worked its way through the aftermath of the attack. His leadership was absolutely key to ensuring warfighters and policymakers obtained the best possible support as the Nation began to respond. The success of our forces in the global war against terrorism is a testament to the quality of effort given by the Defense Intelligence Agency under the able leadership of ADM Tom Wilson.

Throughout his career, Admiral Wilson has displayed unmatched dedication to providing the highest quality intelligence support to the warfighter and senior defense officials. His leadership has helped transform the military intelligence community into a joint, interoperable, technologically advanced federation that is postured to support the challenges of today and tomorrow. His personal commitment to the intelligence community, to the Navy, and to our Nation is of the highest, most commendable order.

I wish to extend my gratitude and appreciation to VADM Tom Wilson and his wife of 33 years, Ann, for their friendship, their sacrifice, and for the remarkable service they have provided to our Nation, our Navy, and to the countless young people whose lives they have touched in such a remarkably selfless and positive way. On behalf of a grateful Nation, I want to sincerely thank Tom and Ann Wilson for serving so faithfully and so well. As they end their active service with the Navy, I wish them success and happiness in retirement and future endeavors. As a fellow sailor, I wish them fair winds and following seas—Godspeed.●

## TRIBUTE TO DAVE GERZINA

● Mr. CRAIG. Mr. President, I rise to say thank you to a patriot and a technical expert, Dave Gerzina, who is retiring from civilian service to the Navy on August 3, 2002.

Dave was born in Youngstown, OH and was raised in the Miami, FL area from the age of eight. He attended Florida Atlantic University and received a Bachelor of Science in Ocean Engineering. In 1970, Dave began working for the Navy at the David Taylor Model Basin in Bethesda, MD and has worked continuously for the Navy at three different locations over the past 32 years.

Dave's first assignment was working for the Hydro-Mechanics Division in analyzing maneuvering and seakeeping of naval vessels. He worked there for over 5 years when he transferred to the System Development Division in Panama City, FL.

While in Panama City, Dave served extensively in the development and testing of the Landing Craft Air Cushioned vehicle, LCAC. He provided invaluable engineering and technical expertise for the duration of the development program, seeing it to a successful completion during his eight-year stint at the facility.

Dave transferred to the Naval Surface Warfare Center's Acoustic Research Detachment at Bayview, Idaho in January 1984. He has worked for the Acoustics Department in numerous roles during his 18 continuous years of service at this facility.

Dave initially held the title of Technical Operations Manager, and oversaw all testing and operations performed at the ARD. He was later promoted to the Buoyant Vehicle Operations Manager, where he managed the development and testing of many flow-noise features for Los Angeles Class submarine sonar self-noise improvements. In addition, he re-designed and improved the Detachment's test ranges, and conducted operations in support of the very successful Seawolf Class self-noise program.

He was also instrumental in developing the capability to perform full-scale Towed Array testing in Idaho, which saved months and thousands of dollars over at sea testing, culminating in the procurement of a Navy research vessel.

Dave achieved his greatest career success during the 1988–1995 period when he was responsible for overseeing the installation of the Navy's unique, world class Intermediate Scale Measurement System (ISMS) at Lake Pend Oreille. As Project Manager he was responsible for obtaining environmental approval to develop the system, interfacing with the numerous organizations, engineers, scientists and contractors to plan and then install the intricate system and associated facilities, and finally, the testing to characterize and verify the site. Since completion of the installation in 1995, Dave has assumed the role of Test Program Manager and has been responsible for the conduct of numerous successful ISMS tests as well as the responsibility of maintaining the system.

Dave has improved the ISMS Program's capabilities and reputation into the Navy's premier test site for performing structural, target strength and radiated testing of large-scale submarine models. The underwater range portion has been referred to as the most complex underwater structure in the world.

Dave and his wife of 32 years, Robin, have three adult children and two beloved Dalmations. Dave has been an accomplished bass fisherman and elk hunter since his youth, competing in numerous tournaments. He is also an accomplished sailor and plans to take several ocean trips in a Catamaran after retirement. He hopes to apply his carpentry skills to finish and sell his current house, then settle down in Florida for the winters and spring, returning each year to a small cabin in Idaho for the summers and autumns. Finally, Dave is seriously considering obtaining a law degree in his future spare time.

Dave Gerzina has been a significant contributor to our nation's research capabilities, as well as numerous performance improvements to quieting operational and future vessels and submarines. I want to wish Dave and Robin good luck, fair winds and following seas in their next endeavors.●

## MAJOR GENERAL JOE G. TAYLOR, JR.

● Mr. INHOFE. Mr. President, today I pay tribute to a great Army officer, and a great soldier. This month, Major General Joe G. Taylor, Jr. will depart the Pentagon to assume new duties as the Commanding General, U.S. Army Security Assistance Command in Alexandria, VA. For over two years, he has served as first the Deputy then the Chief of Army Legislative Liaison where he has proven himself to be a trusted advisor to the Secretary of the Army and the Chief of Staff.

During his tour as the Chief of Army Legislative Liaison, he guided the Army's relationship with Congress, wielding a deft and skillful touch during a period of tremendous change. Throughout this period, Joe Taylor ably assisted the Army's senior leadership in dealings with Members of Congress and their staffs in helping them to understand the needs of the Army as it faces the challenges of a new century. His leadership resulted in cohesive legislative strategies, responsiveness to constituent inquires, well-prepared Army leaders and a coherent Army message to Congress.

Joe Taylor's career has reflected a deep commitment to our Nation, which has been characterized by dedicated selfless service, love for soldiers and a commitment to excellence. Major General Taylor's performance over twenty-seven years of service has personified those traits of courage, competency and integrity that our Nation has come to expect from its Army officers. The Pentagon and the Army Secretariat's loss will be the Army Security Assistance Commands gain, as Major General Taylor continues to serve his country and the Army. On behalf of the United States Senate and the people of this great Nation, I offer our heartfelt appreciation for a job well done over the past two years and best wishes for continued success, to a great soldier and friend of Congress.●

## NAMING JULY AS NATIONAL AMERICAN HISTORY MONTH

● Mr. DEWINE. Mr. President, yesterday my friend and colleague from Connecticut, Senator LIEBERMAN, and I introduced a resolution of which every American should be proud. Our country has seen wars, recessions, conflict, prosperity and unification. In order to honor our collective past, this resolution would establish July as American History Month. July, the month of our country's declaration of independence—a time when Americans put aside differences of opinion and signed one of the most important documents in our country's history—is an ideal time for us to reflect on our Nation's history and educate our children about America's past.

Studies have shown that Americans lack a passable knowledge of our history. We, as Americans, should learn from and understand this history. I believe we must encourage Americans of all ages and ethnicities to learn the history and heritage of the United States. Studies have shown that our next generation of leaders may lack the knowledge and understanding of what made our country great. In fact, one survey showed that only 23 percent of college seniors could identify correctly James Madison as the ''Father of the Constitution,'' and 26 percent of those same students mistakenly thought that the Articles of Confederation established the division of power between the states and the Federal Government. To help overcome this lack of knowledge, our resolution would encourage teachers and parents to take educational adventures to historic sites where the students may gain a working and memorable understanding of American history.

I always have been in strong support of teaching American history and preserving our historic sites. Throughout my time in the Senate, I have sponsored legislation, like the Fallen Timbers bill, the National Underground Railroad Freedom Center Act, the National Aviation Heritage Area Act, and a resolution to honor the Buffalo Soldiers. Ohio has been home to seven presidents, which led me to introduce the Presidential Sites Improvement Act. I was also able to secure funds to help restoration of the Grant boyhood home in Georgetown, Ohio. All of these efforts will help provide opportunities for children and adults to learn about our nation's past.

I believe that individuals who have a strong knowledge of American history also possess a deeper appreciation of the need for historic preservation of properties, buildings, and artifacts. There are many great historical sites and museums around Washington and the nation—sites like the Smithsonian Museums, National Archives, Presidential birthplaces, Civil War battlefields, and national monuments. I encourage parents to spend time with their families and take family visits to these great sites.

I am proud to say that Congress also has affirmed its commitment to the teaching of American history by appropriating $100 million to teaching American history in the Leave No Child Behind Act of 2001. Such a financial commitment sends a serious message that Congress believes in the importance of American history. And, with the passage of our resolution, we can only strengthen that message.

In expressing the significance of American history, I defer to the words of Marcus Tullius Cicero, the great Roman orator: ''We study history not to be clever in another time, but to be wise always.'' I encourage my colleagues to support the vital preservation of our history and our historical sites. Our future and wisdom, as Cicero so aptly suggests, depend on our knowledge and grasp on the past.●

## NEW HAMPSHIRE'S REMARKABLE WOMEN IN 2002

● Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate twelve outstanding women of New Hampshire, Kathy Eneguess, Jane Difley, Lauri Ostrander Klefos, Hannah Hardway, Laurel Thatcher Ulrich, Maryann Mroczka, Cathy Bedor, Judy Sprague Sabanek, Natalie Woodroofe, Joan Goshgarian, Anne Zachos, and Alyson Pitman Giles.

Every year New Hampshire Magazine conducts a contest to seek out twelve remarkable women in New Hampshire. In recognizing that women's exceptionality comes in many forms, the magazine chooses twelve separate areas of talent from which to award accomplished women of the community. Candidates, and ultimately winners, are chosen through a number of sources including community and business acquaintances, friends and family.

I would like to briefly mention a little about each of the women, the category for which they were recognized and something of their character and achievement. In the category of Leadership, Kathy Eneguess received recognition for her amazing networking abilities and community involvement in the area of leadership. Kathy is lead policy staffer for legislative and regulatory issues at the New Hampshire Business and Industry Association.

Jane Difley was recognized for her service to the Environment and was granted the award in the category of Environment for her continued dedication to protecting the forests of New Hampshire. Jane has a Masters degree in forest management and was the first woman ever to be elected as president of the Society of American Foresters. She currently holds the top position at the Society for the Protection of New Hampshire Forests.

Lauri Ostrander Klefos was recognized for her excellence in the area of government. Lauri has served in a number of state agencies and in 2000 was confirmed by the Governor and executive council as the first appointed

director of the Division of Travel and Tourism Development. She currently holds a position as chair of the New England State Travel Directors.

Hannah Hardaway was recognized for her achievements in sports. Hannah was a member of the 2002 U.S. Olympic Ski Team that competed in Salt Lake City. She began her amazing ski career at seven years of age, joined the U.S. Ski Team in 1996, became Junior World Champion in 1997, and looks forward to competing in the Olympics again in 2006 in Italy. In her spare time, Hannah is continuing her education at Cornell University and endorsing major companies like Sprint and Solomon.

Laurel Thatcher Ulrich was recognized for her excellence in the area of education. Laurel's career in education began with a simple guide-book she wrote for a church-sponsored Relief Society. Since then, Laurel has taught at the University of Maryland and, most recently, at Harvard University as a professor and director of American History Studies. Laurel has also maintained a degree of success from her writing including, ''Good Wives, Images and Reality in the Lives of Women in Northern New England,'' her newest, ''The Age of Homespun: Objects and Stories in the Making of an American Myth,'' and ''A Midwife's Tale: The Life of Martha Ballad,'' for which she won the Pulitzer Prize for History in 1991.

Maryann Mroczka was recognized for her extraordinary work in the field of media. Maryann has moved from New Hampshire Public Television to transforming the University of New Hampshire's video department to being sought after by WMUR–TV. Along the way, Maryann has won numerous awards including two Emmy's and three Medals from New York International Film Festivals. Maryann currently maintains her busy schedule in television as well as a new family at home.

Cathy Bedor was recognized for her accomplishments in the area of hospitality. After Cathy, her husband, and three other local families purchased The Mount Washington Hotel and Resort, Cathy's skills in hospitality began to shine as they spent the next two years restoring and preserving the Historic Landmark. The hotel is now open year-round for the first time in its history and Cathy had been there every step of the way. Cathy is truly an expert in her field serving on many boards in the state including the New England Innkeepers Association, the White Mountains Attraction Association, and the New Hampshire Historical Society.

Judy Sabanek was recognized for her accomplishments as President and CEO. Judy and her husband began Keepsake Quilting as a mail order business and they are now co-owners of what has turned into one of the largest quilting catalog businesses in the nation. Recently the couple had to open a retail store in Center Harbor because of the enormous number of people wanting to come and see the fabrics. The company, and its now 100 employees, had just been acquired by an investment firm. This may give Judy and her husband more time to spend with their two-year old Portuguese Water Dog mascot, Cisco.

Natalie Woodroofe was recognized for her work in the field of Entrepreneurship. Natalie has spent her life as an advocate and role model for women and children in the North County and has received a number of awards for her work in this area. Natalie is the visionary and backbone to WREN, the Women's rural Entrepreneurial Network, the largest and fastest growing nonprofit in the State of New Hampshire. Her organization offers a number of workshops that teach women skills from technology training to networking. Natalie describes her work as, ''Economic development, personal passions, giving back, connecting with others, making a silk purse from pig's ears, hope and magic.''

Joan Goshgarian was recognized for her contributions to the field of art. Joan began as a teacher of art and soon developed an art therapy program for institutionalized adolescents who were developmentally and physically challenged. In 1985, Joan became founder and executive director of the New Hampshire Business Committee for the Arts. Using this medium, Joan has been able to broaden support for the arts and collaborate with different organizations in an effort to do this. Joan is also on many boards around the state including the Granite State Association of Non-Profits and the Commission on Charitable Giving.

Anne Zachos was recognized for her excellence in the area of philanthropy. Anne learned the importance of giving to the community from her parents when she was a child. When Anne was able to become involved she started with volunteer work for her children's schools, church, the Girl Scouts, and the League of Women Voters. Since then, Anne has been involved in more community work than is able to be honored. Anne has had significant involvement with the New Hampshire Charitable Foundation, as a board member for the Manchester Regional Community Foundation and for ''Arts Build Communities.'' Anne has received an honorary doctorate from Notre Dame College, the Granite State Award for Public Service from the University of New Hampshire, and the Pastoral Counseling Community Service Award.

Alyson Pitman Giles was recognized for her accomplishments in the field of health care. Alyson has quickly and successfully moved herself up through the ranks since her beginnings as an occupational therapist. After only one year as an O.T. at Virginia Hospital, Alyson became director of occupational therapy at a Tennessee health care center. She took a post two years later in New Hampshire and has lived there with her husband and four children ever since. Alyson received her masters degree and now serves as President and CEO of Catholic Medical Center. Alyson also finds time to serve on several boards including the Greater Manchester Chamber of Commerce.

I would like to commend each of these women for their exceptional contributions to the State of New Hampshire and for being role models to young women everywhere. Thank you for all you do. It has been an honor to represent you in the U.S. Senate.●

## ROGER GENDRON RETIRING FROM YEARS OF SERVICE

● Mr. SMITH of New Hampshire. Mr. President, I rise today to commend and congratulate Roger Gendron, who is retiring as the Marketing Business Manager at Portsmouth Naval Shipyard.

Roger began his career at Portsmouth Naval Shipyard in 1967, as an Industrial Engineer Technician. In 1970, Roger became a Computer Technician/Computer Systems Analyst, and in 1979, served as a Management Analyst until 1986, when he ascended to his current position as Marketing Business Manager.

As Marketing Business Manager, Roger has forged strong community and business relations through an aggressive, pro-active marketing strategy and outreach programs. He has been an instrumental leader in guiding the Yard through the challenges of downsizing, reduced budgets, and balancing manpower/workload equations. Through his vision for the future, Roger was fundamental in developing the Shipyard's MilCon Projects Priority List, which included the construction of the Dry Dock #2 Complex; a state-of-the-art Los Angeles Class refueling complex.

During Roger's distinguished career, he has exhibited extraordinary knowledge and leadership, helping to steer Portsmouth Naval Shipyard successfully through two Base Realignment and Closure processes. Roger's progressive planning contributed significantly to the establishment of Partnering, Out leasing, Regional Maintenance, SMART Base, and Technology Transfer programs within the Navy and shipyard community.

For several years, I have had the privilege to work with Roger in innovating and improving Portsmouth Naval Shipyard's ability to maintain America's Los Angeles Class nuclear submarines, a vital component in America's national defense. Throughout these challenges, Roger has focused continuously upon achieving the most efficient use of the shipyard's industrial infrastructure and resources.

Roger's expert counsel and vast institutional knowledge has contributed greatly to Portsmouth Naval Shipyard and to the defense of this great nation. Roger has been a dedicated and professional leader in his many years of service with Portsmouth Naval Shipyard.

He will be sorely missed by all of us who have had the honor of working with him.

Roger, I wish you fair winds and following seas. It has been an honor to represent you in the U.S. Senate.●

## TRIBUTE IN REMEMBRANCE OF LTC FLOYD JAMES THOMPSON

● Mr. THURMOND. Mr. President, I rise today to pay tribute to the late LTC Floyd ''Jim'' Thompson. He spent 9 excruciating years as a prisoner of war in Vietnam fighting for his life and our Nation. As the longest-held prisoner of war, Colonel Thompson embodies the core values of the American soldier. He survived because of his spirit, courage and determination, and will forever stand as an American hero. Colonel Thompson should be remembered for his service to our great country and the tremendous sacrifices that he made. I ask that an article by Mr. Tom Philpott be printed in the RECORD.

AMERICA'S LONGEST-HELD PRISONER OF WAR REMEMBERED

Army Col. Floyd ''Jim'' Thompson, the longest-held prisoner of war in American history, died July 16 in Key West, Fla. At age 69, his heart finally gave out, ending one of the most remarkable lives among heroes of the Vietnam War. Thompson's death came 34 years after fellow POWs thought they saw him die in Bao Cao, the nickname of a cruel prison camp in North Vietnam. It was also 25 years after Thompson saw every dream that had kept him alive in Vietnam shattered in the aftermath of our longest war, a conflict vastly different from the war against terror in Afghanistan. ''I am a soldier. Period,'' Thompson would say if asked about the political correctness of the Vietnam War. End of argument, and an icy stare.

Through nine years of torture, starvation, and unimaginable deprivation, Thompson showed us the resiliency of the human spirit. He refused to die, and until death had a willfulness that inspired awe. He survived on dreams of returning home to a loving wife, four adoring children, and a grateful nation. When none of that squared with reality, years of bitterness followed.

The avalanche of challenges at home, Thompson believed, did not diminish his heroics or steadfast resistance before the enemy. Those who saw his strength agree that what he endured, and how, won't be forgotten. By the spring of 1968, Thompson had been held in jungle cages and dank prison cells more than four years, all of it in solitary confinement. The experience turned a 170-pound Special Forces officer into a ''skeleton with hair,'' said one POW, describing Thompson at first sight. His appearance literally frightened other Americans, most of them soldiers captured in the Tet offensive. Warrant Officer Michael O'Connor/glimpsed Thompson through a crack between wall and cell door. He was inches away, leaning against his own cell bars.

''This guy is dead, I thought,'' O'Connor told me for Glory Denied, my book about the Thompson saga. ''As part of some cruel joke, I thought they had stuck a corpse up against the door. Then I realized he was moving.'' Dick Ziegler, a captured helicopter pilot, heard Thompson say he had been shot down in March 1964. Ziegler did a quick calculation, and began to cry. ''Eyes sunk way back in his head, cheekbones sticking out. . . . He scared me to death. I understood then what was waiting for me,'' Ziegler said. As the days passed, O'Connor heard Thompson scratching every morning against the other side of this cell wall.

''One day I asked him what he was doing. 'Standing up,' he said. Standing up! It took him half an hour. . . . Every day I heard him standing up.'' Months later, during a routine indoctrination session for POWs, Thompson collapsed into a violent convulsion. That amazing heart was in seizure, probably from starvation, doctors later surmised.

''A couple of us were told to carry him back to his cell,'' O'Connor recalled. ''We didn't see him move.'' Guards came later and took Thompson away. The other POWs figured he was dying if not already dead.

Before leaving Vietnam in 1973, they learned he survived and his mystique grew, particularly among soldiers. His five years of solitary ended April 1, 1969, when he was tossed into a cell with three other Americans, including Lew Meyer, a Navy civilian firefighter. Meyer and Thompson began an astonishing daily exercise regime, leading to escape, Thompson's fifth attempt, in the fall of 1971. The pair avoided recapture in North Vietnam for two days. For his courage and leadership in this incident, the first observed by other POWs, Thompson would receive the Silver Star.

At home, within a year of losing her husband, Alyce Thompson saw her support structure collapsing. She decided to move her four children into the home of a retired soldier, and pose as his wife. She instructed the Army to withhold Thompson's name from POW lists. For years, the Army complied. By the time Thompson was freed, in March 1973, Navy Lt. Cmdr. Everett Alvarez had returned and been celebrated as the longest-held POW. Thompson became a backpage story except in his hometown newspaper.

At first, he didn't care. He was struggling to fulfill dreams of family and career. He and Alyce tried to save their marriage, with devastating consequences for the children. Thompson himself wasn't well-armed for that task, battling alcoholism, depression, and a deep sense of betrayal that never eased.

After losing his family, Thompson fought to save his career. Again, alcohol interfered, aggravating a nine-year professional gap with officer peers. Thompson never blamed the Army or the war for his troubles. He suffered a massive stroke in 1981, which forced him to retire. Disabled, he moved to Key West and shut himself off from family and friends. His identity as a former POW, as longest-held, made life worthwhile. He had flag poles installed in front of his condominium complex so one could fly the POW–MIA flag. A bronze plaque mounted nearby refers to Thompson, the resident hero. Bolted to the fender of his new black Cadillac are two large U.S. flags, fit for a motorcade. His license plate reads ''POW.''

Thompson left instructions to be cremated and, without ceremony, that his ashes be spread at sea—unless, at time of death, he had been awarded the Medal of Honor. In that case, with his sacrifices properly recognized, he wanted to be buried at Arlington National Cemetery.

Whether Jim Thompson deserves the nation's highest military honor, others will decide. Surely, for what he gave, he deserved more than he got.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, 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 appropriate committees.

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

## MEASURES READ THE FIRST TIME

The following joint resolution was read the first time:

S.J. Res. 43. Joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–8402. A communication from the President of the United States, transmitting, pursuant to law, the periodic report on the national emergency with respect to Libya that was declared in Executive Order 12543 of January 1986; to the Committee on Banking, Housing, and Urban Affairs.

EC–8403. A communication from the President of the United States, transmitting, pursuant to law, the periodic report on the national emergency with respect to Iraq that was declared in Executive Order 12722 of August 2, 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC–8404. A communication from the President of the United States, transmitting, pursuant to law, a report concerning the continuation of the national emergency with respect to Iraq beyond August 9, 1990; to the Committee on Banking, Housing, and Urban Affairs.

EC–8405. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Payments for Cattle and Other Property Because of Tuberculosis'' (Doc. No. 00–105–1) received on July 30, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8406. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Fee Increases for Overtime Services'' (Doc. No. 00–087–2) received on July 30, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8407. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Acephate, Amitraz, Carbaryl, Chlorpyritos, Cryolite, et al.; Tolerance Revocations'' (FRL7191–4) received on July 31, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8408. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Fludioxonil, Pesticide Tolerance'' (FRL7188–7) received on July 31, 2002; to the

Committee on Agriculture, Nutrition, and Forestry.

EC–8409. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: Construction/Real Estate—Retainage Payable'' (UIL:0460 .03–10) received on July 30, 2002; to the Committee on Finance.

EC–8410. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Paul Pekar v. Commissioner'' received on July 30, 2002; to the Committee on Finance.

EC–8411. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice 2002–53, 2002 Section 43 Inflation Adjustment'' received on July 29, 2002; to the Committee on Finance.

EC–8412. A communication from the Clerk of the Court, United States Court of Federal Claims, transmitting, the Report of the Review Panel relative to a private relief bill; to the Committee on the Judiciary.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–274. A House Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to legislation to repeal the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act of 1964, and to restore Filipino World War II Veterans' to full United States Veterans' status and benefit; to the Committee on Veterans' Affairs.

HOUSE CONCURRENT RESOLUTION 34

Whereas, on July 26, 1941, President Franklin Roosevelt called back to active duty Lieutenant General Douglas MacArthur, who was then serving as military adviser to the Commonwealth government in the Philippines. President Roosevelt appointed General MacArthur to command the newly formed United States Armed Forces in the Far East (USAFFE); and

Whereas, General MacArthur mobilized the entire Philippine Commonwealth Army, consisting of approximately 212,000 soldiers, into the USAFFE and reinforced approximately 10,000 American soldiers, including the 10,000-strong Philippine Scouts (who were the Filipino regulars in the American army) and the 6,000-strong Philippine Constabulary, under the command of American military forces; and

Whereas, with the destruction of the United States fleet at Pearl Harbor and the United States Air Force at Clark Field, and with the withdrawal of United States naval forces to Java, the USAFFE lost its naval and air support in the first few days of the war in the Pacific; and

Whereas, within days, Japanese troops landed in Aparri and Vigan, in Legazpi and Davao, in Lingayen, Atimonan, and Mauban, while their planes bombed military objectives and government centers. Within a few weeks, the American and Filipino forces defending Luzon were in full retreat to the stronghold where General MacArthur proposed to make a last stand—the peninsula of Bataan and the island fortress of Corregidor; and

Whereas, in the ensuing months, Japanese Imperial Forces in the Philippines focused all their military might against the USAFFE in Bataan and Corregidor; and

Whereas, on February 20, 1942, President Manuel Quezon and Vice President Sergio Osmena of the Philippine Commonwealth left Corregidor for the United States to form a government in exile. On March 11, 1942, General MacArthur left Corregidor for Australia to take over the defense of the southern Pacific area. It was upon his arrival in Melbourne that he issued his famous pledge, ''I shall return''; and

Whereas, Hong Kong, Singapore, and the East Indies (Indonesia) fell before the fierce Japanese advance in the week following the attack on Pearl Harbor. The soldiers in the Philippines, under the command of Lieutenant General Jonathan Wainright, fought on. Their valiant struggle, the only Allied resistance in East Asia during the winter and spring of 1942, slowed down the enemy and gave Australia more time to strengthen its defenses; and

Whereas, thousands of Japanese infantrymen, supported by artillery barrages and tank fire power, pounded the Filipino-American lines. Overhead, Japan's air corps soared and bombed the foxholes, hospitals, and ammunition dumps of Bataan. From the sea the enemy warships poured lethal shells on the defenders' positions. Bataan was doomed. The defenders, weakened by hunger, disease, and fatigue, fought fiercely and many died as heroes; and

Whereas, Bataan fell on April 9, 1942. Corregidor's Voice of Freedom radio station announced, ''Bataan has fallen, but the spirit that made it stand—a beacon to all the liberty-loving peoples of the world—cannot fall''. As many as 36,000 Filipino and American soldiers were captured by the victorious Japanese. Forced to set out on the infamous ''Death March'' to San Fernando, tens of thousands died from hunger, thirst, disease, and exhaustion. Survivors were crammed into boxcars and shipped to imprisonment in Capas; and

Whereas, General Wainwright and the 12,000 Filipino and American soldiers manning the rocky fortress of Corregidor continued to fight, but after the fall of Bataan, the end was in sight for them as well. On May 6, 1942, Major General William Sharp was ordered to be stop future useless sacrifice of human life in the Fortified Islands, and to surrender all troops under his command in the Visayan Islands and Mindanao. Corregidor fell almost five months to the day after the attack on Pearl Harbor. Organized military resistance to the invasion of the Philippines ended that day; and

Whereas, many Filipino officers and men refused to heed the order to surrender. They fled to the hills with their arms and, with the help of the civilian population, waged a relentless guerrillas war against the invaders. The guerrillas, almost without arms at the beginning, hungry, and unclothed, gave battle to the enemy from every nook and corner of the land. For three seemingly interminable years and despite unbelievable hardships, they carried the torch of freedom; and

Whereas, it was against the backdrop of Bataan, Corregidor, and other theaters of battle, where alien soldiers under the United States flag fought bravely and fiercely, that the United States Congress amended the naturalization provisions of the Nationality Act of 1940; and

Whereas, in 1942, Congress reestablished the policy it had set forth during the first World War by providing for the naturalization of aliens honorably serving in the armed forces of the United States during the war. As part of the second War Powers Act, Congress waived the requirement of residence, literacy, and education for alien soldiers. The law allowed any alien who was inducted or who enlisted into the United States Army, Navy, or Air Force during World War II to become a United States citizen; and

Whereas, even while the war was raging, alien soldiers in England, Iceland, and North Africa, who served in American military forces, could be naturalized as United States citizens. This naturalization was made possible because beginning in January 1943, naturalization officers were dispatched to foreign countries where they accepted applications, performed naturalization ceremonies, and swore into American citizenship thousands of alien soldiers; and

Whereas, while the Philippines was under Japanese occupation, approximately 7,000 Filipino soldiers were naturalized outside the Philippines. The great majority of Filipino soldiers in the country, however, were not even aware of these liberal naturalization benefits. The United States withdrew its naturalization officer from the Philippines for nine months and then allowed the law to lapse in 1946, so few Filipino veterans were able to exercise their rights in a timely manner—rights that had been supposedly earned on the battlefield for a lifetime; and

Whereas, although the Immigration Act of 1990 rectified this foreclosure of rights by permitting Filipino veterans of World War II to apply for naturalization and to receive benefits after May 1, 1991, it did not remedy the betrayal of Filipino veterans orchestrated forty-five years earlier by a cost-conscious country through the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act (1946), which declared that the service performed by many Filipino veterans was not ''active service'' and denied them their veterans benefits after the fact; and

Whereas, while Filipino-American veterans who served honorably in an active-duty status under the command of the USAFFE or within the Philippine Army, the Philippine Scouts, or recognized guerrilla units, between September 1, 1939, and December 31, 1946, braved the same dangers and were entitled to apply for naturalization, only those persons who served in the armed forces of the United States or joined the Philippine Scouts before October 6, 1945, currently are entitled to the full-range of veterans benefits; and

Whereas, it should be the right of every Filipino-American veteran of World War II, who served honorably in an active-duty status under the Philippine Scouts, or recognized guerrilla units, to receive the full-range of veterans benefits, including a nonservice disability burial allowance and pension, treatment for nonservice connected disabilities at Veterans Hospitals in the United States, home loan guarantees, burial in a national or state veterans cemetery and headstones, contract national service life insurance and educational assistance for spouses and surviving spouses; and

Whereas, those who served in the armed forces of the United States or Philippine Scouts that enlisted prior to October 6, 1945, are eligible for full veterans' benefits, but others can only receive partial benefits. Those with limited benefits include veterans of the Philippine Scouts enlisted after October 6, 1945, Commonwealth Army of the Philippines enlisted between July 26, 1941 and June 30, 1946, and recognized guerrillas with service between April 20, 1942 and June 30, 1946. For these groups, monetary benefits are received in pesos in an amount equivalent to only half of the dollar value, regardless of whether the recipient resides in the Philippines or the United States; and

Whereas, Philippine veterans with military service with the Special Philippine Scouts who enlisted between October 6, 1945 and June 30, 1947, under Public Law 190, 79th Congress (''New Scouts'') are not entitled to full

Department of Veterans Affairs benefits. They are only entitled to service-connected disability benefits. This is payable to a veteran if he is presently suffering from a disability which the Department of Veterans Affairs determined to be the result of a disease or injury incurred in or aggravated during military service. The disability must have been rated by the Department of Veterans Affairs as ten per cent or more disabling to be compensable. (No compensation may be paid for a service-connected disability rated less than ten per cent disabling.) Medical treatment is provided only for their service-connected disabilities; and

Whereas, Philippine veterans with military service in the Commonwealth Army of the Philippines and recognized guerrilla units are entitled to service-connected disability benefits only if they are presently suffering from a disability which the Department of Veterans Affairs determines to be the result of disease or injury incurred in or aggravated during military service. The disability must have been rated by the Department of Veterans Affairs as ten per cent or more to be compensable. No compensation may be paid for a service-connected disability rated less than ten per cent disabling. Benefits are payable in Philippine pesos. Medical treatment is provided only for their service-connected disabilities; and

Whereas, there is no greater duty for a nation of free men and women than the care of former soldiers and their dependents, no greater honor for a former soldier than to be laid to rest next to the soldier's comrades-in-arms, no greater act of respect that a grateful country can show a former soldier than to inter the soldier's remains on hallowed ground, and no greater tribute that future generations of freedom-loving Americans can visit upon a former soldier than to remember those sacrifices may be the soldier on the battlefield; and

Whereas, in the words of President Abraham Lincoln, upon the establishment of the Veterans Administration (now the United States Department of Veterans Affairs), this country has a sacred duty ''to care for him who shall have borne the battle, and for his widow and his orphan''; and awarding the full-range of veterans benefits to former soldiers is the very least that a grateful nation can do for those persons who placed themselves in harm's way to protect the United States from its enemies; now, therefore, be it

*Resolved* by the House of Representatives of the Twenty-first Legislature of the State of Hawaii, Regular Session of 2002, the Senate concurring, that Congress and the President of the United States are requested to support legislation to repeal the Rescission Act of 1946 and the Second Supplemental Surplus Appropriation Rescission Act (1946), and to restore Filipino World War II veterans' to full United States veterans' status and benefits; and be it further

*Resolved* that Hawaii's congressional delegation is again requested to continue its support for legislation and other action to ensure that Filipino-American veterans who served honorably in an active-duty status under the command of the USAFFE or within the Philippine Army, the Philippine Scouts, or recognized guerrilla units, between September 1, 1939, and December 31, 1946, are granted the full range of veterans benefits that they were promised, that they are entitled to and that is provided to other veterans recognized by the Department of Veterans Affairs; and be it further

*Resolved* that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Speaker of the United States House of Representatives, the President pro tempore of the United States Senate, the Secretary of Veterans Affairs, the members of Hawaii's congressional delegation, and the Adjutant General.

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POM–275. A House Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to the establishment of state-province relations of friendship between the State of Hawaii of the United States of America and the Province of Pangasinan of the Republic of the Philippines; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION 28 S.D.1

Whereas, the State of Hawaii is actively seeking to expand its international ties and has an abiding interest in developing goodwill, friendship, and economic relations between the people of Hawaii and the people of Asian and Pacific countries; and

Whereas, as part of its effort to achieve this goal, Hawaii has established a number of sister-state agreements with provinces in the Pacific region; and

Whereas, because of historical relationship between the United States of America and the Republic of the Philippines, there continues to exist valid reasons to promote international friendship and understanding for the mutual benefit of both countries to achieve lasting peace and prosperity as it serves the common interests of both countries; and

Whereas, there are historical precedents exemplifying the common desire to maintain a close cultural, commercial, and financial bridge between ethnic Filipinos living in Hawaii with their relatives, friends, and business counterparts in the Philippines, such as the previously established sister-city relationship between the City and County of Honolulu and the City of Cebu in the Provinces of Cebu and the City of Laoag in Ilocos Norte; and

Whereas, similar state-province relationships exist between the State of Hawaii and the Provinces of Cebu and Ilocos Sur, whereby cooperation and communication have served to establish exchanges in the areas of business, trade, agriculture and industry, tourism, sports, health care, social welfare, and other fields of human endeavor; and

Whereas, a similar sister state relationship would reinforce and cement this common bridge for understanding and mutual assistance between the ethnic Filipinos of both the State of Hawaii and the Province of Pangasinan; and

Whereas, there is an existing relationship between the Province of Pangasinan and the State of Hawaii because several notable citizens in Hawaii can trace their roots or have immigrated from the Province of Pangasinan, and the town of Urdaneta in Pangasinan now prominently features an ''Arch of Aloha'' at the gateway to the town; now, therefore, be it

*Resolved* by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, the Senate concurring, that Governor Benjamin Cayetano, of the State of Hawaii, or his designee, be authorized and is requested to take all necessary actions to establish a sister-state affiliation with the Province of Pangasinan; and be it further

*Resolved* that the Governor or his designee is requested to keep the Legislature of the State of Hawaii fully informed of the process establishing the relationship, and involved in its formalization to the extent practicable; and be it further

*Resolved* that the Province of Pangasinan be afforded the privileges and honors that Hawaii extends to its sister-states and provinces; and be it further

*Resolved* that if by June 30, 2007, the sister-state affiliation with the Province of Pangasinan has not reached a sustainable basis by providing mutual economic benefits through local community support, the sister-state affiliation shall be withdrawn; and be it further

*Resolved* that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's congressional delegation, the President of the Republic of the Philippines through its Honolulu Consulate General, and the Governor and Provincial Board of the Province of Pangasinan, Philippines.

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POM–276. A Senate Concurrent Resolution adopted by the Legislature of the State of Hawaii relative to the establishment of a center for the health, welfare, and education of children, youth, and families for Asia and the Pacific; to the Committee on Foreign Relations.

SENATE CONCURRENT RESOLUTION 69 H.D. 1

Whereas, the Millennium Young People's Congress held in Hawaii in October 1999, demonstrated the value of a collective global vision by and for the children of the world and the need for a forum for international discussion of issues facing all children and youth; and

Whereas, children and youth are the key to world peace, sustainability, and productivity in the next millennium; and

Whereas, the health, welfare, and education of children and families are part of the basic foundation and values shared globally that should be provided for all children and youth; and

Whereas, the populations of countries in Asia and the Pacific Rim are the largest and fastest growing segment of the world's population with young people representing the largest percentage of that population; and

Whereas, Hawaii's location in the middle of the Pacific Rim between Asia and the Americas, along with a diverse culture and many shared languages, provides an excellent and strategic location for meetings and exchanges as demonstrated by the Millennium Young People's Congress, to discuss the health, welfare, and rights of children as a basic foundation for all children and youth, and to research pertinent issues and alternatives concerning children and youth, and to propose viable models for societal application; now, therefore, be it

*Resolved* by the Senate of the Twenty-first Legislature of the State of Hawaii, Regular session of 2002, the House of Representatives concurring, that the United Nations is respectfully requested to consider the establishment in Hawaii of a Center for the Health, Welfare, and Education of Children, Youth and Families for Asia and the Pacific; and be it further

*Resolved* that the President of the United States and the United States Congress are urged to support the establishment of the Center; and be it further

*Resolved* that the House and Senate Committees on Health convene an exploratory task force to develop such a proposal for consideration by the United Nations; and be it further

*Resolved* that certified copies of this Concurrent Resolution be transmitted to the Secretary General of the United Nations, President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, President of the University of Hawaii, President of the East West Center, President of the United Nations Association in Hawaii, and members of Hawaii's Congressional Delegation.

POM–277. A resolution adopted by the House of the Legislature of the State of Hawaii relative to supporting the acquisition of Kahuku Ranch for the expansion of the Hawaii Volcanoes National Park and of Killae Village for expansion of Pu Uhonua O Honaunau National Historical Park; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION 15

Whereas, the Volcanoes National Park on the Big Island consists of 217,000 acres and is one of only two national parks in this State; and

Whereas, The Volcanoes National Park attracts about 1,500,000 visitors each year who enjoy the natural beauty of the lava fields, native forests, and ocean cliffs; and

Whereas, a large parcel of land lying to the south and west of the Volcanoes National Park known as Kahuku Ranch consisting of 117,000 acres has come up for sale; and

Whereas, the Kahuku parcel contains outstanding geological, biological, cultural, scenic, and recreational value, and is the sole habitat for at least four threatened and endangered bird species endemic to Hawaii; and

Whereas, the National Park Service since 1945 has recognized that the property contained nationally significant resources and in fact, in its 1975 Master Plan, the National Park Service identified the property as a ''potential addition to improve the geological, ecological, and scenic integrity of Hawaii Volcanoes National Park''; and

Whereas, the 181-acre Pu'uhonua O Honaunau National Historical Park was established in 1961 to save a sacred place of refuge that for centuries offered sanctuary to any who reached its walls; and

Whereas, adjacent to Pu'uhonua O Honaunau are the remains of Ki'ilae, an ancient Hawaiian settlement dating back to the late 12th or early 13th centuries, and which remained active until about 1930, making it one of the last traditional Hawaiian villages to be abandoned; and

Whereas, significant portions of this ancient Hawaiian village remain outside of national park boundaries; and

Whereas, including these lands within the boundaries of Pu'uhonua O Honaunau National Historical Park has been a goal of park management for more than three decades; and

Whereas, the park's 1972 Master Plan identified Ki'ilae Village as a proposed boundary extension and in 1992, a Boundary Expansion Study completed for the park called for adding the ''balance of Ki'ilae Village''; and

Whereas, within the Ki'ilae lands the National Park Service is seeking to acquire, more than 800 archeological sites, structures, and features have been identified, including at least twenty-five caves and ten heaiu, more than twenty platforms, twenty-six enclosures, over forty burial features, residential compounds, a holua slide, canoe landing sites, a water well, numerous walls, and a wide range of agricultural features; and

Whereas, in June 2001, Senator Inouye and Senator Akaka introduced a bill to authorize the addition of the Ki'ilae Village lands to Pu'uhonua O Honaunau National Historical Park and in October 2001, this bill passed the United States Senate and it is anticipated that the authorization bill will pass the House of Representatives as well; and

Whereas, these acquisitions offer an opportunity rarely imagined because they would give the National Park Service an excellent chance to expand and protect native plants and archaeological sites from destruction; and

Whereas, these opportunities can benefit current and future generations of residents and tourists, because expansion of Volcanoes National Park and Pu'uhonua O Honaunau National Historical Park will preserve more open space, add to the natural environment, protect affected native species, and preserve cultural and historical sites; and

Whereas, in January 2001, the National Park Service held a series of public meetings to receive comments from the public regarding possible purchase of Kahuku Ranch and Ki'ilae Village, and the nearly 400 people in attendance at the meetings expressed overwhelming support and endorsement; now therefore, be it

*Resolved* by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, that this body supports the acquisition by the United States National Park Service of Kahuku Ranch for expansion of the Hawaii Volcanoes National Park and of Ki'ilae Village for expansion of Pu'uhonua O Honaunau National Historical Park; and be it further

*Resolved* that certified copies of this Resolution be transmitted to the Director of the National Park Service, the President of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Hawaii's congressional delegation.

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POM–278. A resolution adopted by the House of the Legislature of the State of Hawaii relative to the establishment of a sister-state relationship between the State of Hawaii and the Municipality of Tianjin in the People's Republic of China; to the Committee on Foreign Relations.

HOUSE RESOLUTION 117

Whereas, Tianjin, a city in northeastern China, is one of four municipalities under the direct control of the central government of the People's Republic of China, and in 2001 had a population slightly over 10,000,000; and

Whereas, the city is made up of 13 districts, five counties, 126 villages, 93 towns, and 133 street communities; and

Whereas, the history of Tianjin begins with the opening of the Sui Dynasty's Big Canal (581–617 AD). Beginning in the mid-Tang Dynasty (618–907 AD), Tianjin became the nexus for the transport of foodstuffs and silk between south and north China. During the Ming Dynasty (1404 AD), the city figured prominently as a military center. In 1860, its importance as a business and communications center began to grow; and

Whereas, Tianjin is known as the Bright Diamond of Bohai Gulf and is the gateway to China's capital of Beijing. Tianjin is one of China's biggest business and industrial port cities and, in north China, is the biggest port city. Tianjin now ranks second in importance and size in terms of industry, business, finance, and trade in the north. Its industrial production and trade volume is second only to Shanghai in the south; and

Whereas, the city's traditional industries include mining, metallurgy, machine-building, chemicals, power production, textiles, construction materials, paper-making, foodstuffs, shipbuilding, automobile manufacturing, petroleum exploitation and processing, tractor production, fertilizer and pesticide production, and watch, television, and camera manufacturing; and

Whereas, in 1994, Tianjin's economic goal was to double its gross national product by the year 2003. With its 1997 gross national product reaching RMB 124 billion yuan (about RMB 8.26 yuan to US$ 1), Tianjin is poised to reach that goal. By the end of 1998, 12,065 foreign-owned companies were established in Tianjin that invested a total of RMB 21.017 billion yuan (about US$ 2.5 billion). About RMB 9.291 billion yuan (about US$ 1.1 billion) of that amount was used for development of Tianjin; and

Whereas, in the past, business and other forms of industrial enterprises were primarily state-owned throughout China. However, under on-going nationwide reform, the proportion of businesses that are state-owned is being reduced. In Tianjin, the percentage of state-owned enterprises in 1997 was 35.7 percent versus 16.6 percent for collective ownership, and 47.7 percent for other forms, including private ownership. In the retail sector, the respective proportions were 23.7 percent, 17.3 percent, and 59 percent, respectively; and

Whereas, Tianjin has a broad science and technology base upon which to build, for example, it is home to 161 independent research institutions (117 local and 44 national). Aside from its several universities and colleges, Tianjin has six national-level laboratories and 27 national and ministerial-level technological test centers and has plans to increase its science and technology educational goals; and

Whereas, in 1984, the State Council issued a directive to establish the Tianjin Economic-Technological Development Area (TEDA), situated some 35 miles from Tianjin. Recently, some 3,140 foreign-invested companies have located to TEDA with a total investment of over US$ 11 billion; and

Whereas, at present, TEDA has developed four pillar industries: electronics and communications, automobile manufacturing and mechanization, food and beverages, and biopharmacy, and is promoting four new industries: information software, bioengineering, new energies, and environmental protection; and

Whereas, in 1996, TEDA began offering a technology incubator to help small and medium-sized enterprises with funding, tax breaks, personnel, etc. Within the TEDA high-tech park, Tianjin offers preferential treatment in the form of funding, land fees, taxes, and facilities (such as water, gas, and heating). Residential and other services, shopping, and educational and recreation facilities are either already in place or are being planned; and

Whereas, for the eleven months ending November 2001, total exports from TEDA was US$ 3.53 billion, of which foreign-funded enterprises accounted for US$ 3.49 billion while total foreign investment in TEDA amounted to US$ 2.3 billion; and

Whereas, Hawaii has been, since its early days, the destination of many Chinese immigrants who have helped to develop the State and its economy; and

Whereas, compared to the rest of the country, Hawaii is advantageously situated in the Pacific to better establish and maintain cultural, educational, and economic relationships with countries in the Asia-Pacific region, especially the People's Republic of China; and

Whereas, the new century we have embarked upon has been described by some as the ''century of Asia'' or the ''China's century''; and

Whereas, like Tianjin, Hawaii is also striving to diversify its economy by expanding into environmentally clean high-technology industries including medical services and research; and

Whereas, the State also emphasizes the importance of higher education in order to create a solid foundation and workforce to serve as the basis from which to launch initiatives in high-technology development; and

Whereas, both Hawaii and Tianjin share many common goals and values as both work towards achieving their economic and educational objectives in the new century, and the people of the State of Hawaii desire to form a mutually beneficial relationship between the State of Hawaii and the municipality of Tianjin to share our knowledge and

experiences in order to better assist each other in reaching our goals; now, therefore, be it

*Resolved* by the House of Representatives of the Twenty-First Legislature of the State of Hawaii, Regular Session of 2002, that Governor Benjamin Cayetano, of the State of Hawaii, or his designee, be authorized and is requested to take all necessary actions to establish a sister-state affiliation with the municipality of Tianjin of the People's Republic of China; and be it further

*Resolved* that the Governor or his designee is requested to keep the Legislature of the State of Hawaii fully informed of the process in establishing the relationship, and involved in its formalization to the extent practicable; and be it further

*Resolved* that the municipality of Tianjin be afforded the privileges and honors that Hawaii extends to its sister-states and provinces; and be it further

*Resolved* that certified copies of this Resolution be transmitted to President of the United States, the Governor of the State of Hawaii, the President of the United States Senate, the Speaker of the United States House of Representatives, Hawaii's coangressional delegation, and the President of the People's Republic of China and the Mayor of the municipality of Tianjin through the Los Angeles Consulate General of the People's Republic of China.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2043: A bill to amend title 38, United States Code, to extend by five years the period for the provision by the Secretary of Veterans Affairs of noninstitutional extended care services and required nursing home care, and for other purposes. (Rept. No. 107–231).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1871: A bill to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes. (Rept. No. 107–232).

By Mr. BAUCUS, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

S. 724: A bill to amend title XXI of the Social Security Act to provide for coverage of pregnancy-related assistance for targeted low-income pregnant women. (Rept. No. 107–233).

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2237: A bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes. (Rept. No. 107–234).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1739: A bill to authorize grants to improve security on over-the-road buses. (Rept. No. 107–235).

By Mr. KERRY, from the Committee on Small Business and Entrepreneurship, with amendments:

S. 2335: A bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes. (Rept. No. 107–236).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

H.R. 2546: A bill to amend title 49, United States Code, to prohibit States from requiring a license or fee on account of the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes. (Rept. No. 107–237).

S. 1220: A bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track. (Rept. No. 107–238).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2182: A bill to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes. (Rept. No. 107–239).

S. 2201: A bill to protect the online privacy of individuals who use the Internet. (Rept. No. 107–240).

S. 1750: A bill to make technical corrections to the HAZMAT provisions of the USA PATRIOT Act. (Rept. No. 107–241).

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 2121: A bill to make available funds under the Foreign Assistance Act of 1961 to expand democracy, good governance, and anti-corruption programs in the Russian Federation in order to promote and strengthen democratic government and civil society in that country and to support independent media.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment:

H.R. 4558: A bill to extend the Irish Peace Process Cultural and Training Program.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment and with an amended preamble:

S. RES. 309: A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States.

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment:

S. 2394: A bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients.

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amended preamble:

S. CON. RES. 122: A concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN for the Committee on Foreign Relations.

*Richard L. Baltimore III, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Salutanate of Oman.

Nominee: Richard L. Baltimore III.

Post: Ambassador to Sultanate of Oman.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, Richard L. Baltimore III, None.
2. Spouse, Eszter Baltimore, none.
3. Children and Spouses, Names: Krisztina, Josephine & Natalie none.
4. Parents, Names: Richard L. Baltimore Jr., Lois M. Baltimore (dec'd) none.
5. Grandparents, Names: Richard L. Baltimore Sr., Emily Baltimore (dec'd) none.
6. Brothers and Spouses, Names: N/A none.
7. Sisters and Spouses, Names: Roslyn Baltimore, $100, 2002, Gov. Dav.

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*Nancy J. Powell, of Iowa, 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 Islamic Republic of Pakistan.

Nominee: Nancy J. Powell.

Post: Islamabad, Pakistan.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.
2. Spouse, N/A.
3. Children and Spouses, Names: N/A.
4. Parents Names: Joseph and J. Maxine Powell None.
5. Grandparents Names: N/A.
6. Brothers and Spouses Names: William Powell none.
7. Sisters and Spouses Names: N/A.

By Mr. BAUCUS for the Committee on Finance.

*Pamela F. Olson, of Virginia, to be an Assistant Secretary of the Treasury.

*Charlotte A. Lane, of West Virginia, to be a Member of the United States International Trade Commission for a term expiring December 16, 2009.

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Edward J. Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board for a term expiring July 1, 2004.

*Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board for a term expiring July 1, 2005.

*Nomination was reported with recommendation that it be confirmed subject the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

By Mr. HARKIN for the committee on Agriculture, Nutrition, and Forestry.

Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

(The nomination was reported without the recommendation that it be confirmed.)

Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

(The nomination was reported without the recommendation that is be confirmed.)

The nominees agreed to respond to requests to appear and testify before any duly constituted committee of the Senate.

The following executive reports of committee were submitted:

By Mr. BIDEN, from the Committee on Foreign Relations: Treaty Doc. 105–32 South Pacific Environment Programme Agreement (Exec. Rept. No. 107–7)

Text of Committee-recommended Resolution of advice and consent: *Resolved* (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Agreement Establishing the South Pacific Regional Environmental Programme, subject to a Declaration.

The Senate advises and consents to the ratification of the Agreement Establishing the South Pacific Regional Environment Programme, done at Apia on June 16, 1993 (Treaty Doc. 105–32), subject to the declaration in Section 2.

Section 2. Declaration.

The advice and consent of the Senate is subject to the declaration that the ''no reservations'' provision in Article 10 of the Agreement has the effect of inhibiting the Senate in its exercise of its constitutional duty to give advice and consent to ratification of a treaty, and that the Senate's approval of the Agreement should not be construed as a precedent for acquiescence to future treaties containing such provisions.

Treaty Doc. 107–2 Protocol Amending 1949 Convention of Inter-American Tropical Tuna Commission (Exec. Rept. No. 107–6)

Text of Committee-recommended resolution of advice and consent: *Resolved* (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, done at Guayaquil, June 11, 1999, and signed by the United States, subject to ratification, in Guayaquil, Ecuador, on the same date (Treaty Doc. 107–2).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ENZI (for himself, Mr. GRASSLEY, and Mr. HAGEL):

S. 2834. A bill to provide emergency livestock assistance to agricultural producers, with an offset; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2835. A bill to promote the development of health care cooperatives that will help businesses to pool the health care purchasing power of employers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TORRICELLI:

S. 2836. A bill to suspend temporarily the duty on manganese metal; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2837. A bill to amend the Internal Revenue Code of 1986 to allow businesses to qualify as renewal community businesses if such businesses employ residents of certain other renewal communities; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2838. A bill to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CLELAND:

S. 2839. A bill to enhance the protection of privacy of children who use school or library computers employing Internet content management services, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ENSIGN (for himself and Mr. REID):

S. 2840. A bill to designate the facility of the United States Postal Service located at 120 North Main Street in Fallon, Nevada, as the ''Rollan D. Melton Post Office Building''; to the Committee on Governmental Affairs.

By Mr. CORZINE (for himself, Mr. CARPER, Mr. ENSIGN, Mr. SCHUMER, and Mr. ALLARD):

S. 2841. A bill to adjust the indexing of multifamily mortgage limits, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. CARNAHAN:

S. 2842. A bill to amend the Older Americans Act of 1965 to authorize appropriations for demonstration projects to provide supportive services to older individuals who reside in naturally occurring retirement communities; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU:

S. 2843. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

By Mr. ROCKEFELLER:

S. 2844. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2845. A bill to extend for one year procedural relief provided under the USA PATRIOT Act for individuals who were or are victims or survivors of victims of a terrorist attack on the United States on September 11, 2001; to the Committee on the Judiciary.

By Mr. EDWARDS (for himself and Mr. SCHUMER):

S. 2846. A bill to establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 2847. A bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes; to the Committee on Environment and Public Works.

By Ms. COLLINS (for herself, Mr. CLELAND, Mr. HUTCHINSON, Mr. KERRY, Ms. SNOWE, and Mr. MILLER):

S. 2848. A bill to amend title XVIII of the Social Security Act to provide for a clarification of the definition of homebound for purposes of determining eligibility for home health services under the medicare program; to the Committee on Finance.

By Ms. COLLINS (for herself and Mrs. MURRAY):

S. 2849. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER:

S. 2850. A bill to create a penalty for automobile insurance fraud, and for other purposes; to the Committee on the Judiciary.

By Mr. TORRICELLI:

S. 2851. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for qualified higher education expenses to $10,000, and for other purposes; to the Committee on Finance.

By Mr. TORRICELLI:

S. 2852. A bill to amend the Internal Revenue Code of 1986 to provide for employee benefits for work site employees of certain corporations operating on a cooperative basis; to the Committee on Finance.

By Mr. JOHNSON (for himself and Mr. DORGAN):

S. 2853. A bill to direct the Secretary of the Interior to establish the Missouri River Monitoring and Research Program, to authorize the establishment of the Missouri River Basin Stakeholder Committee, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BINGAMAN (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2854. A bill to amend title XVIII of the Social Security Act to improve disproportionate share medicare payments to hospitals serving vulnerable populations; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, and Mr. GRAHAM):

S. 2855. A bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program; to the Committee on Finance.

By Mr. TORRICELLI (for himself and Mr. CHAFEE):

S. 2856. A bill to designate Colombia under section 244 of the Immigration and Nationality Act in order to make nationals of Colombia eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. WYDEN):

S. 2857. A bill to amend titles XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2858. A bill to modify the project for navigation, Union River, Maine; to the Committee on Environment and Public Works.

By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2859. A bill to deauthorize the project for navigation, Northeast harbor, Maine; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER (for himself, Mr. CHAFEE, Mr. KENNEDY, and Mr. HATCH):

S. 2860. A bill to amend title XXI of the Social Security Act to modify the rules for redistribution and extended availability of fiscal year 2000 and subsequent fiscal year allotments under the State children's health insurance program, and for other purposes; to the Committee on Finance.

By Mr. INHOFE:

S. 2861. A bill to empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. HOLLINGS, Ms. CANTWELL, and Mr. BIDEN):

S. 2862. A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. McCAIN:

S. 2863. A bill to provide for deregulation of consumer broadband services; to the Committee on Commerce, Science, and Transportation.

By Mr. HUTCHINSON:

S. 2864. A bill to modify the full payment amount available to States under the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THURMOND:

S. 2865. A bill to establish Fort Sumter and Fort Moultrie National Historical Park in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GREGG (for himself, Mr. HUTCHINSON, Mr. CRAIG, and Mr. BROWNBACK):

S. 2866. A bill to provide scholarships for District of Columbia elementary and secondary students, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 2867. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOMENICI (for himself, Mr. CAMPBELL, and Mr. ALLARD):

S. 2868. A bill to direct the Secretary of the Army to carry out a research and demonstration program concerning control of salt cedar and other nonnative phreatophytes; to the Committee on Environment and Public Works.

By Mr. KERRY (for himself and Mr. BROWNBACK):

S. 2869. A bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY:

S. 2870. A bill to amend titles 10 and 14, United States Code, to provide for the use of gold in the metal content of the Medal of Honor; to the Committee on Armed Services.

By Mr. TORRICELLI (for himself, Mr. KERRY, Mr. CLELAND, Mr. REED, Mr. CORZINE, Mr. SCHUMER, and Mr. DURBIN):

S. 2871. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as ancient forests, roadless areas, watershed protection areas, special areas, and Federal boundary areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

By Mr. FITZGERALD:

S. 2872. A bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 2873. A bill to improve the provision of health care in all areas of the United States; to the Committee on Finance.

By Mr. DAYTON (for himself, Mr. CORZINE, Mr. INOUYE, and Mr. WELLSTONE):

S. 2874. A bill to provide benefits to domestic partners of Federal employees; to the Committee on Governmental Affairs.

By Mr. WELLSTONE (for himself, Mr. DAYTON, and Ms. MIKULSKI):

S. 2875. A bill to amend the Employee Retirement Income Security Act of 1974 to increase the maximum levels of guaranteed single-employer plan benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MURRAY (for herself and Mr. WELLSTONE):

S. 2876. A bill to amend part A of title IV of the Social Security Act to promote secure and healthy families under the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

By Mr. LIEBERMAN (for himself and Mrs. BOXER):

S. 2877. A bill to amend the Internal Revenue Code of 1986 to ensure that stock options of public companies are granted to rank and file employees as well as officers and directors, and for other purposes; to the Committee on Finance.

By Mr. FEINGOLD:

S. 2878. A bill to amend part A of title IV of the Social Security Act to ensure fair treatment and due process protections under the temporary assistance to needy families program, to facilitate enhanced data collection and reporting requirements under that program, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. BREAUX, and Mr. ROCKEFELLER):

S. 2879. A bill to amend titles XVIII and XIV of the Social Security Act to improve the availability of accurate nursing facility staffing information, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2880. A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HARKIN:

S. 2881. A bill to amend the Internal Revenue Code of 1986 to exclude from income amounts received by an employee from an employer as assistance towards the purchase of a principal residence; to the Committee on Finance.

By Mr. CONRAD (for himself, Mr. JOHNSON, and Mr. ROCKEFELLER):

S. 2882. A bill to amend the Internal Revenue Code of 1986 to modify the tax credit for holders of qualified zone academy bonds; to the Committee on Finance.

By Mr. CRAIG:

S. 2883. A bill to allow States to design a program to increase parental choice in special education, to fully fund the Federal share of part B of the Individuals with Disabilities Education Act, to help States reduce paperwork requirements under part B of such Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAUCUS (for himself, Mr. CRAPO, Mr. JOHNSON, Mr. THOMAS, Mr. CRAIG, Mr. ENZI, Mr. CONRAD, Mr. BINGAMAN, and Mr. ALLARD):

S. 2884. A bill to improve transit service to rural areas, including for elderly and disabled; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORZINE (for himself and Mr. AKAKA):

S. 2885. A bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SMITH of New Hampshire (for himself, Mr. HELMS, and Mr. HUTCHINSON):

S. 2886. A bill to amend the Internal Revenue Code of 1986 to ensure the religious free exercise and free speech rights of churches and other houses of worship to engage in an insubstantial amount of political activities; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2887. A bill to provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 2888. A bill to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that country; to the Committee on Environment and Public Works.

By Mr. HUTCHINSON:

S. 2889. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance; to the Committee on Finance.

By Mr. DODD (for himself and Mr. DEWINE):

S. 2890. A bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY (for himself, Mr. HARKIN, and Ms. LANDRIEU):

S. 2891. A bill to create a 4-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans; to the Committee on Small Business and Entrepreneurship.

By Mr. KENNEDY (for himself, Mrs. CLINTON, and Mr. ROCKEFELLER):

S. 2892. A bill to provide economic security for America's workers; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2893. A bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico; to the Committee on Energy and Natural Resources.

By Mr. McCONNELL:

S. 2894. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mrs. HUTCHISON, and Ms. SNOWE):

S. 2895. A bill to enhance the security of the United States by protecting seaports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LOTT:

S.J. Res. 43. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto; read the first time.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. HUTCHISON (for herself, Mr. GRAMM, Ms. SNOWE, Mr. BROWNBACK, and Mr. DURBIN):

S. Res. 315. A resolution congratulating Lance Armstrong for winning the 2002 Tour de France; to the Committee on the Judiciary.

By Mrs. LINCOLN (for herself, Mr. COCHRAN, Mr. THOMPSON, and Mr. FRIST):

S. Res. 316. A bill designating the year beginning February 1, 2003, as the ''Year of the Blues''; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 317. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

By Mrs. LINCOLN:

S. Res. 318. A resolution designating August 2002, as ''National Missing Adult Awareness Month''; considered and agreed to.

By Mr. GRAMM:

S. Res. 319. A resolution recognizing the accomplishments of Professor Milton Friedman; considered and agreed to.

By Mr. BAUCUS (for himself, Mr. BURNS, Mr. MILLER, Mr. LEVIN, Mr. COCHRAN, Mrs. CLINTON, Ms. LANDRIEU , Mr. JOHNSON, Mr. CRAPO, Mr. HELMS, and Mr. STEVENS):

S. Con. Res. 134. A concurrent resolution expressing the sense of Congress to designate the fourth Sunday of each September as ''National Good Neighbor Day''; to the Committee on the Judiciary.

By Mr. NICKLES (for himself, Mr. KYL, Mr. ROBERTS, Mr. INHOFE, Mr. BUNNING, Mr. GRAHAM, Mr. BAYH, Mr. HAGEL, and Mrs. CARNAHAN):

S. Con. Res. 135. A concurrent resolution expressing the sense of Congress regarding housing affordability and urging fair and expeditious review by international trade tribunals to ensure a competitive North American market for softwood lumber; to the Committee on Finance.

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

S. Con. Res. 136. A concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the International Association of Fish and Wildlife Agencies; to the Committee on the Judiciary.

By Mr. MILLER:

S. Con. Res. 137. A concurrent resolution expressing the sense of Congress that the Federal Mediation and Conciliation Service should exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in a strike, to lockout, or any conduct that interferes with the playing of scheduled professional baseball games; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 788

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 788, a bill to amend the Public Health Service Act to establish a National Organ and Tissue Donor Registry that works in conjunction with State organ and tissue donor registries, to create a public-private partnership to launch an aggressive outreach and education campaign about organ and tissue donation and the Registry, and for other purposes.

S. 847

At the request of Mr. DAYTON, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 917

At the request of Ms. COLLINS, the names of the Senator from Utah (Mr. BENNETT) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1220

At the request of Mr. BREAUX, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1220, a bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track.

S. 1626

At the request of Mr. BINGAMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 1777

At the request of Mrs. CLINTON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1777, a bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1867

At the request of Mr. LIEBERMAN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

S. 1877

At the request of Mr. HARKIN, the names of the Senator from South Carolina (Mr. HOLLINGS), the Senator from Washington (Mrs. MURRAY) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 1877, a bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran.

S. 1991

At the request of Mr. HOLLINGS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1991, to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes.

S. 2055

At the request of Ms. CANTWELL, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2055, a bill to make grants to train sexual assault nurse examiners, law enforcement personnel, and first responders in the handling of sexual assault cases, to establish minimum standards for forensic evidence collection kits, to carry out DNA analyses of samples from crime scenes, and for other purposes.

S. 2067

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2067, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

S. 2079

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was withdrawn as a cosponsor of S. 2079, a bill to amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

At the request of Mr. ROCKEFELLER, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2079, supra.

S. 2189

At the request of Mr. ROCKEFELLER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2189, a bill to amend the Trade Act of 1974 to remedy certain effects of injurious steel imports by protecting benefits of steel industry retirees and encouraging the strengthening of the American steel industry.

S. 2250

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2250, a bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Texas (Mrs. HUTCHISON), the Senator from South Carolina (Mr. THURMOND), the Senator from Kansas (Mr. ROBERTS), the Senator from Louisiana (Mr. BREAUX), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Missouri (Mr. BOND) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers

and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2335

At the request of Mr. JOHNSON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2335, a bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes.

S. 2395

At the request of Mr. BIDEN, the name of the Senator from Virginia (Mr. ALLEN) was withdrawn as a cosponsor of S. 2395, a bill to prevent and punish counterfeiting and copyright piracy, and for other purposes.

S. 2425

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2425, a bill to prohibit United States assistance and commercial arms exports to countries and entities supporting international terrorism.

S. 2430

At the request of Mr. BREAUX, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2430, a bill to provide for parity in regulatory treatment of broadband services providers and of broadband access services providers, and for other purposes.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2521

At the request of Mr. KERRY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2521, a bill to amend title II of the Social Security Act to restrict the application of the windfall elimination provision to individuals whose combined monthly income from benefits under such title and other monthly periodic payments exceeds $2,000 and to provide for a graduated implementation of such provision on amounts above such $2,000 amount.

S. 2529

At the request of Mr. BINGAMAN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 2529, a bill to amend title XVIII of the Social Security Act to improve the medicare incentive payment program.

S. 2626

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2643

At the request of Mr. BUNNING, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2643, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs.

S. 2654

At the request of Ms. CANTWELL, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2654, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income loan payments received under the National Health Service Corps Loan Repayment Program established in the Public Health Service Act.

S. 2700

At the request of Mrs. LINCOLN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2700, a bill to amend titles II and XVI of the Social Security Act to limit the amount of attorney assessments for representation of claimants and to extend the attorney fee payment system to claims under title XVI of that Act.

S. 2712

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

At the request of Mr. HAGEL, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2712, supra.

S. 2714

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2714, a bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2002.

S. 2715

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2715, a bill to provide an additional extension of the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.

S. 2748

At the request of Mrs. HUTCHISON, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2748, a bill to authorize the formulation of State and regional emergency telehealth network testbeds and, within the Department of Defense, a telehealth task force.

S. 2749

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 2749, a bill to establish the Highlands Stewardship Area in the States of Connecticut, New Jersey, New York, and Pennsylvania, and for other purposes.

S. 2762

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 2762, a bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes.

At the request of Mr. THOMAS, the names of the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2762, supra.

S. 2770

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 2770, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas.

S. 2777

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2777, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the treatment of qualified public educational facility bonds as exempt facility bonds.

S. 2790

At the request of Ms. CANTWELL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2790, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 2794

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 2794, a bill to establish a Department of Homeland Security, and for other purposes.

At the request of Mr. GRAMM, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from Colorado (Mr. CAMPBELL), the Senator from Idaho (Mr. CRAIG), the Senator from Idaho (Mr. CRAPO), the Senator from Ohio (Mr. DEWINE), the Senator from Nevada (Mr. ENSIGN), the Senator from Wyoming (Mr. ENZI), the Senator from Tennessee (Mr. FRIST), the Senator from Iowa (Mr. GRASSLEY), the Senator from New Hampshire (Mr. GREGG), the Senator from Nebraska (Mr. HAGEL), the Senator from Utah (Mr. HATCH), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from North Carolina (Mr. HELMS), the Senator from Montana (Mr. BURNS), the Senator from Virginia (Mr. WARNER), the Senator from South Carolina (Mr. THURMOND), the Senator from Wyoming (Mr. THOMAS), the Senator from Oregon (Mr. SMITH), the Senator from New Hampshire (Mr. SMITH), the Senator from Alabama (Mr. SESSIONS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Kansas (Mr. ROBERTS), the Senator from Oklahoma (Mr. NICKLES), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Arizona (Mr. MCCAIN), the Senator from Mississippi (Mr. LOTT), the

Senator from Arizona (Mr. KYL), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 2794, supra.

S. 2798

At the request of Mr. DURBIN, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2798, a bill to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code.

S. 2800

At the request of Mr. BAUCUS, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

S. 2814

At the request of Mr. DORGAN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2814, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds.

S. 2819

At the request of Mr. JEFFORDS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2819, a bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their unspent allotments under the State children's health insurance program to expand health coverage under that program or for expenditures under the medicaid program, and for other purposes.

S. 2820

At the request of Mrs. CARNAHAN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2820, a bill to increase the priority dollar amount for unsecured claims, and for other purposes.

S. 2826

At the request of Mr. SCHUMER, the names of the Senator from Georgia (Mr. CLELAND), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 2826, a bill to improve the national instant criminal background check system, and for other purposes.

S. 2830

At the request of Mr. ROBERTS, the names of the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 2830, a bill to provide emergency disaster assistance to agricultural producers.

S. CON. RES. 122

At the request of Ms. SNOWE, the name of the Senator from Iowa (Mr . HARKIN) was added as a cosponsor of S. Con. Res. 122, a concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

S. CON. RES. 129

At the request of Mr. CRAPO, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. Con. Res. 129, a concurrent resolution expressing the sense of Congress regarding the establishment of the month of November each year as ''Chronic Obstructive Pulmonary Disease Awareness Month''.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2835. A bill to promote the development of health care cooperatives that will help businesses to pool the health care purchasing power of employers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation to help businesses form group-purchasing cooperatives to obtain enhanced benefits, to reduce health care rates, and to improve quality for their employees' health care.

High health care costs are burdening businesses and employees across the Nation. These costs are digging into profits and preventing access to affordable health care. Too many patients feel trapped by the system, with decisions about their health dictated by costs rather than by what they need.

This year has been the third year in a row of double-digit increases in health care costs. Companies will likely face average increases of 12 to 15 percent in 2003, on top of the 12.7 percent increase this year.

For some employers in Wisconsin, costs will rise much more sharply. A recent study found health care cost for businesses in southeastern Wisconsin were 55 percent higher than the Midwest average. While nationwide, the average health care premium for a family currently costs about $588 per month, in Wisconsin an average family pays $812 per month.

We must curb these rapidly-increasing health care premiums. I strongly support initiatives to ensure that everyone has access to health care. It is crucial that we support successful local initiatives to reduce health care premiums and to improve the quality of employees; health care.

By using group purchasing to obtain rate discounts, some employers have been able to reduce the cost of health care premiums for their employees. According to the National Business Coalition on Health, there are more than 90 employer-led coalitions across the United States that collectively purchase health care. Through these pools, businesses are able to proactively challenge high costs and inefficient delivery of health care and share information on quality. These coalitions represent over 7,000 employers and approximately 34 million employees nation-wide.

Improving the quality of health care will also lower the cost of care. By investing in the delivery of quality health car, we will be able to lower long term health care costs. Effective care, such as quality preventive services, can reduce overall health care expenditures. Health purchasing coalitions help promote these services and act as an employer forum for networking and education on health care cost containment strategies. They can help foster a dialogue with health care providers, insurers, and local HMOs.

Health care markets are local. Problems with cost, quality, and access to healthcare are felt most intensely in the local markets. Health care coalitions can function best when they are formed and implemented locally.

Local employers of large and small businesses have formed health care coalitions to track health care trends, create a demand for quality and safety, and encourage group purchasing.

In Wisconsin, there have been various successful initiatives that have formed health care purchasing cooperatives to improve quality of care and to reduce cost. For example, the Employer Health Care Alliance Cooperative, an employer-owned and employer-directed not-for-profit cooperative, has developed a network of health care providers in Dane County and 12 surrounding counties on behalf of its 170 member employers. Through this pooling effort, employers are able to obtain affordable, high-quality health care for their 110,000 employees and dependents.

This legislation seeks to build on successful local initiatives, such as The Alliance, that help businesses to join together to increase access to affordable and high-quality health care.

The Promoting Health Care Purchasing Cooperatives Act would authorize grants to a group of businesses so that they could form group-purchasing cooperatives to obtain enhanced benefits, reduce health care rates, and improve quality.

This legislation offers two separate grant programs to help different types of businesses pool their resources and bargaining power. Both programs would aid businesses to form cooperatives. The first program would help large businesses that sponsor their own health plans, while the second program would help small businesses that purchase their health insurance.

My bill would enable larger businesses to form cost-effective cooperatives that could offer quality health care through several ways. First, they could obtain health services through pooled purchasing from physicians, hospitals, home health agencies, and

others. By pooling their experience and interests, employers involved in a coalition could better attack the essential issues, such as rising health insurance rates and the lack of comparable health care quality data. They would be able to share information regarding the quality of these services and to partner with these health care providers to meet the needs of their employees.

For smaller businesses that purchase their health insurance, the formation of cooperatives would allow them to buy health insurance at lower prices through pooled purchasing. Also, the communication within these cooperatives would provide employees of small businesses with better information about the health care options that are available to them. Finally, coalitions would serve to promote quality improvements by facilitating partnerships between their group and the health care providers.

By working together, the group could develop better quality insurance plans and negotiate better rates.

Past health purchasing pool initiatives have focused only on cost and have tried to be all things for all people. My legislation creates an incentive to join the pool by giving grants to a group of similar businesses to form group-purchasing cooperatives. The pool are also given flexibility to find innovative ways to lower costs, such as enhancing benefits, for example, more preventive care, and improving quality. Finally, the cooperative structure is a proven model, which creates an incentive for businesses to remain in the pool because they will be invested in the organization.

We must reform health care in America and give employers and employees more options. This legislation, by providing for the formation of cost-effective coalitions that will also improve the quality of care, contributes to this essential reform process. I urge my colleagues to join me in cosponsoring this proposal to improve the quality and ease the costs of health care.

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By Ms. LANDRIEU:

S. 2837. A bill to amend the Internal Revenue Code of 1986 to allow businesses to qualify as renewal community businesses if such businesses employ residents of certain other renewal communities; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, I rise to introduce legislation to make a small change to the Renewal Community program that will make a big difference for the people of my State. This legislation will spur job growth and economic development in many impoverished areas that have been designated as renewal communities.

Renewal communities were authorized under the Community Renewal Tax Relief Act of 2000. The Department of Housing and Urban Development has designated 40 urban and rural areas around the country as renewal communities that are eligible to share in an estimated $17 billion in tax incentives to stimulate job growth, promote economic development, and create affordable housing. The purpose of the Act is to help bring needed investment to areas with demonstrated economic distress. The poverty rate in renewal communities is at least 20 percent, and the unemployment rate is one-and-a-half times the national level. The households in the renewal communities have incomes that are 80 percent below the median income of households in their local jurisdictions.

Businesses in renewal communities are eligible to receive wage credits, tax deductions, and capital gains exclusions for hiring workers living in the renewal communities. In order for businesses to qualify for participation in the program they must meet certain criteria. For example, at least fifty percent of the total gross income of a business must come from operations within the renewal community and a substantial part of its tangible property must lie within the renewal community. Furthermore, at least thirty-five percent of its employees must be residents of the renewal community and the employees' services must be performed in the renewal community.

The Renewal Community program is targeted to help small businesses in poor communities. Through the tax benefits provided, the small and family-owned businesses are able to maintain their operations and continue supplying goods and services to their neighborhoods. These businesses are the true essence of the entrepreneurial spirit and are the engines of economic growth and development. The Renewal Community program also encourages the start of new businesses. Louisiana has really benefited from this program. It has been a catalyst in boosting local economics and cutting unemployment.

Louisiana has four renewal communities. Some of them border one another. Under the rules of the program, however, a business cannot take advantage of the tax incentives if they hire someone who lives outside the renewal community, even if that person lives in the renewal community next door. In rural areas, this rule poses a problem for people living in one renewal community who often find jobs with companies in an adjacent renewal community.

A good example of what I am talking about is in the northern part of Louisiana, home of the North Louisiana Renewal Community and the Ouachita Renewal Community. The City of Monroe is located at the heart of the Ouachita Renewal Community. Monroe serves as the hub for Northeast Louisiana. All around Monroe and the Ouachita Renewal Community there are parishes which all fall in the North Louisiana Renewal Community, Morehouse Parish to the north, Richland Parish to the east, Caldwell Parish to the south, and Lincoln Parish to the west. We know that many companies in the Ouachita Renewal Community would qualify for the tax benefits if they could count any employees they hired from the adjacent North Louisiana Renewal Community toward meeting the thirty-five percent requirement. My legislation will allow the employers in one renewal community to hire employees from an adjacent or nearby renewal community areas and still receive the tax benefits granted through the Act.

The goal of the Renewal Community Program is to provide a vehicle for change in poverty stricken areas. It makes sense that we take steps to add flexibility to the program. Employees with a particular skill set may be better suited to work at companies located in an adjacent renewal community. My legislation provides employers and employees with the opportunity to take full advantage of the Renewal Community program.

This legislation is an opportunity for continued assistance to low income people and economically distressed areas of our country. I urge my colleagues to support this bill.

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By Mrs. FEINSTEIN:

S. 2838. A bill to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am proud to introduce legislation today to transfer 27 acres of land from the Stanislaus National Forest to the Clovis Unified School District.

This bill allows the school district to continue operating the California Five Mile Regional Learning Center and, more importantly, raise the necessary funds to renovate the facilities.

Since 1989, Clovis Unified School District has leased the Five Mile Regional Learning Center from the Forest Service to offer programs to students living in the Central Valley. And each year, thousands of eager children come to the Center to take classes that emphasize natural resource conservation. During this past academic year, for instance, more than 14,000 students benefitted from classes ranging from forest management to aviary studies to team building.

In addition to classes, students have the option of attending summer basketball camps offered in the Center's gymnasium and participating in individual activities given on the Center's adjacent 93 acres. To date, the district has invested $14 million of local funds to provide these opportunities.

Unfortunately, in the last few years, the Regional Learning Center has fallen into a state of disrepair. The buildings that occupy the 27 acres are over 40 years old, but have never undergone

major renovations to modernize and improve them. As a result, the Center has a laundry list of items in need of repair: from cracked asphalt and leaky roofs to unreliable electrical wiring. And while Clovis Unified School District officials have done a fine job of operating the Center and are willing to invest in renovations, the Forest Service can not permit the district to spend local funds to renovate these federally owned buildings.

This bill enables the Forest Service to convey the acreage that the buildings occupy to the school district allowing the district to make the necessary repairs. Clovis Unified has already committed to investing $5 million over 5 years to make the renovations, in addition to the district's $1.2 million of annual contributions spent on routine maintenance and operating costs. These investments will be used to expand and enhance the Center's environmental educational curriculum. I believe that given the budget constraints that schools nationwide are facing that this commitment speaks to the quality of these programs and to the need to keep the Center in operation.

The Forest Service has already acknowledged that this transfer would be in the best interest of both the Forest Service and the general public. At the Forest Service's request, reversionary language was added to this bill to ensure that the gederal government would retain ownership of the land should the school district decide to no longer operate the facilities.

Without this important legislation, in a few years time, the California Five Mile Regional Learning Center will be uninhabitable and another educational resource that benefits our children will close its doors. I believe that this bill is the perfect example of what can happen when local, state, and federal governments work together to get something done. It is this type of partnership that Congress should support in our efforts to diversify and improve educational opportunities for students and encourage multi-use activities on federal land. In this case, I believe everyone wins and I urge my colleagues to join me in supporting this bill.

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. 2838

*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 ''California Five Mile Regional Learning Center Transfer Act''.

**SEC. 2. LAND CONVEYANCE AND SPECIAL USE AGREEMENT, FIVE MILE REGIONAL LEARNING CENTER, CALIFORNIA.**

(a) CONVEYANCE.—The Secretary of Agriculture shall convey to the Clovis Unified School District of California all right, title, and interest of the United States in and to a parcel of National Forest System land consisting of 27.10 acres located within the southwest ¼ of section 2, township 2 north, range 15 east, Mount Diablo base and meridian, California, which has been utilized as the Five Mile Regional Learning Center by the school district since 1989 pursuant to a special use permit (Holder No. 2010–02) to provide natural resource conservation education to California youth. The conveyance shall include all structures, improvements, and personal property shown on original map #700602 and inventory dated February 1, 1989.

(b) SPECIAL USE AGREEMENT.—As soon as practicable after the date of the enactment of this Act, the Secretary shall enter into negotiations with the Clovis Unified School District to enter into a new special use permit for the approximately 100 acres of National Forest System land that, as of the date of the enactment of this Act, is being used by the school district pursuant to the permit described in subsection (a), but is not included in the conveyance under such subsection.

(c) REVERSION.—In the event that the Clovis Unified School District discontinues its operation of the Five Mile Regional Learning Center, title to the real property conveyed under subsection (a) shall revert back to the United States.

(d) COSTS AND MINERAL RIGHTS.—The conveyance under subsection (a) shall be for a nominal cost. Notwithstanding such subsection, the conveyance does not include the transfer of mineral rights.

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By Mr. CLELAND:

S. 2839. A bill to enhance the protection of privacy of children who use school or library computers employing Internet content management services, and for other purposes; to the Committee on commerce, Science, and Transportation.

Mr. CLELAND. Mr. President, in December 2000, New York Times reporter, John Schwartz, wrote ''When Congress passed a new bill last week requiring virtually every school and library in the nation to install technology to protect minors from adult materials online, it created a business opportunity for companies that sell Internet filtering systems. . . . some of the filtering companies' business plans include tracking students' Web wanderings and selling the data to market research firms.'' While I support the use of filtering technology in schools and libraries that will be visited by our children, this statement alarmed me.

A month later, the Wall Street Journal reported that the Department of Defense was buying information about our school children's Internet habits from a filtering company without the knowledge of their parents or the school officials. The Defense Department contracted directly with the filtering company. As one of our most vulnerable populations, I believe it is Congress's duty to act in a manner to ensure families knowledge of the information that is collected about our children and to restrict the collection of personal information on children. The fact that this arrangement could occur without anyone with direct responsibility for the children having knowledge of it is a serious oversight. We need a solution, and to that end, I am introducing the Children's Electronic Access Safety Enhancement, or CEASE Act.

This legislation is a commonsense approach to dealing with this problem in order to ensure our children are protected. The first section of the bill requires an Internet filtering government contractor to disclose its treatment of collected information to the school or library with which it is contracting. Additionally, if changes to these policies are made, the filtering company must inform the school or library of these changes. If adequate notice is not provided, the entity has the option to cancel the contract. Armed with such information about the company's practices, the school or library officials can make an informed decision of whether it wishes to contract with a particular company.

The Children's Online Privacy Protection Act, COPPA, which passed Congress and was signed into law in 1998, prohibits the collection of personal information about children on commercial websites. In the second section of my legislation, a similar COPPA prohibition would extend to Internet content management services at schools and libraries. If personal information is collected on a child, the provider is required to inform the school or library and the Federal Trade Commission and to indicate how it will treat this information so that it will not be disclosed or distributed. When children go to schools and libraries, these environments are supposed to be safe. Parents and guardians should not have to worry about how their children's personal information may be compromised, especially by a company that markets itself to protect children and in some cases facilitate learning. I believe my legislation will help put to rest such concerns.

Protecting the privacy of children has been widely supported, as it should be. When Congress was debating COPPA in 1998, the bill received broad support. At a Senate Commerce Committee hearing in September 1998, Arthur Sackler, representing the Direct Marketing Association, DMA stated, ''Although DMA usually supports self-regulation of electronic commerce, we believe it may be appropriate to consider targeted legislation in this area.'' Kathyrn Montgomery from the Center for Media Education stated, ''Children are not little adults. . . . Because many young children do not fully understand the concept of privacy, they can be quite eager and willing to offer up information about themselves and their families when asked. Children also tend to be particularly trusting of computers, and thus more open to interacting with them.''

An April 2002 FTC report on the implementation of COPPA draws the conclusion that Web sites have generally been able to comply with COPPA. That is why I have every hope and expectation that the CEASE Act can also be implemented.

Given the fact that we have evidence of some Internet content management companies already sharing information with outside entities, the CEASE Act is timely. If an Internet content management company believes it is a good business plan to share information, even in aggregate, with outside parties, these companies should not be adverse to disclosing this practice with a potential client. And, I believe that a number of communities may not wish to allow these practices at all because they believe that, as Alex Molnar, a professor at the University of Wisconsin at Milwaukee, stated, ''Providing demographic information about students to special interests, even in aggregate form, is a potential violation of the privacy of children and their families.'' Communities with such beliefs should be able to act upon them in the best interest of their children, and my legislation requires the disclosure that will help make this a reality.

There is no arguing that the Internet is, and will continue to be, an important part of the learning process. Personally, I support wiring the schools and libraries in this Nation as rapidly as possible because I understand the educational and job opportunities the Internet can bring. However, especially for our children, we need to ensure there are safeguards. Providing more information and empowering local officials to make decisions based on this information are good policies. As the Nation's children prepare to return to school—schools that are more wired now than ever before—I urge my colleagues to support the CEASE bill to protect our children.

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

S. 2839

*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 ''Children's Electronic Access Safety Enhancement (CEASE) Act''.

**SEC. 2. DISCLOSURE BY INTERNET CONTENT MANAGEMENT SERVICES OF COLLECTION, USE, AND DISCLOSURE OF INFORMATION UNDER CONTRACTS FOR SCHOOLS AND LIBRARIES.**

(a) INITIAL DISCLOSURE OF POLICIES.—

(1) IN GENERAL.—A provider of Internet content management services shall, before entering into a contract or other agreement to provide such services to or for an elementary or secondary school or library, notify the local educational agency or other authority with responsibility for the school, or library, as the case may be, of the policies of the provider regarding the collection, use, and disclosure of information from or about children whose Internet use will be covered by such services.

(2) ELEMENTS OF NOTICE.—Notice on policies regarding the collection, use, disclosure of information under paragraph (1) shall include information on the following:

(A) Whether any information will be collected from or about children whose Internet use will be covered by the services in question.

(B) Whether any information so collected will be stored or otherwise retained by the provider of Internet content management services, and, if so, under what terms and conditions, including a description of how the information will be secured.

(C) Whether any information so collected will be sold, distributed, or otherwise transferred, and, if so, under what terms and conditions.

(3) FORM OF NOTICE.—Any notice under this subsection shall be clear, conspicuous, and designed to be readily understandable by its intended audience.

(b) MODIFICATION OF POLICIES.—

(1) IN GENERAL.—A provider of Internet content management services shall, before implementing any material modification of the policies described in subsection (a)(1) under a contract or other agreement with respect to an elementary or secondary school or library, notify the local educational agency or other authority with responsibility for the school, or library, as the case may be, of the proposed modification of the policies.

(2) TIMELINESS.—Notice under paragraph (1) shall be provided in sufficient time in advance of the modification covered by the notice to permit the local educational agency or other authority concerned, or library concerned, as the case may be, to evaluate the effects of the modification.

(c) REGULATIONS.—The Commission shall prescribe regulations for purposes of the administration of this section. The regulations shall include provisions regarding the elements of notice required under subsection (a)(2) and the timeliness of notice under subsection (b)(2).

(d) ADMINISTRATION.—

(1) IN GENERAL.—This section shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(e) NONCOMPLIANCE.—

(1) IN GENERAL.—The violation of any provision of this section, including the regulations prescribed by the Commission under subsection (c), shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) TERMINATION OF CONTRACT OR AGREEMENT.—

(A) AUTHORITY TO TERMINATE.—Notwithstanding any provision of a contract or agreement to the contrary, if a provider of Internet content management services for a school or library fails to comply with a policy in a notice under subsection (a), or fails to submit notice of a modification of a policy under subsection (b) in a timely manner, the local educational agency or other authority concerned, or library concerned, may terminate the contract or other agreement with the provider to provide Internet content management services to the school or library, as the case may be.

(B) RESOLUTION OF DISPUTES.—Any dispute under subparagraph (A) regarding the failure of a provider of Internet content management services as described in that subparagraph shall be resolved by the Commission.

(C) RELATIONSHIP TO OTHER RELIEF.—The authority under this paragraph with respect to noncompliance of a provider of Internet content management services is in addition to the power of the Commission to treat the noncompliance as a violation under paragraph (1).

(f) NOTICE TO PARENTS.—A school or library shall provide reasonable notice of the policies of an Internet content management service provider used by that school or library to parents of students, or patrons of the library, as the case may be.

**SEC. 3. COLLECTION OF PERSONAL INFORMATION ABOUT CERTAIN OLDER CHILDREN BY PROVIDERS OF INTERNET CONTENT MANAGEMENT SERVICES TO SCHOOLS AND LIBRARIES.**

(a) PROHIBITION.—A provider of Internet content management services to or for an elementary or secondary school or library may not collect through such services personal information from or about a child who is a student at that school or a user of that library.

(b) RESPONSIBILITIES UPON COLLECTION.—

(1) IN GENERAL.—If a provider of Internet content management services to or for an elementary or secondary school or library collects through such services personal information from or about a child who is a student at that school or a user of that library, the provider shall—

(A) provide prompt notice of such collection—

(i) to either—

(I) the local educational agency or other authority with responsibility for the school and appropriate officials of the State in which the school is located; or

(II) the library; and

(ii) to the Federal Trade Commission; and

(B) take appropriate actions to treat the personal information—

(i) in a manner consistent with the provisions of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.) if the personal information was collected from a child as defined in section 1302(1) of that Act; or

(ii) in a similar manner, under regulations prescribed by the Commission, if the personal information was collected from a child over the age of 12.

(2) ELEMENTS OF NOTICE.—Notice of the collection of personal information by a provider of Internet content management services under paragraph (1)(A) shall include the following:

(A) A description of the personal information so collected.

(B) A description of the actions taken by the provider with respect to such personal information under paragraph (1)(B).

(c) RESPONSE TO NOTICE.—A local educational agency or other authority, or library, receiving notice under subsection (b) with respect to a covered child shall take appropriate actions to notify a parent or guardian of the child of receipt of such notice.

**SEC. 4. APPLICATION OF COPPA.**

Section 1302 of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501) is amended by adding at the end the following:

''(13) PROVIDER OF INTERNET CONTENT MANAGEMENT SERVICES TREATED AS OPERATOR.—The term 'operator' includes a provider of Internet content management services (as defined in section 5(4) of the Children's Electronic Access Safety Enhancement Act) who collects or maintains personal information from or about the users of those services, or on whose behalf such information is collected or maintained, if those services are provided for commercial purposes involving commerce described in paragraph (2)(A)(i), (ii), or (iii).''.

**SEC. 5. DEFINITIONS.**

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(2) CHILD.—Except as provided in section 3(b)(1)(B), the term ''child'' means an individual who is less than 19 years of age.

(3) PERSONAL INFORMATION.—The term ''personal information'' has the meaning given that term in section 1301(8) of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501(8)).

(4) PROVIDER OF INTERNET CONTENT MANAGEMENT SERVICES.—The term ''provider of

Internet content management services'' includes a provider of Internet content management software if such software operates, in whole or in part, by or through an Internet connection or otherwise provides information on users of such software to the provider by the Internet or other means.

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By Mr. CORZINE (for himself, Mr. CARPER, Mr. ENSIGN, Mr. SCHUMER, and Mr. ALLARD):

S. 2841. A bill to adjust the indexing of multifamily mortgage limits, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, today I am introducing legislation, the FHA Multifamily Housing Loan Limit Improvement Act, to expand the supply of affordable housing by increasing the Federal Housing Administration's multifamily housing loan limit to account for inflation.

Providing access to decent, safe, affordable housing for individuals and families remains an enormous challenge for our Nation. Throughout the country, rising construction costs have resulted in shortage of affordably priced rental units. In fact, the shortage of affordable housing should be considered nothing short of a crisis. After all, housing is among the most basic of human needs, and it is critically important for all American communities.

The Federal Housing Administration, FHA, was established as part of a national commitment to providing affordable housing, particularly for those most in need. Overall, the FHA, through its various initiatives, has been successful in providing increased access to housing. But as the crisis of affordable housing has grown, so has the need for Congress and the Department of Housing and Urban Development, HUD, to promote increased production of affordable housing.

That is why I am pleased to join with Senators CARPER, ENSIGN and SCHUMER in introducing this legislation to increase the production and availability of affordable housing for American families. The bill would improve upon legislation I introduced last year, ''The FHA Multifamily Housing Loan Limit Adjustment Act,'' which Congress approved last year as part of the VA–HUD Appropriations bill. That legislation increased by twenty-five percent the statutory limits for multifamily project development loans that are insurable by the FHA. The change reflected the increased costs associated with the production of multifamily units since 1992, the last time those limits were revised upwards.

In other words, it had taken Congress ten years to modify the underlying statute to account for rising prices and simply maintain the effectiveness of the program. That is too long. The legislation we are introducing today would ensure that it does not take another decade or longer to assist those who need affordable housing.

This bill is simple, it ensures that the insurable FHA loan limit amounts, as adjusted under ''The FHA Multifamily Loan Adjustment Act,'' would keep pace with economic growth by indexing them each year to the Annual Construction Cost Index, issued annually by the Census Bureau.

This bill also promotes the production of affordable housing in another important way, by promoting the development of affordable housing in high-cost cities like Newark, NJ, New York, Philadelphia and San Francisco. Currently in those communities, the cost of living is so high that the FHA insurance program is rendered largely ineffective.

This bill improves the FHA multifamily program by adjusting its statutory limits to promote increased housing production in high-cost, primarily urban, communities.

There is a very real need for Congress to address the shortage of affordable housing. A report released last year by the Center for Housing Policy, ''Housing America's Working Families,'' documented the severity of this need. The report found that more than fourteen million people faced severe housing needs because of the lack of affordable housing. That number may well be higher now.

This bill will provide the proper incentive for public/private investment in affordable housing in communities throughout America and spur new production of cooperative housing projects, rental housing for the elderly, new construction or substantial rehabilitation of apartments by for- and non-profit entities, condominium developments and refinancing of rental properties.

In short, this bill is good housing policy. That is why the National Association of Home Builders, the National Association of Realtors and the Mortgage Bankers Association endorse the legislation, along with other housing and community advocates.

I hope that my colleagues will support this legislation and 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 the RECORD, as follows:

S. 2841

*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 ''FHA Multifamily Housing Loan Limit Improvement Act''.

**SEC. 2. INDEXING OF MULTIFAMILY MORTGAGE LIMITS.**

(a) SECTION 207 LIMITS.—Section 207(c)(3) of the National Housing Act (12 U.S.C. 1713(c)(3)) is amended—

(1) by striking ''11,250'' and inserting ''$17,460'';

(2) by inserting before ''; and except that'' the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(3) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(b) SECTION 213 LIMITS.—Section 213(b)(2) of the National Housing Act (12 U.S.C. 1715e(b)(2)) is amended—

(1) by striking ''$38,025'', ''$42,120'', ''$50,310'', ''$62,010'', and ''$70,200'', and inserting ''$41,207'', ''$47,511'', ''$57,300'', ''$73,343'', and ''$81,708'', respectively;

(2) by striking ''$49,140'', ''$60,255'', ''$75,465'', and ''$85,328'', and inserting ''$49,710'', ''$60,446'', ''$78,197'', and ''$85,836'', respectively;

(3) by inserting after the colon at the end of the first proviso the following: ''*Provided further*, That the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce:''; and

(4) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(c) SECTION 220 LIMITS.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by inserting after ''foregoing dollar amount limitations contained in this clause'', the first place such phrase appears, the following: ''(as such limitations may have been previously adjusted pursuant to this clause)''.

(2) by inserting after ''Provided,'' the following: ''That the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce: *Provided further*,''; and

(3) by striking ''(as determined after the application of the preceding proviso)'' and inserting ''(as such limitations may have been previously adjusted pursuant to the preceding proviso and as determined after application of any percentage increase authorized in this clause relating to units with 2, 3, 4, or more bedrooms)''.

(d) SECTION 221(d)(3) LIMITS.—Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(3)(ii)) is amended—

(1) by inserting before ''; and except that'' the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(2) by inserting after ''foregoing dollar amount limitations contained in this clause'' the following: ''(as such limitations may have been previously adjusted pursuant to this clause)''.

(e) SECTION 221(d)(4) LIMITS.—Section 221(d)(4)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(4)(ii)) is amended—

(1) by inserting before ''; and except that'' the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this clause (as such limitation may have been previously adjusted pursuant to this clause) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(2) by inserting after ''foregoing dollar amount limitations contained in this clause'' the following: ''(as such limitations may have been previously adjusted pursuant to this clause)''.

(f) SECTION 231 LIMITS.—Section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended—

(1) by inserting before ''; and except that'' the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce''; and

(2) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph)''.

(g) SECTION 234 LIMITS.—Section 234(e)(3) of the National Housing Act (12 U.S.C. 1715y(e)(3)) is amended—

(1) by inserting before ''; except that'' the second place such phrase appears the following: ''; except that the Secretary shall adjust each such dollar amount limitation set forth in this paragraph (as such limitation may have been previously adjusted pursuant to this paragraph) effective January 1 of each year, beginning in 2003, in accordance with the percentage increase, if any, during the 12-month period ending with the preceding October, in the Annual Construction Cost Index of the Bureau of the Census of the Department of Commerce'';

(2) by inserting after ''each of the foregoing dollar amounts'' the following: ''(as such amounts may have been previously adjusted pursuant to this paragraph)''; and

(3) by inserting after ''foregoing dollar amount limitations contained in this paragraph'' the following: ''(as such limitations may have been previously adjusted pursuant to this paragraph and increased pursuant to the preceding clause)''.

**SEC. 2. HIGH-COST AREAS.**

(a) SECTION 207 LIMITS.—Section 207(c)(3) of the National Housing Act (12 U.S.C. 1713(c)(3)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(b) SECTION 213 LIMITS.—Section 213(b)(2) of the National Housing Act (12 U.S.C. 1715e(b)(2)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(c) SECTION 220 LIMITS.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(d) SECTION 221(d)(3) LIMITS.—Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(3)(ii)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(e) SECTION 221(d)(4) LIMITS.—Section 221(d)(4)(ii) of the National Housing Act (12 U.S.C. 1715l(d)(4)(ii)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(f) SECTION 231 LIMITS.—Section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

(g) SECTION 234 LIMITS.—Section 234(e)(3) of the National Housing Act (12 U.S.C. 1715y(e)(3)) is amended—

(1) by striking ''140 percent'' and inserting ''170 percent''; and

(2) by striking ''110 percent'' and inserting ''140 percent''.

Mr. CARPER. Mr. President, I am very pleased to join today with my distinguished colleagues from New Jersey, Nevada, and New York to introduce legislation to index the Federal Housing Administration's, FHA, multifamily loan limits.

Last year, Senator CORZINE and I introduced similar legislation that raised the FHA multifamily loan limits, which had not been increased since 1992 despite a 23 percent increase in the Annual Construction Cost Index. Senators MIKULSKI and BOND included this increase in last year's VA–HUD appropriations legislation. I am pleased that these limits were increased last year, however, an important piece of the original legislation was left undone. While the FHA loan limits were increased, they were not indexed. Construction costs will continue to rise, and the multifamily loan limits should be indexed, just like the FHA single-family loan limits.

Affordable housing continues to be a problem in this country. Over the July recess, I held a series of housing summits in Delaware to hear from Delawareans about the lack of affordable housing. In each county, I heard that working families in Delaware are having difficulty finding affordable housing. This shortage of affordable housing also comes at a time of limited federal resources. Thus, we have to find the best use of each dollar at our disposal, as well as the most effective use of existing Federal programs to stimulate new housing production and substantial rehabilitation. This bill modifies a current federal program, FHA multifamily insurance, to make that program more effective.

In the next Congress, I hope to be able to address the affordable housing problem in a more comprehensive manner. In the meantime, I believe Congress can take some incremental steps to address the shortage of affordable housing.

I ask my colleagues to join Senators CORZINE, ENSIGN, and SCHUMER and me to increase these multifamily loan limits so that more working families will have access to affordable housing.

Mr. ENSIGN. Mr. President, I rise today, along with my good friend, the Senator from New Jersey, to introduce a bill that will help solve the affordable housing crisis that is facing this Nation.

There is a dramatic shortage of rental housing that is affordable to low and moderate income working families. FHA multifamily insurance programs are designed to stimulate the construction, rehabilitation and preservation of properties by insuring lenders against loss in financing first mortgages. The programs assist both the private and the public sectors towards the goal of providing affordable housing to those that otherwise may not be able to afford it.

Last year, in a remarkable step, Congress granted a 25 percent increase in the FHA multifamily loan limits. The new loan limits are one great remedy to the affordable housing crisis facing our nation, but this alone does not do enough.

Unfortunately, without additional legislation, the loan limits will again be outpaced by inflation and today's growing construction costs.

The legislation that we are introducing solves this problem by indexing the multifamily loan limits to the annual construction costs index of the Bureau of the Census. This will allow loan limits to increase automatically, as costs increase. Without such a fix, the FHA multifamily loan program will again be limited in its ability to stimulate the development of affordable housing.

This legislation will help halt the growing shortage of affordable rental housing faced by millions of Americans and give builders and lenders the confidence that they will be able to use the programs in their communities every year, even as construction and land costs rise over time.

Additionally, this legislation raises the loan limits in high-cost areas. This will allow several major urban markets to take advantage of the new FHA multifamily insurance programs, and to provide much needed new affordable housing to low and moderate income families.

I believe this legislation is an important step in our ongoing battle to ensure that each American has access to affordable housing. I would like to once again thank the Senator from New Jersey, Mr. CORZINE, for his hard work on this bill, and for recognizing the significant effect this legislation will have for many low and moderate income families by dramatically increasing their access to affordable housing.

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By Mrs. CARNAHAN:

S. 2842. A bill to amend the Older Americans Act of 1965 to authorize appropriations for demonstration

projects to provide supportive services to older individuals who reside in naturally occurring retirement communities; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CARNAHAN. Mr. President, we are all familiar with our changing demographics. Those once a part of the baby boom are now well on their way to creating a senior boom. By the year 2020, one in six Americans will be age 65 or over. By 2040, the number of seniors aged 85 and older will more than triple from about 4 million to 14 million. This boom will create a dramatic increase in the demand for services for seniors especially long-term care.

Long-term care is more than just health care. It includes any services that seniors need to maintain their quality of life, such as transportation, nutrition, or other supports that help seniors live independently.

Long-term care can mean help with buying groceries, paying bills each month, getting dressed in the morning, getting a ride to the doctor's office, or taking medicine at the appropriate time. We need to make sure our society is ready to provide these kinds of services for seniors, and we need to make sure that we give seniors options. We need to be creative in what we offer.

Last year I learned about an innovative option for providing long-term care services for seniors. The concept is based on naturally occurring retirement communities, NORCs. A naturally occurring retirement community develops in a community or neighborhood where residents remain for years and age as neighbors. A NORC may be a large apartment building or a street of single family homes. According to AARP, about 27 percent of seniors currently live in NORCs. NORCs represent a new model for giving seniors the support services they need. We can bring services directly to seniors, and we can help enhance their quality of life and allow them to age in place.

This is important because most seniors prefer living in their own homes. To address the need for long-term care services, I secured $1.2 million last year to establish a NORC project in downtown St. Louis. To get this project underway, first there will be assessment of residents' needs. The funds will then be used to meet these individual needs. Residents will receive such services as individual case management, family education, wellness services, and other needed supports.

The St. Louis program is only the first step. This unique model could be used to deliver support services to seniors in communities across the country. That is why I am pleased to introduce the Senior Self-Sufficiency Act. This legislation would lay the foundation for a new way of helping seniors stay in their own homes and in their own communities. The Senior Self-Sufficiency Act would create ten demonstration projects in naturally occurring retirement communities across the country. Each would last 4 years. The grant would be used to provide comprehensive support services to seniors.

The services offered would be created to meet the individual needs of the residents and to help them maintain their independence. Funds would also be used to make housing improvements that would allow seniors to live in their own neighborhoods longer. For example, they could install safety bars in bathrooms or replace stairs with wheelchair ramps. Two of the ten projects would be located in rural areas where access to services is often harder or more distant. We will learn from the research how best to expand the program to all areas of the country.

If given the choice, most people would prefer to grow older in their own homes, surrounded by friends and family. This is exactly what this legislation will allow seniors to do. By making support services available to seniors in their own homes, we can extend the time they live independently, and we can improve their quality of life. We can provide services at lower cost, and we can start preparing now for the future needs of our population.

I am pleased to announce that the Senior Self-Sufficiency Act has the support of the Missouri Department of Health and the Jewish Federation of St. Louis.

I ask unanimous consent that their letters of support and the text of the bill be printed in the RECORD.

Mrs. CARNAHAN. We need to begin now to plan for the future senior boom. The Senior Self-Sufficiency Act is a step in the right direction, making it possible for seniors to remain in their home longer and to retain their independence. That is a goal worth pursuing.

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

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES,
*Jefferson City, MO, July 31, 2002.*

Hon. JEAN CARNAHAN,
*U.S. Senate, Hart Senate Office Bldg, Washington, DC.*

DEAR SENATOR CARNAHAN: The Missouri Department of Health and Senior Services is charged with the mission of enhancing the quality of life for all Missourians by protecting and promoting the community's health and well-being of citizens of all ages. In following that mission, we are pleased to offer our support of your proposed legislation known as the Senior Self-Sufficiency Act.

This legislation, which would authorize demonstration projects in naturally occurring retirement communities, would help show the effectiveness of providing comprehensive supportive services to older individuals who reside in their homes to enhance their quality of life and reduce the need for institutionalization. Missouri has long supported the concept of ''options in care'' to include comprehensive home and community based services and supports. This legislation would help focus and define the concept and value of communities, to include the significance of retaining seniors within their natural occurring communities. The comprehensive nature of the services to be offered under this concept, such as health services, nutrition services, transportation, home and personal care, socialization, continuing adult education, information and referral, and any other services to enhance quality of life will greatly increase a person's ability to remain in their home and community.

I can assure you the Department of Health and Senior Services is eager to assist with the implementation of this concept. Your proposed legislation is paramount in supporting our mission to protect and promote our community's health, and well-being of citizens of all ages. Please feel free to contact Jerry Simon, Interim Department Deputy Director, at (573) 751–8535, if we can offer any additional information or support to this important concept.

Respectfully,

RONALD W. CATES,
*Interim Director.*

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JEWISH FEDERATION OF ST. LOUIS,
*St. Louis, MO, July 29, 2002.*

Hon. JEAN CARNAHAN,
*U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR CARNAHAN: I am writing regarding the legislation you will be introducing to amend the Older Americans act of 1965 authorizing appropriations for demonstration projects to provide services to older individuals residing in NORCs. As you are aware, the St. Louis community has a large senior citizen population compared with other communities of similar size. It is essential that we find ways to help our older adults remain health, productive, and independent for as long as possible in order to enhance their quality of life.

Your bill, the Senior Self-Sufficiency Act, authorizing ten demonstration projects to provide comprehensive supportive services to residents of naturally occurring retirement communities will ensure that best practices are developed and/or replicated nationwide. It is an innovative and exciting opportunity to study aging-in-place populations and postpone or avoid institutionalization for these populations.

I strongly support this legislation and appreciate your tireless efforts on behalf of older adults.

Sincerely,

BARRY ROSENBERG,
*Executive Vice President.*

S. 2842

*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 ''Senior Self-Sufficiency Act''.

**SEC. 2. AMENDMENTS.**

Part A of title IV of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq) is amended by adding at the end the following:

**''SEC. 422. DEMONSTRATION PROJECTS IN NATURALLY OCCURRING RETIREMENT COMMUNITIES.**

''(a) PROGRAM AUTHORIZED.—The Assistant Secretary shall award grants to eligible entities to carry out 10 demonstration projects to provide comprehensive supportive services to older individuals who reside in noninstitutional residences in naturally occurring retirement communities to enhance the quality of life of such individuals and reduce the need to institutionalize such individuals. Those residences for which assistance is provided under section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q) in naturally occurring retirement communities shall not receive services through a demonstration project under this section if such services would otherwise be provided as part of the assistance received by such residences under such section 202.

''(b) ELIGIBLE ENTITY.—An entity is eligible to receive a grant under this section if

such entity is a nonprofit public or private agency, organization, or institution that proposes to provide services only in geographical areas considered to be low- or middle-income areas.

''(c) PRIORITY.—

''(1) IN GENERAL.—In awarding grants under this section, the Assistant Secretary shall give priority to eligible entities that provided comprehensive supportive services in fiscal year 2002 to older individuals who resided in noninstitutional residences in naturally occurring retirement communities.

''(2) RURAL AREAS.—Two of the 10 grants awarded under this section shall be awarded to eligible entities that propose to provide services to residents in rural areas.

''(d) GRANT PERIOD.—Each grant awarded under this section shall be awarded for a period of 4 years, with not more than $1,000,000 being awarded annually.

''(e) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Assistant Secretary in such form and containing such information as the Assistant Secretary may require, including a plan for continuing services provided under the grant after the grant expires.

''(f) LIMITATIONS.—

''(1) COST-SHARING.—An eligible entity receiving a grant under this section may require cost-sharing from individuals receiving services only in a manner consistent with the requirements of title III.

''(2) CONSTRUCTION.—An entity may not use funds received under a grant under this section to construct or permanently improve (other than remodeling to make facilities accessible to older individuals) any building or other facility.

''(g) DEFINITIONS.—In this section:

''(1) NATURALLY OCCURRING RETIREMENT COMMUNITY.—The term 'naturally occurring retirement community' means a geographical area in which not less than 40 percent of the noninstitutional residences are occupied for not less than 10 years by heads of households who are older individuals, but does not include residences for which assistance is provided under section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q). The definition provided for in the previous sentence may be modified by the Secretary as such definition relates to grants for rural areas.

''(2) SUPPORTIVE SERVICES.—The term 'supportive services' means services offered to residents that may include—

''(A) case management;

''(B) health services and education;

''(C) nutrition services, nutrition education, meals, and meal delivery;

''(D) transportation services;

''(E) home and personal care services;

''(F) continuing adult education;

''(G) information and referral services; and

''(H) any other services and resources appropriate to enhance the quality of life of residents and reduce the need to institutionalize such individuals.

''(h) MATCHING REQUIREMENT.—The Assistant Secretary may not make a grant to an eligible entity under this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program for which the grant was awarded, the entity will make available in cash or in-kind (directly or through donations from public or private entities) non-Federal contributions equaling 5 percent of Federal funds provided under the grant for the second year that such grant is provided, 10 percent of Federal funds provided under the grant for the third year that such grant is provided, and 15 percent of Federal funds provided under the grant for the fourth year that such grant is provided.

''(i) REPORT.—Not later than the beginning of the fourth year of distributing grants under this section, the Assistant Secretary shall evaluate services provided with funds under this section and submit a report to Congress summarizing the results of such evaluation and recommending what services should be taken in the future.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, not more than $10,000,000 for each of fiscal years 2003 through 2006.''.

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By Ms. LANDRIEU:

S. 2843. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

Ms. LANDRIEU. Mr. President, it is my pleasure to come to the floor today and introduce a bill that I believe will make it easier for parents to learn about dangerous products that may harm their children, and remove these products from their homes.

Every year, more than 1.7 million children under the age of 5 are harmed by defective or hazardous products. As my colleagues know, each year the Consumer Products Safety Commission recalls hundreds of products which have been found to pose a danger to consumers. Unfortunately, many times parents do not get the word about these recalls, because companies often do not have a way of getting in touch with their customers. This is particularly significant when you are talking about children's products. The manufacturers of these products rarely have records of who their customers are; often all they can do is publicize the recall as best they can. It is for this reason, that I am introducing the Product Safety Notification and Recall Effectiveness Act of 2002.

This legislation would require the Consumer Products Safety Commission to establish a rule to require manufacturers to establish and maintain a system for notifying consumers of the recall of certain products that may cause harm to children. The database could be assembled through the use of shortened product registration cards, Internet registration, or other alternate means of encouraging consumers to provide vital contact information.

As an example for my colleagues, I just want to touch on one method that this bill would encourage companies to use. We've all seen the registration cards that come with many products. It is these cards that provide companies with much of the information on their customers, and could be used to help spread the word about a recall. Unfortunately, many consumers just throw these cards away without even sending them in. In fact, by some estimates 90 percent of these cards are thrown away. Why? Well, one reason is because the cards ask for personal and marketing information that many people do not want to give out. So they throw the card away.

But if you shorten the card, to just ask for the basic information, name, address, and phone number, people are much more likely to return them. This is particularly true if the card specifies the information will not be used for marketing purposes. These cards are an idea that Ann Brown, former chairman of the CPSC and now Chairman of the non-profit group SAFE, a Safer America for Everyone Foundation, has been advocating for years. And studies done with companies like Mattel and BrandStamp have shown that these methods really do increase the number of consumers who respond.

So, I come to the floor today to say that this is something we need to do, and we need to do it as quickly as possible. This is a very important bill for our citizens. I am hopeful that we can get a hearing on this legislation very soon.

Before I close, I just want to commend Ann Brown and the folks at SAFE for all of their hard work on product recall. I introduced this legislation in the Senate today, but Ann is the one who has been pushing this issue for years, since she served on the CPSC. I am proud to work with her on this and want to thank her for her monumental efforts to bring this to the forefront. I also want to acknowledge my colleagues, Congressman JIM MORAN and Congressman JAMES MCGOVERN, who introduced this bill in the House of Representatives. And, of course, I look forward to working with the CPSC on this bill. I know they had some problems with this bill initially, and I am hopeful we have addressed most of these concerns.

I want to encourage my colleagues to support this much-needed legislation. By passing this bill, we can give parents the information they need to protect their children. When a child is hurt or killed by a defective product that has already been recalled, there simply is no excuse. This legislation would go a long way towards ensuring that this kind of tragedy never happens again.

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. 2843

*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 ''Product Safety Notification and Recall Effectiveness Act of 2002''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds the following:

(1) The Consumer Product Safety Commission conducts approximately 300 recalls of hazardous, dangerous, and defective consumer products each year.

(2) In developing comprehensive corrective action plans with recalling companies, the

Consumer Product Safety Commission staff greatly relies upon the media and retailers to alert consumers to the dangers of unsafe consumer products, because the manufacturers do not generally possess contact information regarding the purchasing consumers. Based upon information received from companies maintaining customer registration lists, such contact information is known for generally less than 7 percent of the total consumer products produced and distributed.

(3) The Consumer Product Safety Commission staff has found that most consumers do not return purchaser identification cards because of requests for marketing and personal information on the cards, and the likelihood of receiving unsolicited marketing materials.

(4) The Consumer Product Safety Commission staff has conducted research demonstrating that direct consumer contact is one of the most effective ways of motivating consumer response to a consumer product recall.

(5) Companies that maintain consumer product purchase data, such as product registration cards, warranty cards, and rebate cards, are able to effectively notify consumers of a consumer product recall.

(6) The Consumer Product Safety Commission staff has found that a consumer product safety owner card, without marketing questions or requests for personal information, that accompanied products such as small household appliances and juvenile products would increase consumer participation and information necessary for direct notification in consumer product recalls.

(7) The National Highway Traffic Safety Administration has, since March 1993, required similar simplified, marketing-free product registration cards on child safety seats used in motor vehicles.

(b) PURPOSE.—The purpose of this Act is to reduce the number of deaths and injuries from defective and hazardous consumer products through improved recall effectiveness, by—

(1) requiring the Consumer Product Safety Commission to promulgate a rule to require manufacturers of juvenile products, small household appliances, and certain other consumer products, to include a simplified product safety owner card with those consumer products at the time of original purchase by consumers, or develop effective electronic registration of the first purchasers of such products, to develop a customer database for the purpose of notifying consumers about recalls of those products; and

(2) encouraging manufacturers, private labelers, retailers, and others to use creativity and innovation to create and maintain effective methods of notifying consumers in the event of a consumer product recall.

**SEC. 3. DEFINITIONS.**

For purposes of this Act:

(1) TERMS DEFINED IN CONSUMER PRODUCT SAFETY ACT.—The definitions set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this Act.

(2) COVERED CONSUMER PRODUCT.—The term ''covered consumer product'' means—

(A) a juvenile product;

(B) a small household appliance; and

(C) such other consumer product as the Commission considers appropriate for achieving the purpose of this Act.

(3) JUVENILE PRODUCT.—The term ''juvenile product''—

(A) means a consumer product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(B) includes—

(i) full-size cribs and nonfull-size cribs;

(ii) toddler beds;

(iii) high chairs, booster chairs, and hook-on chairs;

(iv) bath seats;

(v) gates and other enclosures for confining a child;

(vi) playpens;

(vii) stationary activity centers;

(viii) strollers;

(ix) walkers;

(x) swings;

(xi) child carriers; and

(xii) bassinets and cradles.

(4) PRODUCT SAFETY OWNER CARD.—The term ''product safety owner card'' means a standardized product identification card supplied with a consumer product by the manufacturer of the product, at the time of original purchase by the first purchaser of such product for purposes other than resale, that only requests that the consumer of such product provide to the manufacturer a minimal level of personal information needed to enable the manufacturer to contact the consumer in the event of a recall of the product.

(5) SMALL HOUSEHOLD APPLIANCE.—The term ''small household appliance'' means a consumer product that is a toaster, toaster oven, blender, food processor, coffee maker, or other similar small appliance as provided for in the rule promulgated by the Consumer Product Safety Commission.

**SEC. 4. RULE REQUIRING SYSTEM TO PROVIDE NOTICE OF RECALLS OF CERTAIN CONSUMER PRODUCTS.**

(a) IN GENERAL.—The Commission shall promulgate a rule under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)) that requires that the manufacturer of a covered consumer product shall establish and maintain a system for providing notification of recalls of such product to consumers of such product.

(b) REQUIREMENT TO CREATE DATABASE.—

(1) IN GENERAL.—The rule shall require that the system include use of product safety owner cards, Internet registration, or an alternative method, to create a database of information regarding consumers of covered consumer products, for the sole purpose of notifying such consumers of recalls of such products.

(2) USE OF TECHNOLOGY.—Alternative methods specified in the rule may include use of on-line product registration and consumer notification, consumer information data bases, electronic tagging and bar codes, embedded computer chips in consumer products, or other electronic and design strategies to notify consumers about product recalls, that the Commission determines will increase the effectiveness of recalls of covered consumer products.

(c) USE OF COMMISSION STAFF PROPOSAL.—In promulgating the rule, the Commission shall consider the staff draft for an Advanced Notice of Proposed Rulemaking entitled ''Purchaser Owner Card Program'', dated June 19, 2001.

(d) EXCLUSION OF LOW-PRICE ITEMS.—The Commission shall have the authority to exclude certain low-cost items from the rule for good cause.

(e) DEADLINES.—

(1) IN GENERAL.—The Commission—

(A) shall issue a proposed rule under this section by not later than 90 days after the date of enactment of this Act; and

(B) shall promulgate a final rule under this section by not later than 270 days after the date of enactment of this Act.

(2) EXTENSION.—The Commission may extend the deadline described in paragraph (1) if the Commission provides timely notice to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

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By Mr. ROCKEFELLER:

S. 2844. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, perhaps the most effective way to improve the education of America's children is to ensure that they begin their education in an uncrowded classroom led by a qualified teacher. This body recognized that fact when we overwhelmingly passed the ''No Child Left Behind Act'' last year, mandating the hiring of qualified teachers by every school in every district.

Unfortunately, without our help, America's poor and rural schools may not be able to attract the qualified teachers this legislation mandates and our children deserve. Isolated and impoverished, competing against higher paying and well-funded school districts for scarce classroom talent, they are already facing a desperate shortage of qualified teachers. As pressure to hire increases, that shortage will become a crisis, and children already at a disadvantage in relation to their more affluent and less isolated peers will be the ones who suffer most.

Today, I propose a bill that will help bring dedicated and qualified teaching professionals to West Virginia's and America's poor and rural schools, and help give their students the opportunity to learn and flourish that every child deserves. The Incentives To Educate American Children Act, or ''I Teach'' Act, will provide teachers a refundable tax credit every year they practice their profession in the public schools where they are needed most. And it will give every public school teacher, whichever school they choose, a refundable tax credit for earning certification by the National Board for Professional Teaching Standards. Together, these two tax credits will give economically depressed areas a better ability to recruit and retain skilled teachers.

One-fourth of America's children attend public schools in rural areas, and of the 250 poorest counties in the United States, 244 are rural. West Virginia has rural schools scattered through 36 of its 55 counties, and these schools face real challenges in recruiting and retaining teachers, as well as dealing with other issues related to their rural location.

Attracting teachers to these schools is difficult in large part due to the vast gap between what rural districts are able to offer and the salaries paid by more affluent school districts, as wide as $20,000 a year, according to one study. Poor urban schools must overcome similar difficulties. It is often a challenge for these schools to attract and keep qualified teachers. Yet, according to the 2001 No Child Left Behind Act, every school must have

qualified teachers by the end of the 2005–2006 school year.

My ''I Teach'' Act will reward teachers willing to work in rural or high poverty schools with an annual $1,000 refundable tax credit. If the teacher obtains certification by the National Board for Professional Teaching Standards, they will receive an additional annual $1,000 refundable tax credit.

Every teacher willing to work in underserved schools will earn a tax credit. Every teacher who gets certified will earn a tax credit. Teachers who work in rural or poor schools and get certified will earn both. Schools who desperately need help attracting teachers will get a boost. And children educated in poor and rural schools will benefit most.

In my State of West Virginia, as in over 30 other States, there is already a State fiscal incentive for teachers who earn National Board certification. My legislation builds upon the West Virginia program; together, they add up to a powerful tax incentive for teachers to remain in the classroom and to use their skills where they are most needed.

I have spent a great deal of time in West Virginia classrooms this year, and it has become obvious to me that our education agenda suffers greatly from inadequate funding on a number of fronts. In response, I have introduced a series of bills attacking different aspects of the problem.

A qualified teacher is a great start, but children also deserve a safe, modern classroom. And so, in addition to the ''I Teach'' Act, I have introduced a measure to encourage investment in school construction and renovations.

I am promoting legislation to develop Math and Science Partnerships at the National Science Foundation, to place needed emphasis on these core subjects.

And to ensure that every student, including those in rural areas, has access to modern technology and the wealth of educational resources on the web, I remain vigilant in protecting the E-Rate, which provides $2.25 billion in annual discounts to connect our schools and libraries to the Internet.

Education is among our top national priorities, essential for every family with a child and vital for our economic and national security. I supported the bold goals and higher standards of the 2001 No Child Left Behind Act, but they won't be met unless our schools have the teachers and resources they need. I am committed to working closely with my Senate colleagues this fall to secure as much funding as possible for our children's education.

No amount of construction or technology can replace a qualified and motivated teacher, however, and making it easier for underserved schools to attract the teachers they need remains one of my most important objectives. I hope each of my colleagues will join me in supporting this important legislation which takes a great stride toward better education for every child in the United States.

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By Mr. FEINGOLD:

S. 2847. A bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, I rise today to introduce the Crane Conservation Act of 2002. I propose this legislation in the hope that Congress will do its part to protect the existence of these birds, whose cultural significance and popular appeal can be seen worldwide. This legislation is important to the people of Wisconsin, as our State provides habitat and refuge to several crane species. But this legislation, which authorizes the United States Fish and Wildlife Service to distribute funds and grants to crane conservation efforts both domestically and in developing countries, promises to have a larger environmental and cultural impact that will go far beyond the boundaries of my home State.

In October of 1994, Congress passed and the President signed the Rhinoceros and Tiger Conservation Act. The passage of this act provided support for multinational Rhino and Tiger conservation through the creation of the Rhinoceros and Tiger Conservation Fund, or RTCF. Administered by the United States Fish and Wildlife Service, the RTCF distributes up to $10 million in grants every year to conservation groups to support projects in developing countries. Since its establishment in 1994, the RTCF has been expanded by Congress to cover other species, such as elephants and great apes.

Today, with the legislation I am introducing, I am asking Congress to add cranes to this list. Cranes are the most endangered family of birds in the world, with ten of the world's fifteen species at risk of extinction. Specifically, this legislation would authorize up to $3 million of funds per year to be distributed in the form of conservation project grants to protect cranes and their habitat. The financial resources authorized by this bill can be made available to qualifying conservation groups operating in Asia, Africa, and North America. The program is authorized from Fiscal Year 2003 through Fiscal Year 2007.

In keeping with my belief that we should maintain fiscal integrity, this bill proposes that the $15 million in authorized spending over five years for the Crane Conservation Act established in this legislation should be offset by rescinding $18 million in unspent funds from funds carried over the Department of Energy's Clean Coal Technology Program in the Fiscal Year 2002 Energy and Water Appropriations Bill. The Secretary of the Interior would be required to transfer any funds it does not expend under the Crane Conservation Act back to the Treasury at the end of Fiscal Year 2007. I do not intend my bill to make any particular judgments about the Clean Coal program or its effectiveness, but I do think, in general, that programs should expend resources that we appropriate in a timely fashion.

I am offering this legislation due to the serious and significant decline that can be expected in crane populations worldwide without conservation efforts. The decline of the North American whooping crane, the rarest crane on earth, perfectly illustrates the dangers faced by these birds. In 1941, only 21 whooping cranes existed in the entire world. This stands in contrast to the almost 400 birds in existence today. The North American whooping crane's resurgence is attributed to the birds' tenacity for survival and to the efforts of conservationists in the United States and Canada. Today, the only wild flock of North American whooping cranes breeds in northwest Canada, and spends its winters in coastal Texas. Two new flocks of cranes are currently being reintroduced to the wild, one of which is a migratory flock on the Wisconsin to Florida flyway.

This flock of five birds illustrates that any effort by Congress to regulate crane conservation needs to cross both national and international lines. As this flock of birds makes its journey from Wisconsin to Florida, the birds rely on the ecosystems of a multitude of states in this country. In its journey from the Necedah National Wildlife Refuge in Wisconsin to the Chassahowitzka National Wildlife Refuge in Florida in the fall and eventual return to my home state in the spring, this flock also faces threats from pollution of traditional watering grounds, collision with utility lines, human disturbance, disease, predation, loss of genetic diversity within the population, and vulnerability to catastrophes, both natural and man-made. Despite the conservation efforts taken since 1941, this symbol of conservation is still very much in danger of extinction.

While over the course of the last half-century, North American whooping cranes have begun to make a slow recovery, many species of crane in Africa and Asia have declined, including the sarus crane of Asia and the wattled crane of Africa.

The sarus crane is a symbol of martial fidelity in many Asian cultures, especially Laos, Thailand and Indonesia. Additionally, in northern India, western Nepal, and Vietnam, these birds are a symbol of fertility, lending them as important religious significance. Standing at four feet tall, these birds can be found in the wetlands of northern India and south Asia. These birds require large, open, well watered plains or marshes to breed and survive.

Due to agricultural expansion, industrial development, river basin development, pollution, warfare, and heavy

use of pesticides, which is found to be highly prevalent in India and southeast Asia, the sarus crane population has been in decline. Furthermore, in many areas, a high human population concentration compounds these factors. On the Mekong River, which runs through Cambodia, Vietnam, Laos, Thailand, and China, human population growth and planned development projects threaten the sarus crane. Reports from India, Cambodia, and Thailand have also cited incidences of the trading of adult birds and chicks, as well as hunting and egg stealing in the drop-in population of the sarus crane.

Only three subspecies of the sarus crane exist today. One resides in northern India and Nepal, one resides in southeast Asia, and one resides in northern Australia. Their population is about 8,000 in the main Indian population, with recent numbers showing a rapid decline. In Southeast Asia, only 1,000 birds remain.

The situation of the sarus crane in Asia is mirrored by the situation of the wattled crane in Africa. In Africa, the wattled crane is found in the southern and eastern regions, with an isolated population in the mountains of Ethiopia. Current population estimates range between 6,000 to 8,000 and are declining rapidly, due to loss and degradation of wetland habitats, as well as intensified agriculture, dam construction, and industrialization. In other parts of the range, the creation of dams has changed the dynamics of the flood plains, thus further endangering these cranes and their habitats. Human disturbance at or near breeding sites also continues to be a major threat. Lack of oversight and education over the actions of humans, industry, and agriculture is leading to reduced preservation for the lands on which cranes live, thereby threatening the ability of cranes to survive in these regions.

If we do not act now, not only will cranes face extinction, but the ecosystems that depend on their contributions will suffer. With the decline of the crane population, the wetlands and marshes they inhabit can potentially be thrown off balance. I urge my colleagues to join me in supporting legislation that can provide funding to the local farming, education and enforcement projects that can have the greatest positive effect on the preservation of both cranes and fragile habitats. This small investment can secure the future of these exemplary birds and the beautiful areas in which they live. Therefore, I ask my colleagues to support the Crane Conservation Act of 2002.

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By Ms. COLLINS (for herself, Mr. CLELAND, Mr. HUTCHINSON, Mr. KERRY, Ms. SNOWE, and Mr. MILLER):

S. 2848. A bill to amend title XVIII of the Social Security Act to provide for a clarification of the definition of homebound for purposes of determining eligibility for home health services under the medicare program; to the Committee on Finance.

Ms. COLLINS. Mr. President, I am pleased to join with Senators CLELAND, HUTCHINSON, KERRY, SNOWE and MILLER in introducing the David Jayne Medicare Homebound Modernization Act of 2002 to modernize Medicare's outdated ''homebound'' requirement that has impeded access to needed home health services for many of our nation's elderly and disabled Medicare beneficiaries.

Health care in American has gone full circle. People are spending less time in institutions, and recovery and care for patients with chronic diseases and conditions has increasingly been taking place in the home. The highly skilled and often technically complex care that our home health agencies provide have enabled millions of our most vulnerable older and disabled individuals to avoid hospitals and nursing homes and stay just where they belong, in the comfort and security of their own homes.

Under current law, a Medicare patient must be considered ''homebound'' if he or she is to be eligible for home health services. While an individual is not actually required to be bedridden to qualify for benefits, his or her conditions must be such that ''there exists a normal inability to leave home.'' The statute does allow for absences from the home of ''infrequent'' or ''relatively short duration.'' Unfortunately, however, it does not define precisely what this means. It leaves it to the fiscal intermediaries to interpret just how many absences qualify as ''frequent'' and just how short those absences must be. Interpretations of this definition have therefore varied widely.

As a consequence, there have been far too many instances where an overzealous or arbitrary interpretation of the definition has turned elderly or disabled Medicare beneficiaries, who are dependent upon Medicare home health services and medical equipment for survival, into virtual prisoners in their own home. We have heard disturbing accounts of individuals on Medicare who have had their home health benefits terminated for leaving their homes to visit a hospitalized spouse or to attend a family gathering, including, in one case, to attend the funeral of their own child.

Under current law, a Medicare patient must be considered ''homebound'' if he or she is to be eligible for home health services. While an individual is not actually required to be bedridden to quality for benefits, his or her condition must be such that ''there exists a normal inability to leave home.''

The statute does allow for absences from the home that are ''infrequent and of short duration.'' It also gives specific permission for the individual to leave home to attend medical appointments, adult day care or religious services. Otherwise, it leaves it to the fiscal intermediaries to interpret just how many absences qualify as ''frequent'' and just how short those absences must be. Interpretations of this definition have therefore varied widely.

As a consequence, there have been far too many instances where an overzealous or arbitrary interpretation of the definition has turned elderly or disabled Medicare recipients, who are dependent upon Medicare home health services and medical equipment for survival, into virtual prisoners in their own homes.

The current homebound requirement is particularly hard on younger, disabled Medicare patients. For example, I recently met with David Jayne, a 40-year old man with Lou Gehrig's disease, who is confined to a wheelchair and cannot swallow, speak or even breathe on his own. Mr. Jayne needs several skilled nursing visits per week to enable him to remain independent and out of an inpatient facility. Despite his disability, Mr. Jayne meets frequently with youth and church groups. Speaking through a computerized voice synthesizer, he gives inspirational talks about how the human spirit can endure and even overcome great hardship.

The Atlanta Journal Constitution ran a feature article on Mr. Jayne and his activities, including a report about how he had, with the help of family and friends, attended a football game to root for the University of Georgia Bulldogs. A few days later, at the direction of the fiscal intermediary, his home health agency, which had been sending a health care worker to his home for two hours, four mornings a week, notified him that he could no longer be considered homebound, and that his benefits were being cut off. While his benefits were subsequently reinstated due to the media attention given the case, this experience motivated him to launch a crusade to modernize the homebound definition and led him to found the National Coalition to Amend the Medicare Homebound Restriction.

The current homebound requirement is particularly hard on younger, disabled individuals who are on Medicare. The fact is that the current requirement reflects an outmoded view of life for persons who live with serious disabilities. The homebound criteria may have made sense thirty years ago, when an elderly or disabled person might expect to live in the confines of their home, perhaps cared for by an extended family. The current definition, however, fails to reflect the technological and medical advances that have been made in supporting individuals with significant disabilities and mobility challenges. It also fails to reflect advances in treatment for seriously ill individuals, like Mr. Jayne, which allow them brief periods of relative wellness.

It also fails to recognize that an individual's mental acuity an physical stamina can only be maintained by use, and that the use of the body and mind is encouraged by social interactions outside the four walls of a home.

The David Jayne Medicare Homebound Modernization Act of 2002 will amend the homebound definition to base eligibility for the home health benefit on the patient's functional limitations and clinical condition, rather than on an arbitrary limitation on absences from the home. It will provide a specific, limited exception to the homebound rule for individuals who:

One, have been certified by a physician has having a permanent and severe condition that will not improve;

Two, who need assistance from another person with 3 or more of the 5 activities of daily living and require technological and/or personal assistance with the act of leaving home;

Three, who have received Medicare home health services during the previous 12 month period; and

Four, who are only able to leave home because the services provided through the home health benefit makes it possible for them to do so.

We believe that our legislation is budget neutral because it is specifically limited to individuals who are already eligible for Medicare and whose conditions require the assistance of a skilled nurse, therapist or home health aide to make it functionally possible for them to leave the home. Our legislation does not expand Medicare eligibility—it simply gives people who are already eligible for the benefit their freedom.

This issue was first brought to my attention by former Senator Robert Dole, who has long been a vigorous advocate for people with disabilities. Our proposal is also supported by the Consortium of Citizens with Disabilities, the Visiting Nurse Associations of America, the National Association for Home Care, Advancing Independence: Modernizing Medicare and Medicaid, AIMM, and the National Coalition to Amend the Medicare Homebound Restriction.

Moreover, the David Jayne Medicare Homebound Modernization Act of 2002 is consistent with President Bush's ''New Freedom Initiative'' which has, as its goal, the removal of barriers that impede opportunities for those with disabilities to integrate more fully into the community. By allowing reasonable absences from the home, our amendment will bring the Medicare home health benefit into the 21st Century, and I look forward to working with my colleagues to getting it done.

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By Ms. COLLINS (for herself and Mrs. MURRAY):

S. 2849. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join my colleague from Washington, Senator MURRAY, in introducing the Pancreatic Islet Cell Transplantation Act of 2002 which will help to advance important research that holds the promise of a cure for the more than one million Americans with Type 1 or juvenile diabetes.

As the founder and Co-Chair of the Senate Diabetes Caucus, I have learned a great deal about this serious disease and the difficulties and heartbreak that it causes for so many Americans and their families as they await a cure. Diabetes is a devastating, life-long condition that affects people of every age, race and nationality. It is the leading cause of kidney failure, blindness in adults, and amputations not related to injury. Moreover, diabetes costs the nation more than $105 billion a year, one out of every ten health care dollars, in health-related expenditures.

The burden of diabetes is particularly heavy for children and young adults with juvenile diabetes. Juvenile diabetes is the second most common chronic disease affecting children. Moreover, it is one that they never outgrow.

In individuals with juvenile diabetes, the body's immune system attacks the pancreas and destroys the islet cells that produce insulin. While the discovery of insulin was a landmark breakthrough in the treatment of people with diabetes, it is not a cure, and people with juvenile diabetes face the constant threat of developing devastating, life-threatening complications as well as a drastic reduction in their quality of life.

Thankfully, there is good news for people with diabetes. We have seen some tremendous breakthroughs in diabetes research in recent years, and I am convinced that diabetes is a disease that can be cured, and will be cured in the near future.

We were all encouraged by the development of the ''Edmonton Protocol,'' an experimental treatment developed at the University of Alberta involving the transplantation of insulin-producing pancreatic islet cells, which has been hailed as the most important advance in diabetes research since the discovery of insulin in 1921. Of the approximately 70 patients who have been treated using variation of the Edmonton Protocol over the past two years, all have seen a reversal of their life-disabling hypoglycemia, and nearly 80 percent have maintained normal glucose levels without insulin shots for more than two years.

Moreover, the side effects associated with this treatment—which uses more islet cells and a less-toxic combination of immunosuppressive drugs than previous, less successful protocols—have been mild, and the therapy has been generally well-tolerated by most patients.

Unfortunately, long-term use of toxic immunosuppressive drugs, has side-effects that make the current treatment inappropriate for use in children. Researchers, however, are working hard to find a way to reduce the transplant recipient's dependence on these drugs so that the procedure will be appropriate for children in the future, and the protocol has been hailed around the world as a remarkable breakthrough and proof that islet transplantation can work. It appears to offer the most immediate chance to achieve a cure for juvenile diabetes, and the research is moving forward rapidly.

New sources of islet cells must be found, however, because, as the science advances and continues to demonstrate promise, the number of islet cell transplants that can be performed will be limited by a serious shortage of pancreases available for islet cell transplantation. There currently are only 2,000 pancreases donated annually, and, of these, only about 500 are available each year for islet cell transplants. Moreover, most patients require islet cells from two pancreases for the procedure to work effectively.

The legislation we are introducing today will increase the supply of pancreases available for these trials and research. Our legislation will direct the Centers for Medicare and Medicaid Services to grant credit to organ procurement organizations, OPS, for the purposes of their certification—for pancreases harvested and used for islet cell transplantation and research.

Currently, CMS collects performance data from each OPO based upon the number of organs procured for transplant relative to the population of the OPO's service area. While CMS considers a pancreas to have been procured for transplantation if it is used for a whole organ transplant, the OPO receives no credit towards its certification if the pancreas is procured and used for islet cell transplantation or research. Our legislation will therefore give the OPOs an incentive to step up their efforts to increase the supply of pancreases donated for this purpose.

In addition, the legislation establishes an inter-agency committee on islet cell transplantation comprised of representatives of all of the federal agencies with an active role in supporting this research. The many advisory committees on organ transplantation that currently exist are so broad in scope that the issue of islet cell transplantation—while of great importance to the juvenile diabetes community—does not rise to the level of consideration when included with broader issues associated with organ donation, such as organ allocation policy and financial barriers to transplantation. We believe that a more focused effort in the area of islet cell transplantation is clearly warranted since the research is moving forward at such a rapid pace and with such remarkable results.

And finally, to help us collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy covered by insurance, our legislation directs the Institute of Medicine to conduct a study on the impact of islet cell transplantation on the health-related quality of life for individuals with juvenile

diabetes as well as the cost-effectiveness of the treatment.

Islet cell transplantation offers real hope for people with juvenile diabetes. Our legislation, which is strongly supported by the Juvenile Diabetes Research Foundation, addresses some of the specific obstacles to moving this research forward as rapidly as possible, and I urge all of our colleagues to join us in sponsoring it.

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By Mr. JOHNSON (for himself and Mr. DORGAN):

S. 2853. A bill to direct the Secretary of the Interior to establish the Missouri River Monitoring and Research Program, to authorize the establishment of the Missouri River Basin Stakeholder Committee, and for other purposes; to the Committee on Environment and Public Works.

Mr. JOHNSON. Mr. President, today, I am pleased to join Senator BYRON DORGAN in introducing legislation that will establish a world-class, science-based long-term monitoring program for the Missouri River. As America's longest river, fed by the headwaters of thousand, year-old glaciers, the Missouri is intertwined into the fabric of the American experience. Fed by dozens of tributaries crisscrossing Montana, North and South Dakota, Nebraska, Missouri, and Kansas, the Missouri River supports hundreds of river species and provides crucial wildlife habitat for migratory birds and other animals. The Missouri River also sustains trophy walleye fishing on South Dakota's main stem reservoirs and is the hub for the cultural and economic development of several communities and Indian Tribes.

The Missouri River faces challenges on several fronts: The manipulation of its water levels by the Corps of Engineers, the continued development of river shoreline, and the invasion of nonnative fish and plants. The Missouri River Enhancement and Monitoring Act of 2002 creates a comprehensive monitoring program to investigate and examine how the multiple uses of the Missouri are impacting water quality and the sustainability of fish and wildlife.

The legislation authorizes the establishment of a federal research program through the Biological Resources Division of the USGS, the Department of the Interior's research engine. The strength of the bill, however, stems from the participation of the states, Indian Tribes, and academic institutions all who have a stake in the health of the River. To that end, the legislation authorizes the establishment of monitoring field stations throughout the Missouri River basin. The bill also includes a competitive funding process to contract with Indian Tribes and basin States for the recovery of threatened species and specific habitat restoration projects. These focused investigations will encourage States and Indian Tribes to study the impact of water flows on fish populations at main stem reservoirs.

Earlier this year, water releases from South Dakota reservoirs damaged the spring fish spawn and the ecology of the Missouri River. This bill authorizes funds for State agencies with jurisdiction over fish and wildlife habitat to initiate projects that will be able to tell us how low water levels at South Dakota reservoirs impact fish populations and recreational opportunities.

I ask unanimous consent that a letter from the South Dakota Department of Game, Fish, and Parks in support of the Missouri River Monitoring Act of 2002 be printed in the RECORD.

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

DEPARTMENT OF GAME,
FISH AND PARKS,
*Pierre, SD, July 23, 2002.*

Senator TIM JOHNSON,
*Hart Senate Office,*
*Washington, DC.*

DEAR SENATOR JOHNSON: I would like to express my appreciation for all of your efforts on behalf of Missouri River fish and wildlife resources, especially the introduction of the ''Missouri River Monitoring Act of 2002.'' The framework for this legislation. ''The Missouri River Environmental Assessment Program (MOREAP), was developed by the Missouri River Natural Resources Committee (MRNRC) during 1996 and 1997 in partnership with the Biological Resources Division of the United States Geological Survey (USGS) and 79 Missouri River scientists and fish and wildlife managers. The MRNRC was established in 1987 by my agency and other main stem state fish and wildlife agencies with statutory responsibilities for management and stewardship of river fish and wildlife resources held in trust for the public. We are accountable to the public for management of those resources.

My staff and I have reviewed the proposed legislation and I want you to know that we support your bill. The Missouri River lacks a basin wide biological monitoring program and environmental assessment is desperately needed. The need for collecting comprehensive, long-term natural resource data to understand the effects of future river management decisions cannot be over-stated. This program will generate a system-wide database on Missouri River water quality, habitat, and biota that will provide the scientific foundation for management decisions.

The Missouri River is 2,341 miles long and drains one-sixth of the United States. It is one of the most important resources in our country. Harnessing the river's flow and constricting its channel has altered and reduced native fish and wildlife habitat. Recovering declining fish and wildlife resources in this extremely large, diverse and complex river environment, while maintaining the important economic benefits the river and reservoir system provides, will require sound and ongoing scientific data.

The time has come to make management changes on the Missouri River and those changes should be based on a thorough understanding of how those changes affect the river's environment. Scientific data will help us understand the complex relationships between river management and fish and wildlife habitat recovery.

I thank you once again for your help. This legislation has the strong support of the South Dakota Department Game Fish and Parks.

Sincerely,

JOHN L. COOPER,
*Department Secretary.*

The time for a monitoring program for the Missouri River has arrived. With the Corps of Engineers poised to revise the Missouri River Master Water Control Manual, a monitoring program will establish a baseline for judging the impact of new water flows. Years of scientific analysis and research from the U.S. Fish and Wildlife Service point toward Corps management of the river as the reason for diminished riparian habitat and a laundry list of threatened fish and bird species. Scientific monitoring must be part of a new Master Manual to examine how the new water flows impact fish and wildlife populations. The Corps has spent nearly 13 years and millions of dollars to find a consensus and implement a new, more balanced Master Manual. The Missouri River Enhancement and Monitoring Act of 2002 establishes a comprehensive database to analyze and examine how fish and wildlife respond to a new management plan. A long-term monitoring program will ensure that future decisions over the Missouri River are based on sound science and not politics.

As we approach the 200 year anniversary of Lewis and Clark's journey up the Missouri River, I call on Congress to pass the Missouri River Enhancement and Monitoring Act of 2002 to ensure the health and vitality of the River for the enjoyment of future generations.

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. 2853

*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 ''Missouri River Enhancement and Monitoring Act of 2002''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) CENTER.—The term ''Center'' means the River Studies Center of the Biological Resources Division of the United States Geological Survey, located in Columbia, Missouri.

(2) COMMITTEE.—The term ''Committee'' means the Missouri River Basin Stakeholder Committee established under section 4(a).

(3) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) PROGRAM.—The term ''program'' means the Missouri River monitoring and research program established under section 3(a).

(5) RIVER.—The term ''River'' means the Missouri River.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Biological Resources Division of the United States Geological Survey.

(7) STATE.—The term ''State'' means—

(A) the State of Iowa;

(B) the State of Kansas;

(C) the State of Missouri;

(D) the State of Montana;

(E) the State of Nebraska;

(F) the State of North Dakota;

(G) the State of South Dakota; and

(H) the State of Wyoming.

(8) STATE AGENCY.—The term ''State agency'' means an agency of a State that has jurisdiction over fish and wildlife of the River.

**SEC. 3. MISSOURI RIVER MONITORING AND RESEARCH PROGRAM.**

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish the Missouri River monitoring and research Program—

(1)(A) to coordinate the collection of information on the biological and water quality characteristics of the River; and

(B) to evaluate how those characteristics are affected by hydrology;

(2) to coordinate the monitoring and assessment of biota (including threatened or endangered species) and habitat of the River; and

(3) to make recommendations on means to assist in restoring the ecosystem of the River.

(b) CONSULTATION.—In establishing the program under subsection (a), the Secretary shall consult with—

(1) the Biological Resources Division of the United States Geological Survey;

(2) the Director of the United States Fish and Wildlife Service;

(3) the Chief of Engineers;

(4) the Western Area Power Administration;

(5) the Administrator of the Environmental Protection Agency;

(6) the Governors of the States, acting through—

(A) the Missouri River Natural Resources Committee; and

(B) the Missouri River Basin Association; and

(7) the Indian tribes of the Missouri River Basin.

(c) ADMINISTRATION.—The Center shall administer the program.

(d) ACTIVITIES.—In administering the program, the Center shall—

(1) establish a baseline of conditions for the River against which future activities may be measured;

(2) monitor biota (including threatened or endangered species), habitats, and the water quality of the River;

(3) if initial monitoring carried out under paragraph (2) indicates that there is a need for additional research, carry out any additional research appropriate to—

(A) advance the understanding of the ecosystem of the River; and

(B) assist in guiding the operation and management of the River;

(4) use any scientific information obtained from the monitoring and research to assist in the recovery of the threatened species and endangered species of the River; and

(5) establish a scientific database that shall be—

(A) coordinated among the States and Indian tribes of the Missouri River Basin; and

(B) readily available to members of the public.

(e) CONTRACTS WITH INDIAN TRIBES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall enter into contracts in accordance with section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) with Indian tribes that have—

(A) reservations located along the River; and

(B) an interest in monitoring and assessing the condition of the River.

(2) REQUIREMENTS.—A contract entered into under paragraph (1) shall be for activities that—

(A) carry out the purposes of this Act; and

(B) complement any activities relating to the River that are carried out by—

(i) the Center; or

(ii) the States.

(f) MONITORING AND RECOVERY OF THREATENED SPECIES AND ENDANGERED SPECIES.—The Center shall provide financial assistance to the United States Fish and Wildlife Service and State agencies to monitor and recover threatened species and endangered species, including monitoring the response of pallid sturgeon to reservoir operations on the mainstem of the River.

(g) GRANT PROGRAM.—

(1) IN GENERAL.—The Center shall carry out a competitive grant program under which the Center shall provide grants to States, Indian tribes, research institutions, and other eligible entities and individuals to conduct research on the impacts of the operation and maintenance of the mainstem reservoirs on the River on the health of fish and wildlife of the River, including an analysis of any adverse social and economic impacts that result from reoperation measures on the River.

(2) REQUIREMENTS.—On an annual basis, the Center, the Director of the United States Fish and Wildlife Service, the Director of the United States Geological Survey, and the Missouri River Natural Resources Committee, shall—

(A) prioritize research needs for the River;

(B) issue a request for grant proposals; and

(C) award grants to the entities and individuals eligible for assistance under paragraph (1).

(h) ALLOCATION OF FUNDS.—

(1) CENTER.—Of amounts made available to carry out this section, the Secretary shall make the following percentages of funds available to the Center:

(A) 35 percent for fiscal year 2003.

(B) 40 percent for fiscal year 2004.

(C) 50 percent for each of fiscal years 2005 through 2017.

(2) STATES AND INDIAN TRIBES.—Of amounts made available to carry out this section, the Secretary shall use the following percentages of funds to provide assistance to States or Indian tribes of the Missouri River Basin to carry out activities under subsection (d):

(A) 65 percent for fiscal year 2003.

(B) 60 percent for fiscal year 2004.

(C) 50 percent for each of fiscal years 2005 through 2017.

(3) USE OF ALLOCATIONS.—

(A) IN GENERAL.—Of the amount made available to the Center for a fiscal year under paragraph (1)(C), not less than—

(i) 20 percent of the amount shall be made available to provide financial assistance under subsection (f); and

(i) 33 percent of the amount shall be made available to provide grants under subsection (g).

(B) ADMINISTRATIVE AND OTHER EXPENSES.—Any amount remaining after application of subparagraph (A) shall be used to pay the costs of—

(i) administering the program;

(ii) collecting additional information relating to the River, as appropriate;

(iii) analyzing and presenting the information collected under clause (ii); and

(iv) preparing any appropriate reports, including the report required by subsection (i).

(i) REPORT.—Not later than 3 years after the date on which the program is established under subsection (a), and not less often than every 3 years thereafter, the Secretary, in cooperation with the individuals and agencies referred to in subsection (b), shall—

(1) review the program;

(2) establish and revise the purposes of the program, as the Secretary determines to be appropriate; and

(3) submit to the appropriate committees of Congress a report on the environmental health of the River, including—

(A) recommendations on means to assist in the comprehensive restoration of the River; and

(B) an analysis of any adverse social and economic impacts on the River, in accordance with subsection (g)(1).

**SEC. 4. MISSOURI RIVER BASIN STAKEHOLDER COMMITTEE.**

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Governors of the States and the governing bodies of the Indian tribes of the Missouri River Basin shall establish a committee to be known as the ''Missouri River Basin Stakeholder Committee'' to make recommendations to the Federal agencies with jurisdiction over the River on means of restoring the ecosystem of the River.

(b) MEMBERSHIP.—The Governors of the States and governing bodies of the Indian tribes of the Missouri River Basin shall appoint to the Committee—

(1) representatives of—

(A) the States; and

(B) Indian tribes of the Missouri River Basin;

(2) individuals in the States with an interest in or expertise relating to the River; and

(3) such other individuals as the Governors of the States and governing bodies of the Indian tribes of the Missouri River Basin determine to be appropriate.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary—

(1) to carry out section 3—

(A) $6,500,000 for fiscal year 2003;

(B) $8,500,000 for fiscal year 2004; and

(C) $15,100,000 for each of fiscal years 2005 through 2017; and

(2) to carry out section 4, $150,000 for fiscal year 2003.

Mr. DORGAN. Mr. President, I am pleased to join my colleague from South Dakota Senator TIM JOHNSON today in introducing this Missouri River Enhancement and Monitoring Act of 2002 and thank him for his efforts in working with me on this legislation. This bill will establish a program to conduct research on, and monitor the health of, the Missouri River to help recover threatened and endangered species, such as the pallid sturgeon and piping plover.

This bill will enable those who are active in the Missouri River Basin to collect and analyze baseline data, as river operations change, so that we can monitor changes in the health of the river and in species recovery in future years.

The program would also provide an analysis of the social and economic impacts along the river. And, it would establish a stakeholder group to make recommendations on the recovery of the Missouri River ecosystem.

The bill establishes a cooperative working arrangement between state, regional federal, and tribal entities that are active in the Missouri River Basin. I look forward to working with all of the stakeholders in the Basin to implement this important legislation.

I am especially pleased that this legislation is supported by a broad range of stakeholders, including the North Dakota State Water Commission, the North Dakota Game and Fish Department, the North Dakota Chapter of the Sierra Club, the Three Affiliated

Tribes, the Missouri River Natural Resources Committee, The Missouri River Basin Association, the South Dakota Game and Fish Department, American Rivers, and Environmental Defense.

I am confident that this legislation will enjoy bipartisan support, because of its significance in helping to monitor and restore the health of this historic River. Lewis and Clark traveled on this River. This River also contributes to $80 million in recreation, fishing, and tourism benefits in the Basin. I look forward to holding hearings on this bill and hope that we will be able to pass it into law in the near future.

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By Mr. BINGAMAN (for himself, Mr. ROBERTS, and Mr. ENZI):

S. 2854. A bill to amend title XVIII of the Social Security Act to improve disproportionate share medicare payments to hospitals serving vulnerable populations; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing bipartisan legislation today with Senators ROBERTS and ENZI that addresses some inequities in the current Medicare disproportionate share hospital, or DSH, program. The bill incorporates the recommendations by the Medicare Payment Advisory Commission, or MedPAC, to address the current inequities in the formula that harm rural hospitals and to better target the money to safety net hospitals.

The Medicare DSH program was created with the purpose of assisting hospitals that provide a substantial amount of care to low-income beneficiaries, including seniors and disabled citizens served by Medicare. To protect access to low-income Medicare beneficiaries, DSH funds are provided to hospitals whose viability is threatened by providing care, including unreimbursed care, to low-income patients.

Unfortunately, the current Medicare DSH formula does not adequately reflect or target money appropriately to these safety net institutions and it also inappropriately sets limits and inequities for rural hospitals, which are a life-line to many of our Nation's senior citizens and yet struggle due to such payment inequities in the Medicare system.

This legislation adopts the recommendations of MedPAC to address these inequities. According to MedPAC from its March 2000 ''Report to the Congress: Medicare Payment Policy''—

> The Commission believes that special policy changes are needed to ameliorate several problems inherent in the existing disproportionate share payment system. The current low-income share measure does not include care to all the poor; most notably, it omits uncompensated care. Instead, the measure relies on the share of resources devoted to treating Medicaid recipients to represent the low-income patient load for the entire nonelderly poor population.

New Mexico leads the Nation in the percentage of uninsured in its populations, according to the Census Bureau. Consequently, as MedPAC has noted repeatedly, the hospitals in my state lose more money to uncompensated care than similarly situated hospitals in other states. Because the Medicare DSH formula fails to account for uncompensated care directly but instead uses Medicaid as a proxy, the hospitals in New Mexico are not fairly compensated by the Medicare DSH formula.

To address this problem, MedPAC recommends the formula ''include the costs of all poor patients in calculating low-income shares used to distribute disproportionate share payments. . . .'' The legislation we are introducing today would make that important change on behalf of our Nation's safety net hospitals.

In addition, MedPAC notes that the current Medicare DSH program has 10 different formulas. MedPAC adds, ''In particular, current policy favors hospitals located in urban areas; almost half of urban hospitals receive DSH payments, compared with only one-fifth of rural facilities.''

Although BIPA improved the equity of DSH payments by raising the minimum low-income share needed to qualify for a payment adjustment for rural hospitals to that of urban hospitals, BIPA capped the DSH add-on payments a rural hospital can receive at just 5.25 percent, except for those rural hospitals already receiving higher payments due to the sole community hospital or rural referral center status. While MedPAC estimated the change made about 840 additional rural hospitals, or 40 percent of all rural facilities, eligible to receive DSH payments, the cap maintains some of the inequities between urban and rural hospitals.

Again, according to MedPAC in its June 2001 ''Report to Congress: Medicare in Rural America'':

> Rural hospitals were responsible for 12.8 percent of the care provided to Medicaid and uncompensated care patients nationally in 1999. With the DSH payment rules in effect through 2000, only 3.1 percent of payments went to rural facilities; BIPA rules would increase that proportion to 6.9 percent.

To address this problem, MedPAC also recommends using the ''same formula to distribute payments to all hospitals covered by prospective payment.''

In incorporating the recommendations of MedPAC in this legislation, it is estimated the bill would increase rural DSH payments by 5.4 percent across the country, including an 8.4 percent increase for rural hospitals with less than 50 beds. Our Nation's public hospitals would also benefit greatly, as urban public hospitals and rural government facilities are estimated to receive increases of 3.6 percent and 7.7 percent, respectively, under this legislation.

This legislation I am introducing with Senators ROBERTS and ENZI addresses some long-standing inequities in the Medicare DSH formula. I urge its adoption this year.

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. 2854

*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 ''Medicare Safety Net Hospital Improvement Act of 2002''.

**SEC. 2. COLLECTION OF DATA AND MODIFICATION OF DISPROPORTIONATE SHARE MEDICARE PAYMENTS TO HOSPITALS SERVING VULNERABLE POPULATIONS.**

(a) COLLECTION OF DATA.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amended by adding at the end the following new clause:

''(xiv) The Secretary shall collect from each subsection (d) hospital annual data on inpatient and outpatient charges, including all such charges for each of the following categories:

''(I) All patients.

''(II) Patients who are entitled to benefits under part A and are entitled to benefits (excluding any State supplementation) under the supplemental security income program under title XVI.

''(III) Patients who are entitled to (or, if they applied, would be eligible for) medical assistance under title XIX or child health assistance under title XXI.

''(IV) Patients who are beneficiaries of indigent care programs sponsored by State or local governments (including general assistance programs) which are funded solely by local or State funds or by a combination of local, State, or Federal funding.

''(V) The amount of charity care charges and bad debt.''.

(b) MODIFICATION.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)), as amended by subsection (a), is amended—

(1) by striking all the matter preceding clause (xiv) and inserting the following:

''(F)(i) The Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which serves a significantly disproportionate number of low-income patients (as defined in clause (iv)).

''(ii) The amount of the payment described in clause (i) for each discharge shall be determined by multiplying—

''(I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A) for that discharge, by

''(II) the disproportionate share adjustment percentage established under clause (iii) for the cost reporting period in which the discharge occurs.

''(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital is equal to (P–T)(C), where—

''(I) 'P' is equal to the hospital's disproportionate patient percentage (as defined in clause (v)) for the period;

''(II) 'T' is equal to the threshold percentage established by the Secretary under clause (iv); and

''(III) 'C' is equal to a conversion factor established by the Secretary in a manner so that, in applying such conversion factor for cost reporting periods beginning in fiscal year 2002—

''(aa) the total of the additional payments that would have been made under this subparagraph for cost reporting periods beginning in fiscal year 2002 if the amendment made by section 2(b) of the Medicare Safety Net Hospital Improvement Act of 2002 had been in effect; are equal to

''(bb) the total of the additional payments that would have been made under this subparagraph for cost reporting periods beginning in fiscal year 2002 if such amendment was not in effect but if the disproportionate share adjustment percentage (as defined in clause (iv) (as in effect during such cost reporting periods)) for all hospitals was equal to the percent determined in accordance with the applicable formulae described in clause (vii) (as so in effect).

The Secretary shall establish the conversion factor under subclause (III) based upon the data described in clause (iv) that is collected by the Secretary.

''(iv) For purposes of this subparagraph, a hospital 'serves a significantly disproportionate number of low-income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (v)) for that period which equals or exceeds a threshold percentage, as established by the Secretary in a manner so that, if the amendment made by section 2(b) of the Medicare Safety Net Hospital Improvement Act of 2002 had been in effect for cost reporting periods beginning in fiscal year 2002 and if the disproportionate share adjustment percentage (as defined in clause (iv) (as in effect during such periods)) for all hospitals was equal to the percent determined in accordance with the applicable formulae described in clause (vii) (as so in effect), 60 percent of subsection (d) hospitals would have been eligible for an additional payment under this subparagraph for such periods. The Secretary shall establish such threshold percentage based upon the data described in clause (iv) that is collected by the Secretary.

''(v) In this subparagraph, the term 'disproportionate patient percentage' means, with respect to a cost reporting period of a hospital (expressed as a percentage)—

''(I) the charges described in subclauses (II) through (V) of clause (vi) for such period; divided by

''(II) the charges described in subclause (I) of such clause for such period.''; and

(2) by redesignating clause (xiv) as clause (vi).

(c) CONFORMING AMENDMENTS.—

(1) MEDICARE.—

(A) QUALIFIED LONG-TERM CARE HOSPITAL.—Section 1886(b)(3)(G)(ii)(II) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(G)(ii)(II)) is amended by striking ''of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi))'' and inserting ''under subsection (d)(5)(F)(v) equal to or greater than an appropriate percentage (as determined by the Secretary)''.

[(B) PROVIDER-BASED STATUS.—Section 404(b)(2)(B) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–507), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by striking ''greater than 11.75 percent or is described in clause (i)(II) of such section'' and inserting ''greater than an appropriate percent (as determined by the Secretary)''.]

(2) MEDICAID.—Section 1923(c) of the Social Security Act (42 U.S.C. 1396r–4(c)) is amended—

(A) in paragraph (1), by striking ''section 1886(d)(5)(F)(iv)'' and inserting ''section 1886(d)(5)(F)(iii)''; and

(B) by striking the second sentence.

(3) PUBLIC HEALTH SERVICE ACT.—Section 340B(a)(4)(L)(ii) of the Public Health Service Act (42 U.S.C. 256b(a)(4)(L)(ii)) is amended to read as follows:

''(ii) for the most recent cost reporting period that ended before the calendar quarter involved—

''(I) in the case of a calendar quarter involved that begins prior to April 1, 2004, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act; and

''(II) in the case of a calendar quarter involved that begins on or after April 1, 2004, had a disproportionate share adjustment percentage (as so determined) that is greater than an appropriate percent, as established by the Secretary in a manner so that, with respect to the 12-month period beginning on such date, the number of hospitals that are described in this subparagraph is the same as, or greater than, the number of hospitals that would have been described in this subparagraph if the Medicare Safety Net Hospital Improvement Act of 2002 had not been enacted; and''.

(d) TECHNICAL AMENDMENTS.—Section 1815(e)(1)(B) of the Social Security Act (42 U.S.C. 1395g(e)(1)(B)) is amended—

(1) in the matter preceding clause (i), by inserting ''a'' before ''hospital''; and

(2) in clause (i), by striking ''(as established in clause (iv) of such section)'' and inserting ''(as established in section 1886(d)(5)(F)(iv), as in effect during fiscal year 1987)''.

(e) EFFECTIVE DATES.—

(1) COLLECTION.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) MODIFICATION AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (c) shall apply to payments for discharges occurring on or after April 1, 2004.

(3) TECHNICAL AMENDMENTS.—The amendments made by subsection (d) shall take effect as if included in the enactment of section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509; 100 Stat. 1996).

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By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, and Mr. GRAHAM):

S. 2855. A bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today I am introducing a bill with Senator ROCKEFELLER that will make significant and long-overdue improvements in the programs that provide assistance to low-income Medicare beneficiaries. This bill is a companion bill to H.R. 5276, which was introduced by Representatives JOHN DINGELL, SHERROD BROWN, HENRY WAXMAN, and PETE STARK last week.

Medicare provides coverage to all 40 million elderly and disabled beneficiaries, regardless of income, but the cost of uncovered services, premiums, and cost-sharing is a serious burden on those with the lowest incomes.

More than 40 percent of Medicare beneficiaries have incomes below 200 percent of poverty, including 47 percent or 102,000 seniors in New Mexico, at income levels below $17,720 for an individual and $23,880 for a couple. These low-income beneficiaries are nearly twice as likely as higher-income beneficiaries to report their health status as fair or poor, but are less likely to have private supplemental insurance to cover the cost of uncovered services or Medicare cost-sharing. Poor beneficiaries also bear a disproportionate burden in out-of-pocket health care costs, spending more than a third of their incomes on health care compared to only 10 percent for higher-income beneficiaries.

Medicaid, through what is known as the ''Medicare Savings Programs,'' fills in Medicare's gaps for low-income beneficiaries, providing supplemental coverage to 17 percent of all Medicare beneficiaries. According to the Center for Medicare Education, which is funded by the Robert Wood Johnson Foundation, the costs for low-income beneficiaries enrolled in the Qualified Medicare Beneficiary, or QMB, program drops out-of-pocket expenditures from 34 percent to 13 percent for low-income beneficiaries. Moreover, Medicare beneficiaries with full Medicaid coverage have out-of-pocket expenses of about 5 percent of their income or $295 a year.

This is a significant and important protection for our Nation's most financially vulnerable seniors and disabled citizens. Unfortunately, millions of beneficiaries, who are eligible for assistance under the Medicare Savings Programs, are not enrolled. Again, the Center for Medicare Education estimates that only half of the beneficiaries below poverty who are eligible for assistance are actually enrolled. Lack of outreach, complex and burdensome enrollment procedures, and restrictive asset requirements keep millions of seniors from receiving the assistance they desperately need.

The ''Medicare Beneficiary Improvement Act of 2002'' takes a number of steps to address these problems. First, the legislation improves eligibility requirements for these programs. It raises the income level for eligibility for Medicare Part B premium assistance from 120 to 135 percent of poverty. This expansion was originally enacted in 1997 but it expires this year. The Congress needs to take action this year to maintain these important protections for the Nation's elderly and should take the additional action to make this provision permanent.

In addition, the bill also ensures that all seniors who meet supplemental security income, or SSI, criteria are automatically eligible for assistance. Currently, automatic eligibility is only required in certain States, meaning that beneficiaries in other states may miss out on critical assistance unless they know enough to apply.

The bill also eliminates the restrictive assets test that requires seniors to become completely destitute in order to qualify for assistance. Most low-income Medicare beneficiaries have limited assets to begin with but the asset restrictions are so severe, a beneficiary

could not keep a fund or more than $1,500 for burial expenses without being disqualified from assistance. Moreover, own a car and you are likely to be denied financial protections under current law.

According to the Kaiser Family Foundation, it is estimated that up to 40 percent of low-income elderly that are otherwise eligible for financial assistance are denied protections due to the assets test. Any senior citizen making less than $13,290 a year who somehow has managed to scrape together $4,000 in a savings account for emergency are not eligible for financial protections from Medicare's cost sharing requirements. This runs counter to the goal of the Medicare program of providing security to the elderly rather than requiring impoverishment of them.

Furthermore, the legislation take steps to eliminate barriers to enrollment under the program. Again, according to the Center for Medicare Education, ''While some states have conducted activities to reach and enroll people in the Medicare Savings Programs, there is a need for more outreach activity in states. For example, in 1999, only 18 states reported that they used a short application form for the Medicare Savings Programs, and less than half of the states placed eligibility workers in settings other than welfare offices.''

The bill allows Medicare beneficiaries to apply for assistance at local social security offices, encourages states to station eligibility workers at these offices, as well as at other sites frequented by senior citizens and individuals with disabilities, and ensures that beneficiaries can apply for the program using a simplified application form. In addition, this bill will ensure that once an individual is found eligible for assistance, the individual remains continuously eligible and does not need to re-apply annually.

Another important step the legislation takes for low-income Medicare beneficiaries is that it provides 3 months of retroactive for QMBs. All other groups of beneficiaries have this protection currently. In addition, it prohibits estate recovery for QMBs for the cost of their cost-sharing or benefits provided through this program. The fear that Medicaid will recoup such costs from a surviving spouse is often a deterrent for many seniors to apply for such assistance.

And finally, the legislation funds a demonstration project to improve information and coordination between federal state, and local entities to increase enrollment of eligible Medicare beneficiaries. This demonstration would help agencies identify individuals who are potentially eligible for assistance by coordinating various data and sharing it with states for the purposes of locating and enrolling these individuals. In addition, the legislation provides grant money for additional innovative outreach and enrollment projects for the Medicare Savings Programs.

I would like to thank Representative DINGELL for his leadership on this issue and am pleased to be introducing the Senate companion bill to his legislation.

I look forward to working with my colleagues to pass this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 2855

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Beneficiary Assistance Improvement Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Renaming program to eliminate confusion.
Sec. 3. Expanding protections by increasing SLMB eligibility income level to 135 percent of poverty.
Sec. 4. Eliminating barriers to enrollment.
Sec. 5. Elimination of asset test.
Sec. 6. Improving assistance with out-of-pocket costs.
Sec. 7. Improving program information and coordination with State, local, and other partners.
Sec. 8. Notices to certain new medicare beneficiaries.

**SEC. 2. RENAMING PROGRAM TO ELIMINATE CONFUSION.**

The programs of benefits for lower income medicare beneficiaries provided under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) shall be known as the ''Medicare Savings Programs''.

**SEC. 3. EXPANDING PROTECTIONS BY INCREASING SLMB ELIGIBILITY INCOME LEVEL TO 135 PERCENT OF POVERTY.**

(a) IN GENERAL.—Section 1902(a)(10)(E)(iii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iii)) is amended by striking ''120 percent in 1995 and years thereafter'' and inserting ''120 percent in 1995 through 2002 and 135 percent in 2003 and years thereafter''.

(b) CONFORMING REMOVAL OF QI–1 AND QI–2 PROVISIONS.—

(1) Section 1902(a)(10)(E) of such Act (42 U.S.C. 1396a(a)(10)(E)) is further amended—

(A) by adding ''and'' at the end of clause (ii);

(B) by striking ''and'' at the end of clause (iii); and

(C) by striking clause (iv).

(2) Section 1933 of such Act (42 U.S.C. 1396u–3) is repealed.

(3) The amendments made by this subsection shall take effect as of January 1, 2003.

(c) APPLICATION OF CHIP ENHANCED MATCHING RATE FOR SLMB ASSISTANCE.—

(1) IN GENERAL.—Section 1905(b)(4) of such Act (42 U.S.C. 1396d(b)(4)) is amended by inserting ''or section 1902(a)(10)(E)(iii)'' after ''section 1902(a)(10)(A)(ii)(XVIII)''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to medical assistance for medicare cost-sharing for months beginning with January 2003.

**SEC. 4. ELIMINATING BARRIERS TO ENROLLMENT.**

(a) AUTOMATIC ELIGIBILITY FOR SSI RECIPIENTS IN 209(b) STATES AND SSI CRITERIA STATES.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(1) be redesignating paragraph (6) as paragraph (11); and

(2) by adding at the end the following new paragraph:

''(6) In the case of a State which has elected treatment under section 1902(f) for aged, blind, and disabled individuals, individuals with respect to whom supplemental security income payments are being paid under title XVI are deemed for purposes of this title to be qualified medicare beneficiaries.''.

(b) SELF-CERTIFICATION OF INCOME.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsection (a), is further amended by inserting after paragraph (6) the following new paragraph:

''(7) In determining whether an individual qualifies as a qualified medicare beneficiary or is eligible for benefits under section 1902(a)(10)(E)(iii), the State shall permit individuals to qualify on the basis of self-certifications of income without the need to provide additional documentation.''.

(c) AUTOMATIC REENROLLMENT WITHOUT NEED TO REAPPLY.—

(1) IN GENERAL.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a) and (b), is further amended by inserting after paragraph (7) the following new paragraph:

''(8) In the case of an individual who has been determined to qualify as a qualified medicare beneficiary or to be eligible for benefits under section 1902(a)(10)(E)(iii), the individual shall be deemed to continue to be so qualified or eligible without the need for any annual or periodic application unless and until the individual notifies the State that the individual's eligibility conditions have changed so that the individual is no longer so qualified or eligible.''.

(2) CONFORMING AMENDMENT.—Section 1902(e)(8) of the Social Security Act (42 U.S.C. 1396a(e)(8)) is amended by striking the second sentence.

(d) USE OF SIMPLIFIED APPLICATION PROCESS.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a), (b), and (c), is further amended by inserting after paragraph (8) the following new paragraph:

''(9) A State shall permit individuals to apply to qualify as a qualified medicare beneficiary or for benefits under section 1902(a)(10)(E)(iii) through the use of the simplified application form developed under section 1905(p)(5)(A) and shall permit such an application to be made over the telephone or by mail, without the need for an interview in person by the applicant or a representative of the applicant.''.

(e) ROLE OF SOCIAL SECURITY OFFICES.—

(1) ENROLLMENT AND PROVISION OF INFORMATION AT SOCIAL SECURITY OFFICES.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by subsections (a), (b), (c), and (d) is further amended by inserting after paragraph (9) the following new paragraph:

''(10) The Commissioner of Social Security shall provide, through local offices of the Social Security Administration—

''(A) for the enrollment under State plans under this title for appropriate medicare cost-sharing benefits for individuals who qualify as a qualified medicare beneficiary or for benefits under section 1902(a)(10)(E)(iii); and

''(B) for providing oral and written notice of the availability of such benefits.''.

(2) CLARIFYING AMENDMENT.—Section 1902(a)(5) of such Act (42 U.S.C. 1396a(a)(5)) is amended by inserting ''as provided in section 1905(p)(10)'' after ''except''.

(f) OUTSTATIONING OF STATE ELIGIBILITY WORKERS AT SSA FIELD OFFICES.—Section 1902(a)(55) of such Act (42 U.S.C. 1396a(a)(55)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)'' and inserting ''paragraph (10)(A)(i)(IV), (10)(A)(i)(VI), (10)(A)(i)(VII), (10)(A)(ii)(IX), or (10)(E)''; and

(2) in subparagraph (A), by striking ''1905(1)(2)(B)'' and inserting ''1905(l)(2)(B), and in the case of applications of individuals for medical assistance under paragraph (10)(E), at locations that include field offices of the Social Security Administration''.

**SEC. 5. ELIMINATION OF ASSET TEST.**

(a) IN GENERAL.—Section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)) is amended—

(1) by adding ''and'' at the end of subparagraph (A);

(2) by striking '', and'' at the end of subparagraph (B) and inserting a period; and

(3) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to eligibility determinations for medicare cost-sharing furnished for periods beginning on or after January 1, 2003.

**SEC. 6. IMPROVING ASSISTANCE WITH OUT-OF-POCKET COSTS.**

(a) ELIMINATING APPLICATION OF ESTATE RECOVERY PROVISIONS.—Section 1917(b)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(B)(ii)) is amended by inserting ''(but not including medical assistance for medicare cost-sharing or for benefits described in section 1902(a)(10)(E))'' before the period at the end.

(b) PROVIDING FOR 3-MONTHS RETROACTIVE ELIGIBILITY.—

(1) IN GENERAL.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before paragraph (1), by striking ''described in subsection (p)(1), if provided after the month'' and inserting ''described in subsection (p)(1), if provided in or after the third month before the month''.

(2) CONFORMING AMENDMENTS.—(A) The first sentence of section 1902(e)(8) of such Act (42 U.S.C. 1396a(e)(8)), as amended by section 4(c)(2), is amended by striking ''(8)'' and the first sentence.

(B) Section 1848(g)(3) of such Act (42 U.S.C. 1395w–4(g)(3)) is amended by adding at the end the following new subparagraph:

''(C) TREATMENT OF RETROACTIVE ELIGIBILITY.—In the case of an individual who is determined to be eligible for medical assistance described in subparagraph (A) retroactively, the Secretary shall provide a process whereby claims previously for services furnished during the period of retroactive eligibility which were not submitted in accordance with such subparagraph are resubmitted and re-processed in accordance with such subparagraph.''.

**SEC. 7. IMPROVING PROGRAM INFORMATION AND COORDINATION WITH STATE, LOCAL, AND OTHER PARTNERS.**

(a) DATA MATCH DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (acting through the Administrator of the Centers for Medicare & Medicaid Services), the Secretary of the Treasury, and the Commissioner of Social Security shall enter into an arrangement under which a demonstration is conducted, consistent with this subsection, for the exchange between the Centers for Medicare & Medicaid Services, the Internal Revenue Service, and the Social Security Administration of information in order to identity individuals who are medicare beneficiaries and who, based on data from the Internal Revenue Service that (such as their not filing tax returns or other appropriate filters) are likely to be qualified medicare beneficiaries or individuals otherwise eligible for medical assistance under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)).

(2) LIMITATION ON USE OF INFORMATION.—Notwithstanding any other provision of law, specific information on income or related matters exchanged under paragraph (1) may be disclosed only as required to carry out subsection (b) and for related Federal and State outreach efforts.

(3) PERIOD.—The project under this subsection shall be for an initial period of 3 years and may be extended for additional periods (not to exceed 3 years each) after such an extension is recommended in a report under subsection (d).

(b) STATE DEMONSTRATION GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall enter into a demonstration project with States (as defined for purposes of title XIX of the Social Security Act (42 U.S..C 1396 et seq.) to provide funds to States to use information identified under subsection (a), and other appropriate information, in order to do ex parte determinations or other methods for identifying and enrolling individuals who are potentially eligible to be qualified medicare beneficiaries or otherwise eligible for medical assistance described in section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)).

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to the Secretary of Health and Human Services for the purpose of making grants under this subsection.

(c) ADDITIONAL CMS FUNDING FOR OUTREACH AND ENROLLMENT PROJECTS.—There are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services through the Administrator of the Centers for Medicare & Medicaid Services, $100,000,000 which shall be used only for the purpose of providing grants to States to fund projects to improve outreach and increase enrollment in Medicare Savings Programs. Such projects may include cooperative grants and contracts with community groups and other groups (such as the Department of Veterans' Affairs and the Indian Health Service) to assist in the enrollment of eligible individuals.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to Congress periodic reports on the projects conducted under this section. Such reports shall include such recommendations for extension of such projects, and changes in laws based on based projects, as the Secretary deems appropriate.

**SEC. 8. NOTICES TO CERTAIN NEW MEDICARE BENEFICIARIES.**

(a) SSA NOTICE.—At the time that the Commissioner of Social Security sends a notice to individuals that they have been determined to be eligible for benefits under part A or B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq., 1395j et seq.), the Commissioner shall send a notice and application for benefits under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to those individuals the Commissioner identifies as being likely to be eligible for benefits under clause (i), (ii), or (iii) of section 1902(a)(10)(E) of such Act (42 U.S.C. 1396a(a)(10)(E)). Such notice and application shall be accompanied by information on how to submit such an application and on where to obtain more information (including answers to questions) on the application process.

(b) INCLUDING INFORMATION IN MEDICARE & YOU HANDBOOK.—The Secretary of Health and Human Services shall include in the annual handbook distributed under section 1804(a) of the Social Security Act (42 U.S.C. 1395b–2(a)) information on the availability of Medicare Savings Programs and a toll-free telephone number that medicare beneficiaries may use to obtain additional information about the program.

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By Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. WYDEN):

S. 2857. A bill to amend titles XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr President, I am extremely pleased to be joined by my colleagues, Senator COLLINS and Senator WYDEN, in introducing the Advanced Directives and Compassionate Care Act of 2002.

The end of life is a difficult time for individuals and their families. A complex web of emotional, legal, medical, and spiritual demands magnify the pain and turmoil already being experienced. Loss of control can result in depression and confusion, sometimes even hastening death. And, too often, a lifetime's dignity can be stripped away in a person's final months, leaving their survivors an inheritance of sadness and regret.

The Advanced Directives and Compassionate Care Act will help families and individuals avoid this bitter legacy, by helping maintain greater control of their final months. It gives patients greater information and power in determining treatment and hospice options. The legislation addresses legal issues that often arise at the end-of-life, and makes it more certain that advanced directives, such as ''living wills'' will be followed. It promotes the hospice-based care that most terminally ill patients prefer. Most important, it gives people a better chance to maintain their dignity in their final hours. I urge that the Senate take up this vital and compassionate legislation this year, and that we ensure it's passage before we return home this fall.

According to a 1999 National Hospice and Palliative Care Organization survey, Americans are hesitant to talk with their elderly parents about how they would like to be cared for at the end of life. This same study showed that less than twenty-five percent of Americans have put into writing instructions for how we'd like to be cared for personally at the end of our lives. Many health care providers overlook the equally important issue of providing adequate and appropriate care such as relief of pain, or family support services to those who are at the end of life. In addition, there is great variation among State laws with respect to advanced directives.

Our legislation takes real and tangible steps toward improving the practices and care that affect our citizens when they are facing death or the real possibility of death.

First, and perhaps most important, the Compassionate Care Act gives patients greater power to control their

final days, by directly addressing the improvement of advanced directives. In my home state, a 2000 survey showed that three-quarters of West Virginians would prefer to die at home, yet nearly 60 percent of all deaths occur in a hospital. West Virginia has perhaps the most progressive state laws with regard to living wills and power of attorney, yet only one-third of those surveyed have either. These figures are unacceptable—people need to have a greater say in their own destiny.

Currently, state laws on the execution of advance directives vary greatly. Too often, this means a serious problem when the patient's wishes about their medical care are ignored—even when family members attest to their validity—because they moved to another state after creating the directive, but before or at the time that care is needed. Most of the differences that cause one state not to honor an advance directive created in another state are technical in nature—for example, one state requires two witnesses while another only one. This variance should not deny a person the type of care desired. Only a federal portability statute can address this problem.

Under our legislation, an advance directive valid in the state in which it is executed would be honored in any other state in which it may be presented. In addition, the Secretary of Health and Human Services would be required to gather information and consult with experts about the feasibility and desirability of creating a uniform advance directive for all Medicare and Medicaid beneficiaries, and possibly others, in the United States, as well as study such issues as the provision of adequate palliative care. A uniform advance directive would enable people to designate the kind of care they wish to receive at the end of their lives in a way that is easily recognizable and understood by everyone.

In 1990, this body passed bipartisan legislation entitled the Patient Self-Determination Act. That legislation required hospitals, and other health care facilities participating in the Medicare and Medicaid programs to provide every adult receiving medical care with written information regarding the patient's involvement with their own treatment decisions. The Compassionate Care Act builds on this Act, and the thinking behind it, to improve the quality of care and the quality of life for terminally ill patients.

Our bill builds on the Patient Self-Determination Act, improving the type and amount of information available by ensuring that a person entering a hospital, nursing home, or other health care facility is helped by a knowledgeable person to create a new advance directive or discuss an existing one. The patient's own needs, desires, and values must be the basis of decision-making and, whenever possible, the patient's family and/or friends should be part of the conversation. Further, the bill requires that if a person has an advance directive it be placed prominently in the medical record where all doctors and nurses involved in the patient's care can clearly see it. Finally, under the Compassionate Care Act, a 24-hour, toll-free hotline that provides consumers with information on advance directives, end-of-life care decision-making, and hospice care would be established.

Second, our legislation would require the Secretary of Health and Human Services to develop outcome standards and other measures for evaluating the quality of end-of-life care including the appropriateness of care and ease of access to high quality care. There are currently too few measures or standards available to assess the quality of care provided to Medicare, Medicaid and S–CHIP beneficiaries with terminal conditions. There are also significant variations in available medical care for patients at the end-of-life based on geographic area, ethnic group and alternative models of care.

Third, this legislation would authorize demonstration projects to develop new and innovative approaches to improving end-of-life care and pain management for Medicare, Medicaid and S–CHIP beneficiaries. At least one demonstration would focus particularly on pediatric end-of-life care. Priorities include adequate pain management for terminally ill patients—40–80 percent of terminally ill patients say they do not receive adequate treatment for their pain; treatment of pediatric illnesses—28 thousand children die of chronic illness each year, but fewer than 10 percent receive hospice care; and treatment of Medicare beneficiaries in hospice care.

Finally, to help improve communication between federal agencies and experts in the fields of hospice, end-of-life, and palliative care, the legislation establishes a 15 member End-of-Life Care Advisory Board consisting of end-of-life care providers, consumers, professional and resource-based groups, and policy/advocacy organizations. Recently, the Centers for Medicare and Medicaid Services has made a concerted effort to improve its involvement in the area of end-of-life care. The Advisory Board is designed to further assist the Secretary and the Centers for Medicare and Medicaid Services in the evaluation of and decisions relating to adequate end-of-life care. In addition, it would utilize the reports mandated in this bill to create its own evaluation of the field and propose recommendations for legislative and administrative actions to improve end-of-life care in America.

Mr. President, death is a hard subject to talk about. It's hard to think about—and especially hard to plan for. I know this personally, as many of my colleagues may as well, from dealing with the loss of a family member to a prolonged illness. Too often discussion about end-of-life care and adequate pain management focuses around physician assisted suicide. The fact is that this quality end-of-life care—helping the dying and their families who want better, more compassionate care—is what we should be talking about, and what our legislation does.

This legislation has been endorsed by the National Hospice and Palliative Care Association, Partnership for Caring, The American Bar Association, Americans for Better Care of the Dying, and the American Academy of Pediatrics. I ask unanimous consent that several of the letters of support from these organizations and the full text of the legislation be included in the RECORD at the conclusion of my remarks.

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

S. 2857

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Advance Planning and Compassionate Care Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Development of standards to assess end-of-life care.
Sec. 3. Study and report by the Secretary of Health and Human Services regarding the establishment and implementation of a national uniform policy on advance directives.
Sec. 4. Improvement of policies related to the use of advance directives.
Sec. 5. National information hotline for end-of-life decisionmaking and hospice care.
Sec. 6. Demonstration project for innovative and new approaches to end-of-life care for medicare, medicaid, and SCHIP beneficiaries.
Sec. 7. Establishment of End-of-Life Care Advisory Board.

**SEC. 2. DEVELOPMENT OF STANDARDS TO ASSESS END-OF-LIFE CARE.**

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Institutes of Health, the Administrator of the Agency for Health Care Policy and Research, and the End-of-Life Care Advisory Board (established under section 7), shall develop outcome standards and measures to—

(1) evaluate the performance of health care programs and projects that provide end-of-life care to individuals, including the quality of the care provided by such programs and projects; and

(2) assess the access to, and utilization of, such programs and projects, including differences in such access and utilization in rural and urban areas and for minority populations.

(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the outcome standards and measures developed under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

**SEC. 3. STUDY AND REPORT BY THE SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING THE ESTABLISHMENT AND IMPLEMENTATION OF A NATIONAL UNIFORM POLICY ON ADVANCE DIRECTIVES.**

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a thorough study of all matters relating to the establishment and implementation of a national uniform policy on advance directives for individuals receiving items and services under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.).

(2) MATTERS STUDIED.—The matters studied by the Secretary of Health and Human Services under paragraph (1) shall include issues concerning—

(A) family satisfaction that a patient's wishes, as stated in the patient's advance directive, were carried out;

(B) the portability of advance directives, including cases involving the transfer of an individual from 1 health care setting to another;

(C) immunity from civil liability and criminal responsibility for health care providers that follow the instructions in an individual's advance directive that was validly executed in, and consistent with the laws of, the State in which it was executed;

(D) conditions under which an advance directive is operative;

(E) revocation of an advance directive by an individual;

(F) the criteria used by States for determining that an individual has a terminal condition;

(G) surrogate decisionmaking regarding end-of-life care;

(H) the provision of adequate palliative care (as defined in paragraph (3)), including pain management; and

(I) adequate and timely referrals to hospice care programs.

(3) PALLIATIVE CARE.—For purposes of paragraph (2)(H), the term ''palliative care'' means interdisciplinary care for individuals with a life-threatening illness or injury relating to pain and symptom management and psychological, social, and spiritual needs and that seeks to improve the quality of life for the individual and the individual's family.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) CONSULTATION.—In conducting the study and developing the report under this section, the Secretary of Health and Human Services shall consult with the End-of-Life Care Advisory Board (established under section 7), the Uniform Law Commissioners, and other interested parties.

**SEC. 4. IMPROVEMENT OF POLICIES RELATED TO THE USE OF ADVANCE DIRECTIVES.**

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (3), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following new paragraph:

''(5)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider of services, a Medicare+Choice organization, or a prepaid or eligible organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

''(ii) For purposes of clause (i), the term ''actual knowledge'' means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following paragraph:

''(6)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider or organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

''(ii) For purposes of clause (i), the term ''actual knowledge'' means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) STUDY AND REPORT REGARDING IMPLEMENTATION.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the implementation of the amendments made by subsections (a) and (b).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

**SEC. 5. NATIONAL INFORMATION HOTLINE FOR END-OF-LIFE DECISIONMAKING AND HOSPICE CARE.**

The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall operate directly, or by grant, contract, or interagency agreement, out of funds otherwise appropriated to the Secretary, a clearinghouse and a 24-hour toll-free telephone hotline in order to provide consumer information about advance directives (as defined in section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)), as amended by section 4(a)), end-of-life decisionmaking, and available end-of-life and hospice care services. In carrying out the preceding sentence, the Administrator may designate an existing clearinghouse and 24-hour toll-free telephone hotline or, if no such entity is appropriate, may establish a new clearinghouse and a 24-hour toll-free telephone hotline.

**SEC. 6. DEMONSTRATION PROJECT FOR INNOVATIVE AND NEW APPROACHES TO END-OF-LIFE CARE FOR MEDICARE, MEDICAID, AND SCHIP BENEFICIARIES.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project under which the Secretary contracts with entities operating programs in order to develop new and innovative approaches to providing end-of-life care to medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries.

(2) APPLICATION.—Any entity seeking to participate in the demonstration project shall submit to the Secretary an application in such form and manner as the Secretary may require.

(3) DURATION.—The authority of the Secretary to conduct the demonstration project shall terminate at the end of the 5-year period beginning on the date the Secretary implements the demonstration project.

(b) SELECTION CRITERIA.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), in selecting entities to participate in the demonstration project, the Secretary shall select entities that will allow for programs to be conducted in a variety of States, in an array of care settings, and that reflect—

(A) a balance between urban and rural settings;

(B) cultural diversity; and

(C) various modes of medical care and insurance, such as fee-for-service, preferred provider organizations, health maintenance organizations, hospice care, home care services, long-term care, pediatric care, and integrated delivery systems.

(2) PREFERENCES.—The Secretary shall give preference to entities operating programs that—

(A) will serve medicare beneficiaries, medicaid beneficiaries, or SCHIP beneficiaries who are dying of illnesses that are most prevalent under the medicare program, the medicaid program, or SCHIP, respectively; and

(B) appear capable of sustained service and broad replication at a reasonable cost within commonly available organizational structures.

(3) SELECTION OF PROGRAM THAT PROVIDES PEDIATRIC END-OF-LIFE CARE.—The Secretary shall ensure that at least 1 of the entities selected to participate in the demonstration project operates a program that provides pediatric end-of-life care.

(c) EVALUATION OF PROGRAMS.—

(1) IN GENERAL.—Each program operated by an entity under the demonstration project shall be evaluated at such regular intervals as the Secretary determines are appropriate.

(2) USE OF PRIVATE ENTITIES TO CONDUCT EVALUATIONS.—The Secretary, in consultation with the End-of-Life Care Advisory Board (established under section 7), shall contract with 1 or more private entities to coordinate and conduct the evaluations under paragraph (1). Such a contract may not be awarded to an entity selected to participate in the demonstration project.

(3) REQUIREMENTS FOR EVALUATIONS.—

(A) USE OF OUTCOME MEASURES AND STANDARDS.—In coordinating and conducting an evaluation of a program conducted under the demonstration project, an entity shall use the outcome standards and measures required to be developed under section 2 as soon as those standards and measures are available.

(B) ELEMENTS OF EVALUATION.—In addition to the use of the outcome standards and measures under subparagraph (A), an evaluation of a program conducted under the demonstration project shall include the following:

(i) A comparison of the quality of care provided by, and of the outcomes for medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries enrolled in, the program being evaluated to the quality of care and outcomes for such individuals that would have resulted if care had been provided under existing delivery systems.

(ii) An analysis of how ongoing measures of quality and accountability for improvement and excellence could be incorporated into the program being evaluated.

(iii) A comparison of the costs of the care provided to medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries under the program being evaluated to the costs of such care that would have been incurred under the medicare program, the medicaid program, and SCHIP if such program had not been conducted.

(iv) An analysis of whether the program being evaluated implements practices or procedures that result in improved patient outcomes, resource utilization, or both.

(v) An analysis of—

(I) the population served by the program being evaluated; and

(II) how accurately that population reflects the total number of medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries residing in the area who are in need of services offered by such program.

(vi) An analysis of the eligibility requirements and enrollment procedures for the program being evaluated.

(vii) An analysis of the services provided to beneficiaries enrolled in the program being evaluated and the utilization rates for such services.

(viii) An analysis of the structure for the provision of specific services under the program being evaluated.

(ix) An analysis of the costs of providing specific services under the program being evaluated.

(x) An analysis of any procedures for offering medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries enrolled in the program being evaluated a choice of services and how the program responds to the preferences of such beneficiaries.

(xi) An analysis of the quality of care provided to, and of the outcomes for, medicare beneficiaries, medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries, that are enrolled in the program being evaluated.

(xii) An analysis of any ethical, cultural, or legal concerns—

(I) regarding the program being evaluated; and

(II) with the replication of such program in other settings.

(xiii) An analysis of any changes to regulations or of any additional funding that would result in more efficient procedures or improved outcomes under the program being evaluated.

(d) WAIVER AUTHORITY.—The Secretary may waive compliance with any of the requirements of titles XI, XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.; 1396 et seq.; 1397aa et seq.) which, if applied, would prevent the demonstration project carried out under this section from effectively achieving the purpose of such project.

(e) REPORTS TO CONGRESS.—

(1) ANNUAL REPORTS BY SECRETARY.—

(A) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the demonstration project and on the quality of end-of-life care under the medicare program, the medicaid program, and SCHIP, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(B) SUMMARY OF RECENT STUDIES.—A report submitted under subparagraph (A) shall include a summary of any recent studies and advice from experts in the health care field regarding the ethical, cultural, and legal issues that may arise when attempting to improve the health care system to meet the needs of individuals with serious and eventually terminal conditions.

(C) CONTINUATION OR REPLICATION OF DEMONSTRATION PROJECTS.—The first report submitted under subparagraph (A) after the 3-year anniversary of the date the Secretary implements the demonstration project shall include recommendations regarding whether such demonstration project should be continued beyond the period described in subsection (a)(3) and whether broad replication of any of the programs conducted under the demonstration project should be initiated.

(2) REPORT BY END-OF-LIFE CARE ADVISORY BOARD ON DEMONSTRATION PROJECT.—

(A) IN GENERAL.—Not later than 2 years after the conclusion of the demonstration project, the End-of-Life Advisory Board shall submit a report to the Secretary and Congress on such project.

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

(i) an evaluation of the effectiveness of the demonstration project; and

(ii) recommendations for such legislation and administrative actions as the Board considers appropriate.

(f) FUNDING.—There are appropriated such sums as are necessary for conducting the demonstration project and for preparing and submitting the reports required under subsection (e)(1).

(g) DEFINITIONS.—In this section:

(1) DEMONSTRATION PROJECT.—The term ''demonstration project'' means the demonstration project conducted under this section.

(2) MEDICAID BENEFICIARIES.—The term ''medicaid beneficiaries'' means individuals who are enrolled in the State medicaid program.

(3) MEDICAID PROGRAM.—The term ''medicaid program'' means the health care program under title XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) MEDICARE BENEFICIARIES.—The term ''medicare beneficiaries'' means individuals who are entitled to benefits under part A or enrolled for benefits under part B of the medicare program.

(5) MEDICARE PROGRAM.—The term ''medicare program'' means the health care program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) SCHIP BENEFICIARY.—The term ''SCHIP beneficiary'' means an individual who is enrolled in SCHIP.

(7) SCHIP.—The term ''SCHIP'' means the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

**SEC. 7. ESTABLISHMENT OF END-OF-LIFE CARE ADVISORY BOARD.**

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an End-of-Life Care Advisory Board (in this section referred to as the ''Board'').

(b) STRUCTURE AND MEMBERSHIP.—

(1) IN GENERAL.—The Board shall be composed of 15 members who shall be appointed by the Secretary of Health and Human Services (in this section referred to as the ''Secretary'').

(2) REQUIRED REPRESENTATION.—The Secretary shall ensure that the following groups, organizations, and associations are represented in the membership of the Board:

(A) An end-of-life consumer advocacy organization.

(B) A senior citizen advocacy organization.

(C) A physician-based hospice or palliative care organization.

(D) A nurse-based hospice or palliative care organization.

(E) A hospice or palliative care provider organization.

(F) A hospice or palliative care representative that serves the veterans population.

(G) A physician-based medical association.

(H) A physician-based pediatric medical association.

(I) A home health-based nurses association.

(J) A hospital-based or health system-based palliative care group.

(K) A children-based or family-based hospice resource group.

(L) A cancer pain management resource group.

(M) A cancer research and policy advocacy group.

(N) An end-of-life care policy advocacy group.

(O) An interdisciplinary end-of-life care academic institution.

(3) ETHNIC DIVERSITY REQUIREMENT.—The Secretary shall ensure that the members of the Board appointed under paragraph (1) represent the ethnic diversity of the United States.

(4) PROHIBITION.—No individual who is a Federal officer or employee may serve as a member of the Board.

(5) TERMS OF APPOINTMENT.—Each member of the Board shall serve for a term determined appropriate by the Secretary.

(6) CHAIRPERSON.—The Secretary shall designate a member of the Board as chairperson.

(c) MEETINGS.—The Board shall meet at the call of the chairperson but not less often than every 3 months.

(d) DUTIES.—

(1) IN GENERAL.—The Board shall advise the Secretary on all matters related to the furnishing of end-of-life care to individuals.

(2) SPECIFIC DUTIES.—The specific duties of the Board are as follows:

(A) CONSULTING.—The Board shall consult with the Secretary regarding—

(i) the development of the outcome standards and measures under section 2;

(ii) conducting the study and submitting the report under section 3; and

(iii) the selection of private entities to conduct evaluations pursuant to section 6(c)(2).

(B) REPORT ON DEMONSTRATION PROJECT.—The Board shall submit the report required under section 6(e)(2).

(e) MEMBERS TO SERVE WITHOUT COMPENSATION.—

(1) IN GENERAL.—All members of the Board shall serve on the Board without compensation for such service.

(2) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(f) STAFF.—

(1) IN GENERAL.—The chairperson of the Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

(2) COMPENSATION.—The chairperson of the Board may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Board who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF BOARD.—Subparagraph (A) shall not be construed to apply to members of the Board.

(g) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Board without additional reimbursement (other than the employee' regular compensation), and such detail shall be without interruption or loss of civil service status or privilege.

(h) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(i) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(j) TERMINATION.—The Board shall terminate 90 days after the date on which the Board submits the report under section 6(e)(2).

(k) FUNDING.—Funding for the operation of the Board shall be from amounts otherwise appropriated to the Department of Health and Human Services.

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NATIONAL HOSPICE AND PALLIATIVE CARE ORGANIZATION,
*Alexandria, VA, July 31, 2002.*

Hon. JOHN D. ROCKEFELLER,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR ROCKEFELLER: The National Hospice and Palliative Care Organization (NHPCO), the nation's largest and oldest organization dedicated to advancing the philosophy and practice of hospice care, appreciates the opportunity to continue to work with you on your proposed draft legislation, ''Advance Planning and Compassionate Care Act of 2002''.

We applaud your efforts to address an important health care issue and appreciate your willingness to work with the NHPCO to incorporate changes relative to hospice into the legislation. Specifically, the NHPCO supports your efforts to make advance directives portable among the states, to study end of life care needs of the general population and to authorize Medicare demonstration projects on end of life care.

We look forward to working with you on your legislation.

Sincerely,

GALEN MILLER,
*Executive Vice President.*

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PARTNERSHIP FOR CARING INC.,
*Washington, DC, July 24, 2002.*

Senator JOHN D. ROCKEFELLER IV,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR ROCKEFELLER: On behalf of Partnership for Caring: America's Voices for the Dying I am writing to endorse and support the passage of the ''Compassionate Care and Advance Planning Act of 2002'' Our Board of Directors, staff and membership are grateful for and applaud your continuing leadership and deep commitment to improving care for people nearing the end of their lives.

Partnership for Caring is a national, nonprofit organization representing consumers of end-of-life care and their families. Our mission is to encourage individuals to think about and plan for the type of care they would like to receive at the end of their journey and to discuss those plans with their families, friends and physicians. Partnership makes available to the public Advance Directives specific to each state's law and educational materials on many aspects of end-of-life care and conversation. We also provide assistance via our 24 hour, toll-free help line, as well as advocacy to improve palliative and end-of-life care.

The health care systems and reimbursement mechanisms in America today are the focus of a great deal of scrutiny, especially the Medicare, Medicaid and S–CHIP programs. Unfortunately, the critically important health care components of palliative and end-of-life care too often are overlooked. We thank you and the cosponsors of the legislation for raising the visibility of this essential aspect of care and for proposing immediate improvements in our health systems as well as research and demonstration projects that will inform us about better ways to care for people in the last phase of their lives.

We are particularly pleased about the proposal to create an End-of-Life Care Advisory Board to work with CMS and HHS. This provision alone will help make certain that any federal government proposals to reform Medicare, Medicaid or S–CHIP will have the informed contributions of experts in the fields of palliative and hospice medicine. Such a Board is vitally important if these programs and other health care laws and regulations are to adequately address the needs of people who are dying. The Board's diversity will help assure that the unique concerns of minorities, children and young adults, various religious and ethnic groups are heard. Consumers and providers of end-of-life care will both have a voice.

The inclusion of the S–CHIP program in legislation dealing with end-of-life care deserves special thanks. While no one likes to think about children dying, about 53,000 children die each year. Research on caring for terminally ill pediatric patients is minimal and dying children have been woefully underserved in the areas of pain management and hospice care. Mandating that at least one demonstration project focus on pediatric issues is step in the right direction and will benefit thousands of children whose young lives will end too soon.

Medicare beneficiaries have a compelling reason to seek improvements in end-of-life care: everyone who becomes a Medicare beneficiary will die a Medicare beneficiary. Today 27% of all Medicare expenditures are spent caring for people in the last year of their lives, frequently on costly, unnecessary procedures in hospitals and nursing homes. Although hospice care currently accounts for only 1.3% of all Medicare expenditures that percentage will grow as the baby-boomers age and seek a qualitatively different end-of-life scenario than the ones many of them watched their parents and grandparents endure. The demonstration projects authorized by your legislation will allow us to learn more about our choices and become better educated consumers of care.

As you will know, caring for an elderly parent, a sick spouse, or a dying child, can

be emotionally, economically, and physically draining under any circumstance. As a consumer based organization, Partnership for Caring knows first hand how much worse it is for those who have never discussed with their loved ones their wishes for end-of-life care, who do not know what resources are available, or who are unaware of palliative and hospice care and how to access these services. Health care providers, too, are often caught having to make decisions or talk to family members without benefit of knowing their patients' wishes or alternative services in their communities. ''The Compassionate Care and Advance Planning Act of 2002'' will help educate the pubic and providers as well as encourage conversations and advance planning. Insuring that each of us can receive the kind of care we would want for ourselves and our loved ones as we near death should be a priority concern as these programs look to the future.

Again, our thanks to you and all of the senators who join in supporting this bill. Insuring that each of us can receive the kind of care we want for ourselves and our loved ones as we near death should be a national priority as we look to the future of health care. We at Partnership for Caring will be working with you and our partner organizations to assure passage of the ''Compassionate Care Act'' and, more importantly, to assure better quality care for all our loved ones and for ourselves.

Sincerely,

KAREN ORLOFF KAPLAN,
*President and CEO.*

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AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE,
*Washington, DC, July 29, 2002.*

Hon. JOHN D. ROCKEFELLER IV,
*U.S. Senate, Hart Office Building, Washington, DC.*

DEAR SENATOR ROCKEFELLER: On behalf of the American Bar Association, I am writing to commend you and your co-sponsors for introducing the Advance Planning and Compassionate Care Act of 2002. This legislation takes several important steps beyond the 1990 Patient Self-Determination Act (PSDA) which introduced the term ''Advance Directive'' to the American vernacular. The American Bar Association supported the enactment of the PSDA and has continued to encourage greater access to the tools of advance planning, greater uniformity and portability of advance directives, and greater responsiveness to the needs of patients in health care systems at all stages of life, including end-of-life care.

The Advance Planning and Compassionate Care Act takes several modest but vital steps towards these goals. Under its provisions there will be an opportunity to discuss advance directives with an appropriately trained individual upon admission to a health care facility, which will help transform the existing paper-disclosure requirement into a meaningful vehicle for discussion and understanding. This will do much to combat the misperception that advance planning means merely signing a form. Good advance planning is, in essence, good communication, not mere form-drafting.

The portability and research mandates concerning advance directives are seriously needed to move public policy beyond the current Balkanization of legal formalities that characterizes current advance-directive law. In addition, the mandate to examine the feasibility and desirability of creating a uniform advance directive will generate much-needed fresh thinking on the strategies that may best encourage advance planning. Sadly, twelve years after the PSDA, the majority of adults still avoid the necessary task of planning for end-of-life decision-making.

The National Information Hotline will provide a valuable consumer tool for information about advance directives and end-of-life care options. Finally, the mandates for standards development, evaluation and demonstration projects, as well as coverage provisions, will help fill the inexcusable chasm in current knowledge, regulation, and financing of end-of-life care under Medicare and Medicaid. Historically, end-of-life decision-making and quality of care have been relegated to the shadows of health and long-term care policy. This Act will help the public and policy makers understand the issues and options in the light of day.

The ABA strongly supports this legislation. We commend your leadership in seeking to enhance patient autonomy and end-of-life care, and we stand ready to be a resource in these efforts.

Sincerely,

ROBERT D. EVANS.

Ms. COLLINS. Mr. President, I am pleased to be joining my colleague from West Virginia, Senator ROCKEFELLER, in introducing the Advance Planning and Compassionate Care Act, which is intended to improve the way we care for people at the end of their lives.

Noted health economist, Uwe Reinhardt, once observed that ''Americans are the only people on earth who believe that death is negotiable.'' Advancements in medicine, public health, and technology have enabled more and more of us to live longer and healthier lives. However, when medical treatment can no longer promise a continuation of life, patients and their families should not have to fear that the process of dying will be marked by preventable pain, avoidable distress, or care that is inconsistent with their values or wishes.

The fact is, dying is a universal experience, and it is time to re-examine how we approach death and dying and how we care for people at the end of their lives. Clearly, there is more that we can do to relieve suffering, respect personal choice and dignity, and provide opportunities for people to find meaning and comfort at life's conclusion.

Unfortunately, most Medicare patients and their physicians do not currently discuss death or routinely make advance plans for end-of-life care. As a result, about one-fourth of Medicare funds are now spent on care at the end of life that is geared toward expensive, high-technology interventions and ''rescue'' care. While most Americans say they would prefer to die at home, studies show that almost 80 percent die in institutions where they may be in pain, and where they are subjected to high-tech treatments that merely prolong suffering.

Moreover, according to a Dartmouth study conducted by Dr. Jack Wennberg, where a patient lives has a direct impact on how that patient dies. The study found that the amount of medical treatment Americans receive in their final months varies tremendously in the different parts of the country, and it concluded that the determination of whether or not an older patient dies in the hospital probably has more to do with the supply of hospital beds than the patient's needs or preference.

The Advance Planning and Compassionate Care Act is intended to help us improve the way our health care system serves patients at the end of their lives. Among other provisions, the bill makes a number of changes to the Patient Self-Determination Act of 1990 to facilitate appropriate discussions and individual autonomy in making difficult discussions about end-of-life care. For instance, the legislation requires that every Medicare beneficiary receiving care in a hospital or nursing facility be given the opportunity to discuss end-of-life care and the preparation of an advanced directive with an appropriately trained professional within the institution. The legislation also requires that if a patient has an advanced directive, it must be displayed in a prominent place in the medical record so that all the doctors and nurses can clearly see it.

In addition, the legislation authorizes the Department of Health and Human Services to study end-of-life issues and also to develop demonstration projects to develop models for end-of-life care for Medicare, Medicaid, and State Child Health Insurance Program, S–CHIP, patients. The Institute of Medicine recently released a report that concluded that we need to improve palliative and end-of-life care for children with terminal illnesses. According to the report, far too often children with fatal or potentially fatal conditions and their families fail to receive competent, compassionate, and consistent care that meets their physical, emotional, and spiritual needs. Our legislation therefore requires that at least one of these demonstrations focus particularly on pediatric end-of-life care.

Finally, the legislation establishes a telephone hotline to provide consumer information and advice concerning advance directives, end-of-life issues, and medical decisionmaking and also establishes an End-of-Life Care Advisory Board to assist the Secretary of Health and Human Services in developing outcome standards and measures to evaluate end-of-life care programs and projects.

The legislation we are introducing today is particularly important in light of the debate on physician-assisted suicide. The desire for assisted suicide is generally driven by concerns about the quality of care for the terminally ill; by the fear of prolonged pain, loss of dignity and emotional strain on family members. Such worries would recede and support for assisted suicide would evaporate if better palliative care and more effective pain management were widely available.

Patients and their families should be able to trust that the care they receive at the end of their lives is not only of high quality, but also that it respects their desires for peace, autonomy, and

dignity. The Advanced Planning and Compassionate Care Act that Senator ROCKEFELLER and I are introducing today will give us some of the tools that we need to improve care of the dying in this country, and I urge all of my colleagues to join us as cosponsors.

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By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2858. A bill to modify the project for navigation, Union River, Maine; to the Committee on Environment and Public Works.

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By Ms. SNOWE (for herself and Ms. COLLINS):

S. 2859. A bill to deauthorize the project for navigation, Northeast Harbor, Maine; to the Committee on Environment and Public Works.

Ms. SNOWE. Mr. President, I introduce two bills for harbors in Maine, one to deauthorize the Federal Navigation Project in Northeast Harbor, and the second to redesignate the Upper Basin of the Union River Federal Navigational Channel as an anchorage. The bills, cosponsored by Senator COLLINS, will help strengthen the economic viability of these two popular Maine harbors.

Because of changing harbor usage over the last 45 years, the Town of Mount Desert has requested that Northeast Harbor be withdrawn from the Federal Navigation Project. This removal will allow the town to adapt to the high demand for moorings and will allow residents to obtain moorings in a more timely manner. The Harbor has now reached capacity for both moorings and shoreside facilities and has a waiting list of over sixty people along with commercial operators who have been waiting for years to obtain a mooring for their commercial vessels.

The Harbor was authorized in 1945 and constructed in 1954 as a mixed-use commercial fishing/recreational boating harbor—and it still is today. It was dredged in the early 1950s to provide more space for recreational boating and the U.S. Army Corps of Engineers has informed the town that Northeast Harbor would be very low on its dredging priority list as it has become primarily a recreational harbor. The town says it realizes that, once it is no longer part of the Federal Navigational Project, any further dredging within the harbor would be carried out at town expense.

The language will not only allow for more recreational moorages and commercial activities, it will also be an economic boost to Northeast Harbor, which is surrounded by Acadia National Park, one of the nation's most visited parks—both by land and by water.

My second bill supports the City of Ellsworth's efforts to revitalize the Union River navigation channel, harbor, and shoreline. The modification called for in my legislation will redesignate a portion of the Union River as an anchorage area. This redesignation will allow for a greater number of moorings in the harbor without interfering with navigation and will further improve the City's revitalization efforts for the harbor area.

I have worked with the New England Division of the Corps to draft these bills and the language has been approved by Army Corps Headquarters in Washington. I look forward to working with my colleagues for their passage, either as stand alone bills or as separate provisions in the Corps reauthorization bill, the Water Resources Development Act of 2002, that Congress is currently drafting.

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By Mr. ROCKEFELLER (for himself, Mr. CHAFEE, Mr. KENNEDY, and Mr. HATCH):

S. 2860. A bill to amend title XXI of the Social Security Act to modify the rules for redistribution and extended availability of fiscal year 2000 and subsequent fiscal year allotments under the State children's health insurance program, and for other purposes; to the Committee on France.

Mr. ROCKEFELLER. Mr. President, I introduce a bill that will improve and protect health insurance for our nation's children. The Children's Health Improvement and Protection Act of 2002, CHIP Act, brings us back to the basics of health care—the fundamental philosophy that no child should go without needed health care. I'm pleased to be joined by my good friends Senator CHAFEE and Senator KENNEDY to introduce the Children's Health Insurance Improvement and Protection Act of 2002.

Established in 1997 to reduce the number of uninsured children, the Children's Health Insurance Program has been an unqualified success. Last year, 4.6 million children were enrolled in CHIP and the percentage of children without health insurance has declined in recent years. In my state of West Virginia, the CHIP program provides health coverage to over 20,000 children. Health insurance coverage is key to assuring children's access to appropriate and adequate health care, including preventive services. Research demonstrates that uninsured children are more likely to lack a usual source of care, to go without needed care, and to experience worse health outcomes than children with coverage. Uninsured children who are injured are 30 percent less likely than insured children to receive medical treatment and three times more likely not to get a needed prescription.

However, the continued success of the CHIP program is now in serious jeopardy. The Bush Administration projects that 900,000 children will lose their health coverage between fiscal years 2003 and 2006, if Congress does not take appropriate action. This is because even as state enrollment and spending rapidly increases, federal CHIP funding dropped by more than $1 billion this year and will be reduced in each of the next two years. Known as the ''CHIP Dip,'' this reduction has no underlying health policy justification; it was solely the result of the budget compromises we had to make when enacting the balanced budget deal in 1997.

As a result, a number of states will have insufficient federal funding to sustain their enrollment and they will have no choice but to scale back or limit their CHIP programs. As enrollment is cut, the number of uninsured children will increase, and as a consequence, sick children will get sicker. The biggest problem that will result from enrollment cuts in the CHIP program are the future health problems of adults who as children could have received benefits under CHIP. Yet, even as states face this funding shortfall, under federal rules, nearly $3 billion in federal CHIP funding is scheduled to expire and revert back to the Treasury over the next two years. If Congress does not act, in order to maintain our current enrollment levels, West Virginia will run out of CHIP funding in 2005.

We cannot allow this to happen. We need a comprehensive and reasonable approach to shore up CHIP financing in order to avert the devastating enrollment decline and make sure that our children are protected into the future. This legislation will extend the life of the expiring funds and fully restore CHIP funding to the pre- ''dip'' levels. This legislation will provide West Virginia with $117 million over the 2004–2012 period allowing them to strengthen and protect children's access to health care.

I urge Congress to enact this legislation and ensure the continued success of the CHIP program and sustain the significant progress CHIP has made in reducing the ranks of uninsured children. Mr. President I ask unanimous consent that the full 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. 2860

*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 ''Children's Health Improvement and Protection Act of 2002''.

**SEC. 2. CHANGES TO RULES FOR REDISTRIBUTION AND EXTENDED AVAILABILITY OF FISCAL YEAR 2000 AND SUBSEQUENT FISCAL YEAR ALLOTMENTS.**

Section 2104(g) of the Social Security Act (42 U.S.C. 1397dd(g)) is amended—

(1) in the subsection heading—

(A) by striking ''AND'' after ''1998'' and inserting a comma; and

(B) by inserting '', AND 2000 AND SUBSEQUENT FISCAL YEAR'' after ''1999'';

(2) in paragraph (1)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ''or for fiscal year 2000 by the end of fiscal year 2002, or allotments for fiscal year 2001 and subsequent fiscal years by the end of the last fiscal year for which such allotments are available under subsection (e), subject to paragraph (2)(C)'' after ''2001,''; and

(II) by striking ''1998 or 1999'' and inserting ''1998, 1999, 2000, or subsequent fiscal year'';

(ii) in clause (i)—

(I) in subclause (I), by striking ''or'' at the end;

(II) in subclause (II), by striking the period and inserting a semicolon; and

(III) by adding at the end the following:

''(III) the fiscal year 2000 allotment, the amount by which the State's expenditures under this title in fiscal years 2000, 2001, and 2002 exceed the State's allotment for fiscal year 2000 under subsection (b);

''(IV) the fiscal year 2001 allotment, the amount by which the State's expenditures under this title in fiscal years 2001, 2002, and 2003 exceed the State's allotment for fiscal year 2001 under subsection (b); or

''(V) the allotment for any subsequent fiscal year, the amount by which the State's expenditures under this title in the period such allotment is available under subsection (e) exceeds the State's allotment for that fiscal year under subsection (b).''; and

(iii) in clause (ii), by striking ''1998 or 1999 allotment'' and inserting ''1998, 1999, 2000, or subsequent fiscal year allotment'';

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking ''with respect to fiscal year 1998 or 1999'';

(ii) in clause (ii)—

(I) by inserting ''with respect to fiscal year 1998 or 1999,'' after ''subsection (e)''; and

(II) by striking ''and'' at the end;

(iii) by redesignating clause (iii) as clause (iv); and

(iv) by inserting after clause (ii), the following:

''(iii) notwithstanding subsection (e), with respect to fiscal year 2000 or any subsequent fiscal year, shall remain available for expenditure by the State through the end of the fiscal year in which the State is allotted a redistribution under this paragraph; and'';

(3) in paragraph (2)—

(A) in the paragraph heading, by striking ''1998 AND 1999'' and inserting ''1998, 1999, 2000, AND SUBSEQUENT FISCAL YEAR'';

(B) in subparagraph (A), by adding at the end the following:

''(iii) FISCAL YEAR 2000 ALLOTMENT.—Of the amounts allotted to a State pursuant to this section for fiscal year 2000 that were not expended by the State by the end of fiscal year 2002, the amount specified in subparagraph (B) for fiscal year 2000 for such State shall remain available for expenditure by the State through the end of fiscal year 2003.

''(iv) FISCAL YEAR 2001 ALLOTMENT.—Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, the amount specified in subparagraph (B) for fiscal year 2001 for such State shall remain available for expenditure by the State through the end of 2004.

''(v) SUBSEQUENT FISCAL YEAR ALLOTMENTS.—Of the amounts allotted to a State pursuant to this section for any fiscal year after 2001, that were not expended by the State by the end of the last fiscal year such amounts are available under subsection (e), the amount specified in subparagraph (B) for that fiscal year for such State shall remain available for expenditure by the State through the end of the fiscal year following the last fiscal year such amounts are available under subsection (e).'';

(C) in subparagraph (B), by striking ''The'' and inserting ''Subject to subparagraph (C), the'';

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

(E) by inserting after subparagraph (B), the following:

''(C) FLOOR FOR FISCAL YEARS 2000 AND 2001.—For fiscal years 2000 and 2001, if the total amounts that would otherwise be redistributed under paragraph (1) exceed 60 percent of the total amount available for redistribution under subsection (f) for the fiscal year, the amount remaining available for expenditure by the State under subparagraph (A) for such fiscal years shall be—

''(i) the amount equal to—

''(I) 40 percent of the total amount available for redistribution under subsection (f) from the allotments for the applicable fiscal year; multiplied by

''(II) the ratio of the amount of such State's unexpended allotment for that fiscal year to the total amount available for redistribution under subsection (f) from the allotments for the fiscal year.''; and

(4) in paragraph (3), by adding at the end the following: ''For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for any fiscal year after 1999, the Secretary shall use the amount reported by the States not later than November 30 of the applicable calendar year on HCFA Form 64 or HCFA Form 21, as approved by the Secretary.''.

**SEC. 3. ESTABLISHMENT OF CASELOAD STABILIZATION POOL AND ADDITIONAL REDISTRIBUTION OF ALLOTMENTS.**

Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following:

''(h) REDISTRIBUTION OF CASELOAD STABILIZATION POOL AMOUNTS.—

''(1) ADDITIONAL REDISTRIBUTION TO STABILIZE CASELOADS.—

''(A) IN GENERAL.—With respect to fiscal year 2003 and any subsequent fiscal year, the Secretary shall redistribute to an eligible State (as defined in subparagraph (B)) the amount available for redistribution to the State (as determined under subparagraph (C)) from the caseload stabilization pool established under paragraph (3).

''(B) DEFINITION OF ELIGIBLE STATE.—For purposes of subparagraph (A), an eligible State is a State whose total expenditures under this title through the end of the previous fiscal year exceed the total allotments made available to the State under subsection (b) or subsection (c) (not including amounts made available under subsection (f)) through the previous fiscal year.

''(C) AMOUNT OF ADDITIONAL REDISTRIBUTION.—For purposes of subparagraph (A), the amount available for redistribution to a State under subparagraph (A) is equal to—

''(i) the ratio of the State's allotment for the previous fiscal year under subsection (b) or subsection (c) to the total allotments made available under such subsections to eligible States as defined under subparagraph (A) for the previous fiscal year; multiplied by

''(ii) the total amounts available in the caseload stabilization pool established under paragraph (3).

''(2) PERIOD OF AVAILABILITY.—Amounts redistributed under this subsection shall remain available for expenditure by the State through the end of the fiscal year in which the State receives any such amounts.

''(3) CASELOAD STABILIZATION POOL.—For purposes of making a redistribution under paragraph (1), the Secretary shall establish a caseload stabilization pool that includes the following amounts:

''(A) Any amount made available to a State under subsection (g) but not expended within the periods required under subparagraphs (g)(1)(B)(ii), (g)(1)(B)(iii), or (g)(2)(A).

''(B) Any amount made available to a State under this subsection but not expended within the period required under paragraph (2).''.

**SEC. 4. RESTORATION OF SCHIP FUNDING FOR FISCAL YEARS 2003 AND 2004.**

(a) IN GENERAL.—Paragraphs (6) and (7) of section 2104(a) of the Social Security Act (42 U.S.C. 1397dd(a)) are amended by striking ''$3,150,000,000'' each place it appears and inserting ''$4,275,000,000''.

(b) ADDITIONAL ALLOTMENT TO TERRITORIES.—Section 2104(c)(4)(B) of the Social Security Act (42 U.S.C. 1397dd(c)(4)(B)) is amended by striking ''$25,200,000 for each of fiscal years 2002 through 2004'' and inserting ''$25,200,000 for fiscal year 2002, $34,200,000 for each of fiscal years 2003 and 2004''.

Mr. CHAFEE. Mr. President, I am pleased to join Senator ROCKEFELLER in introducing the Children's Health Improvement and Protection Act of 2002.

The Children's Health Improvement and Protection Act of 2002 will finally provide long-term stability to the State Children's Health Insurance Program. While SCHIP has been extremely successful at enrolling and insuring low-income and uninsured children since its inception in 1997, the continued success of this program is in question. In fact, it is estimated that almost a million children will lose their SCHIP coverage over the next three years if a legislative remedy is not signed into law to prevent this from happening.

When SCHIP was created by the Balanced Budget Act of 1997, states were given their annual SCHIP allotment based on the number of uninsured and low-income children in each state. According to the Centers for Medicare and Medicaid Services, these state allotments range from $3.5 million for Vermont to $855 million for California. While the percentage of children without health insurance has declined over the past couple of years due to these allotments, the SCHIP allotments for all states are 26 percent lower for Fiscal Years 2002, 2003, and 2004. Each of these years results in a decline of $1 billion for state SCHIP allotments. This phenomenon is known as the ''CHIP-Dip.'' There was no hidden policy agenda behind this steady decline in funding; it was based on a lack of federal funding for SCHIP at the time this program was enacted.

In addition, BBA gave states only three years to roll-over unexpended funds before these funds are given back to the federal treasury for redistribution to other states that have used up their entire allotments. According to the Department of Health and Human Services, a total of $3.2 billion in federal SCHIP funds is scheduled to expire and revert to Treasury over the next two years.

These funding inadequacies not only create instability in the program, but they pose negative consequences for each state over the long-haul due to the uncertainty of federal commitment to SCHIP. The likely result will be that states will either have to cap enrollment in their SCHIP programs, push children out of their programs, or scale back benefits to make up for these budget shortfalls. The end result

will be that children who once had access to health insurance will no longer get the care they need.

Our bill will remedy these funding problems. It will do so by fixing the ''CHIP-Dip'' and by extending the life of expiring funds to states that need the assistance to take care of funding shortfalls. This legislation is crucial to my state of Rhode Island. Without this legislative remedy, Rhode Island is set to run out of SCHIP funds by FY 2004. At 4.5 percent, Rhode Island currently has the lowest uninsured rate of any state in the nation for children. This bill will enable Rhode Island to continue offering health coverage to this vulnerable population.

I urge my colleagues to join Senator ROCKEFELLER and me in supporting this important legislation. It is a crucial step in ensuring that our nation's children will have long-term access to quality health insurance.

Mr. KENNEDY. Mr. President, I am pleased to introduce the Children's Health Improvement and Protection Act today, along with my good friends Senator ORRIN HATCH, Senator JAY ROCKEFELLER, and Senator LINCOLN CHAFEE. This bill will provide needed funding to keep children enrolled in the Children's Health Insurance Program and to allow the program to grow. Without this legislation, hundreds of thousands of children will lose their CHIP coverage and rejoin the ranks of the uninsured.

Monday is the fifth anniversary of the Children's Health Insurance Program. Senator HATCH and I have worked together on many proposals, but none has had more lasting benefit for millions of American children than our legislation to create CHIP. We first proposed CHIP after we became acutely aware of the health defects facing children and the need to assure that every child got a healthy start in life. Before we passed CHIP, 500,000 children with asthma never saw a doctor. Another 600,000 children with earaches and 600,000 with sore throats never received medical care.

A sick child can't learn. A child who can't hear the teacher can't learn. A child who can't see the doctor when they're sick can't learn. That's why uninsured children are more likely to fall behind or drop out of school altogether.

We also became aware of the ravages of smoking on health, and that the key to addressing this problem was to discourage children from starting to smoke. In my own state of Massachusetts, there had been a very successful campaign to raise money to expand children's health coverage by raising the cigarette tax. This united anti-tobacco activists and child health advocates.

So Senator HATCH and I decided that the winning, fiscally responsible, right health policy approach was to develop a major expansion of children's health insurance and finance it with an increase in the tobacco tax.

And what a success CHIP has been. This legislation has touched every community in America. Last year, over 4.5 million children received health insurance through either Children's Health Insurance Program or through Medicaid expansions under the CHIP program. Last year, 105,000 children in Massachusetts were covered through these programs, and many other states have had similar successes.

Despite the clear evidence that health insurance provides children with a healthier start, funding cuts to the CHIP program of more than $1 billion this year and each of the next two years puts the gains we have made in insuring children at risk. This ''CHIP dip'' is a result of the budget constraints when CHIP was enacted in 1997 as part of the Balanced Budget Act. This funding cut comes at the same time enrollment in the program is rising and will cause 900,000 children to lose the health insurance they have today through CHIP.

While states are facing a drop in funding that will cause them to drop insured children, almost $3 billion in unspent CHIP funds will be lost if we do nothing. CHIP funds must be spent within three years of allocation. Because of a mismatch between the time unspent funds were reallocated to the states and when the states needed the funds, some states will not be able to use all of their CHIP funds within the allocation period.

It makes no sense to have funds expire and revert to the Treasury when we know states will be facing a funding drop that will cause them to cut children from their programs. One of this nation's most fundamental guarantees should be that every child has the opportunity to succeed in life. But that commitment rings hollow if children are doomed to a lifetime of disability and illness because they lack needed health care in their early years.

That is why we are introducing the Children's Health Insurance Program. This bill will allow states to maintain and expand their CHIP programs. It lets states keep a portion of their unspent funds that would otherwise expire. It also establishes a new caseload stabilization pool with funds that would otherwise expire. The pool will direct unspent funds to states that are expected to use up all their CHIP funds. Finally, the bill provides additional CHIP funding for fiscal years 2003 and 2004 so that CHIP enrollment can be maintained and expanded. This legislation will move us one important step closer to fulfilling the promise that no child in America will be left behind because of inadequate health care coverage.

I urge my colleagues to support this important legislation.

Mr. HATCH. Mr. President, today, Senators ROCKEFELLER, CHAFEE, KENNEDY, and I are introducing legislation to make certain that States have adequate funding for the Children's Health Insurance Program, otherwise known as CHIP.

I cosponsor this legislation to reflect my concern that, unless the Congress addresses this issue, thousands of children may risk losing their health insurance coverage. CHIP has proven to be an enormously popular program, which has provided much needed health insurance to literally millions of low-income children. It helps the poorest of the poor families who are not Medicaid-eligible.

We cannot afford to stand back now and watch those efforts be undermined because of funding problems that Congress should correct. That is the intent, as I understand it, of the Rockefeller-Chafee bill.

As most of my colleagues are aware, when CHIP was established in 1997, Congress committed $20 billion over five years and a total of $40 billion over 10 years for the program. For each fiscal year 1999 through 2001, Congress allocated $4.3 billion; yet for the fiscal years 2002 through 2004, Congress allocated $3 billion per year for CHIP programs. This so-called ''CHIP'' dip may reduce funding levels in States that are just beginning to ramp up their programs.

I am concerned that while States will have some unspent CHIP moneys available to them, that those funds still might not be enough to address the ''CHIP dip'' and the expanding CHIP population. We need to deal with this issue and we need to deal with the nearly $3 billion in federal CHIP moneys scheduled to revert back to the Treasury in fiscal year 2002 and 2003.

My cosponsorship of this legislation reflects my commitment to address these issues, although I recognize that there are a number of issues associated with this legislation that will need to be worked out. I accept the assurances of my fellow cosponsors that they will work with me to address those issues as the bill moves forward in the Finance Committee.

Let me also add that I am aware that many of my colleagues have additional policy issues regarding the CHIP program that they feel should be addressed. Know I do. I am particularly concerned by recent legislation, approved by the Finance Committee, which would extend coverage under the CHIP program to pregnant women. Now, I wholeheartedly support providing expectant mothers health care assistance. But, I believe that before we extend coverage under CHIP to any adult, States need to demonstrate that they are covering, to the greatest extend possible, all eligible children.

The CHIP program is one of my proudest accomplishments. I want to continue to maintain the integrity of this program. The only purpose of CHIP was to extend access to health insurance to poor kids. As one of the prime authors of the legislation, I can assure my colleagues that it was not our intent that the program be expanded to address the entire problem of health care for the uninsured a piece at a time. Covering the uninsured is a worthy goal and one which we need to address, but that was not the purpose

of CHIP. We were dealing with a special problem: the up to 10 million children who did not have access to health insurance. We ought not lose sight of this. I am confident we can come to an agreement on measures to ensure that needy children receive the health care they deserve and thus I am pleased to join with my colleagues today.

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By Mr. INHOFE:

S. 2861. A bill to empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes; to the Committee on Finance.

Mr. INHOFE. Mr. President; I introduce The Transportation Empowerment Act which will allow states to keep a majority of the federal gas tax dollars raised in their state. Similar to legislation introduced by our former colleague Connie Mack, ''The Transportation Empowerment Act'' restores to states and local communities the ability to make their own transportation decisions without the interference of Washington.

This proposal is very straightforward. It streamlines the federal-aid highway program into four core areas: Interstate, Federal Lands, Safety and Research. The proposed bill provides for continued general fund support for transit grants and authorizes states to enter into multi state compacts for planning and financing regional transportation needs.

The federal tax is kept in place for a four-year transition period, beginning in FY04. After funding the core programs and paying off outstanding bills, the balance is returned to the states in a block grant. At the end of the transition period, in FY07, the federal tax is reduced to two cents per gallon.

I have long believed that the best decisions are those made at the local level. Unfortunately, many of the transportation choices made by cities and states are governed by federal rules and regulations. This bill returns to states the responsibility and resources to make their own transportation decisions.

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By Mr. McCAIN (for himself, Mr. HOLLINGS, Ms. CANTWELL, and Mr. BIDEN):

S. 2862. A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, I am pleased to be joined by Senators HOLLINGS, CANTWELL, and BIDEN in introducing the Firefighting Research and Coordination Act. This legislation would provide for the establishment of the scientific basis for new firefighting technology standards; improved coordination between Federal, state, and local fire officials in training and response to a terrorist attack or a national emergency; and authorize the National Fire Academy to offer training to improve the ability of firefighters to respond to events such as the tragedy of September 11, 2001.

The purpose of this legislation is to act upon some of the lessons learned from the tragic terrorist attacks of September 11, 2001, and address other problems faced by the fire services. On September 11, the New York City fire fighters and emergency service personnel acted with great heroism in selflessly rushing to the World Trade Center and saving the lives of many Americans. Tragically, 343 firefighters and EMS technicians paid the ultimate price in the service of their country. While we strive to prevent any future attack in the United States, it is our duty to ensure that we are adequately prepared for any future catastrophic act of terrorism. In addition, we must recognize that many of the preparations we make to improve the response to national emergencies will also prepare our firefighters for their everyday role in protecting our families and homes.

Today's firefighters use a variety of technologies including thermal imaging equipment, devices for locating firefighters and victims, and state-of-the-art protective suits to fight fires, clean up chemical or hazardous waste spills, and contend with potential terrorist devices. The Federal government's Firefighter Investment and Response Enhancement, FIRE, program is authorized for $900 million this year to assist local fire departments in purchasing this high-tech equipment. It is important that the American taxpayers' money is used for effective new equipment that will protect our local communities.

Unfortunately, there are no uniform technical standards for this new equipment for combating fires. Without such standards, local fire companies may purchase equipment that does not satisfy their needs, or even purchase faulty equipment. For example, Montgomery County, MD, spent $40,000 on ''Level B'' protective suits that they cannot use, because these suits have ''booties'' that are not compatible with the firefighter's boots. Currently, local fire departments also have problems using each other's fire hoses and air bottles for self-contained breathing apparatuses because of inconsistent equipment standards. It is important that new equipment performs properly and is compatible with older equipment.

This bill seeks to address the need for new equipment standards by establishing a scientific basis for voluntary consensus standards. It would authorize the U.S. Fire Administrator to work with the National Institute of Standards and Technology, the Inter-Agency Board for Equipment Standardization and Inter-Operability, and other interested parties to establish measurement techniques and testing methodologies for new firefighting equipment. These new techniques and methodologies will act as a scientific basis for the development of voluntary consensus standards. This bill would allow the Federal government to cooperate with the private sector in developing the basic uniform performance criteria and technical standards to ensure that effectiveness and compatibility of these new technologies.

Many issues regarding coordination surfaced on September 11. Titan Systems Corporation recently issued an after-action report, on behalf of the fire department of Arlington County, VA, which highlighted problems between the coordination of Washington D.C., and Arlington County fire departments. The report also cited the confusion caused by a large influx of self-dispatched volunteers, and increased risk faced by the ''bonafide responders.'' These conclusions are consistent with an article by the current U.S. Fire Administrator, R. David Paulison, in the June 1993 issue of Fire Chief magazine, where he described being overwhelmed by the number of uncoordinated volunteer efforts that poured into Florida after Hurricane Andrew. Additionally, many fire officials and the General Accounting Office have highlighted the duplicative nature of many Federal programs and the need for better coordination between federal, state, and local officials.

The bill also seeks to address these problems by directing the U.S. Fire Administrator to work with state and local fire service officials to establish nationwide and state mutual aid systems for responding to national emergencies. These mutual aid plans would include collection of accurate asset and resource information to ensure that local fire services could work together to deploy equipment and personnel effectively during an emergency. This legislation would also establish the U.S. Fire Administrator as the primary point of contact within the Federal government for state and local firefighting units, in order to ensure greater Federal coordination and interface with state and local officials in preparing and responding to terrorist attacks, hurricanes, earthquakes, or other national emergencies. In addition, the bill would direct the U.S. Fire Administrator to report on the need for a strategy for deploying volunteers, including the use of a national credentialing system. Currently, there is a system for credentialing volunteers to fight wildfires that has proven effective, and the development of a similar system may prevent some of the confusion that occurred at the World Trade Center and Pentagon on September 11.

Finally, the bill would improve the training of state and local firefighters. The bill would authorize the National Fire Academy to offer courses in building collapse rescue; the use of technology in response to fires caused by

terrorist attacks and other national emergencies; leadership and strategic skills including integrated management systems operations; deployment of new technology for fighting forest and wild fires; fighting fires at ports; and other courses related to tactics and strategies for responding to terrorist incidents and other fire services' needs.

This bill would also direct the U.S. Fire Administrator to coordinate the National Fire Academy's training programs with the Attorney General, Secretary of Health and Human Services and other Federal agencies to prevent the duplication in training programs that has been identified by the General Accounting Office.

I am pleased to announce that this legislation is supported by the National Volunteer Fire Council; the Congressional Fire Services Institute; the National Fire Protection Association; the International Association of Fire Chiefs; the International Association of Fire Fighters; the International Association of Arson Investigators; and the International Fire Service Training Association. I look forward to working with my colleagues to ensure passage of this legislation. I am aware that some issues, including funding of this legislation, need to be addressed.

Last year, we were caught unprepared and paid a terrible price as a result. We must ensure that future firefighters are adequately equipped and trained, and are working in coordination to respond to any future national emergencies. Every day firefighters rush into burning buildings to save the lives of their fellow Americans. It is our duty to adequately equip and protect them.

Mrs. LINCOLN. Mr. President, I introduced legislation designating the year beginning February 1, 2003, as the Year of the Blues and requesting that the President issue a proclamation calling on the people of the United States to observe the ''Year of the Blues'' with appropriate ceremonies, activities, and educational programs. I am joined by Senators COCHRAN, THOMPSON, and FRIST and ask unanimous consent that it be printed in the RECORD.

It has been said that ''Blues is more than music; Blues is culture. Blues is America.'' As a native of Helena, Arkansas, I could not agree more. Growing up in the Delta, I often listened to the blues during the famous ''King Biscuit Time'' show on my hometown station, KFFA radio. The songs I heard often told stories of both celebration and triumph, as well as sorrow and struggle.

Although its roots are in the tradition of the primitive songs of the old Southern sharecroppers, the blues has left an important cultural legacy in our country and has documented African-American history in the last century. As the blues began to transform in style and content throughout the twentieth century, its evolution paralleled the migration of American life from a rural, agricultural society to an urban industrialized nation. The blues has also left an indelible impression on other forms of music with its influence heard in jazz, rock and roll, rhythm and blues, country, and even classical music. Despite these facts, though, many young people today do not understand the rich heritage of the blues or recognize its impact on our nation and our world.

That is why I am delighted to introduce this resolution and participate in the Year of the Blues project. Coordinated by The Blues Foundation and Experience Music Project, The Year of the Blues is a multi-faceted entertainment, education, and outreach program recently formed to both celebrate and create greater awareness for the blues and its place in the history and evolution of music and culture, both in the United States and around the world. The program is anchored by high profile events, and beginning next year, it will feature a wide array of participants, projects, and components designed to reach a large audience, as well as support blues oriented education and outreach programs, such as Blues in the Schools.

This project also takes on a special meaning for me because I am a ''daughter of the Delta,'' and my hometown of Helena has played a large role in the development of the blues. Today, Helena serves as a temporary blues Mecca each October when the three day King Biscuit Blues Festival takes place. And as I noted earlier, it is also the site of one of the longest running daily music shows, ''King Biscuit Time,'' which continues to air every weekday at 12:15 pm on KFFA radio from the Delta Cultural Center Visitors' Center. As long as I can remember, ''King Biscuit Time'' has been an integral part of life and culture in the Delta. Debuting in November 1941, ''King Biscuit Time'' originally featured famous harmonica player Sonny Boy Williamson, guitarist Robert Junior Lockwood, and the King Biscuit Entertainers. When recently noting the uniqueness of the show, long-time host ''Sunshine'' Sonny Payne recalled that many of the songs played on ''King Biscuit Time'' originated during the live broadcasts, and in some cases, words to the songs were known to change day to day. After becoming involved with this project, I recently came across an article ''Pass the biscuits, cause it's King Biscuit Time . . . '' written by freelance writer Lex Gillespie. I believe this article provides an accurate account of the development of blues in the South, and I ask unanimous consent to submit it for the RECORD.

So as you can see, the blues has been an important part of my life and the life of many others. It's a style of music that is, in its essence, truly American. But as we move into a new century and embrace new forms and styles of music, we must not allow today's youth to forget the legacy of our past. By teaching the blues, promoting the blues, and celebrating the blues, we can ensure that the rich culture and heritage of our forefathers will always live on. I urge my colleagues to support this resolution.

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

AUGUST 1, 2002.

*Hon.* JOHN MCCAIN,
*Senate Commerce Committee,*
*Washington, DC.*

DEAR SENATOR MCCAIN: The tragic events of September 11th certainly underscored the important need for additional training and advanced technologies for our nation's fire and emergency services. They are equal components in our efforts to prepare our nation for future large-scale emergencies that require rapid deployment of local first responders.

In the area of technology, we have witnessed an emergence of new technologies designed to improve our level of readiness to future terrorist events and other large-scale disasters. Some of this technology has the potential to address the immediate needs of our nation's public safety agencies; while other requires additional scrutiny and testing before the fire and emergency services can be assured of its intended performance.

We extend our appreciation for your interest in this matter and for introducing the Firefighter Research and Coordination Act. We support this legislation as a crucial step towards developing and deploying advanced technologies our nation's first responders need in this period of heightened risk and security.

Working as partners, the United States Fire Administration, National Institute of Standards and Technology, the Interagency Board and other interested parties, including the National Fire Protection Association, can develop a scientific basis for the private sector development of standards for new fire fighting technology. Your legislation will not undermine or duplicate the standards-making process that has served the fire service for over a hundred years, but rather strengthen it in areas of new technologies necessitated by the events of September 11th.

We also support the other two sections of your legislation calling for coordination of response to national emergencies and for increased training. Our organizations strongly believe that the United States Fire Administrator should serve as the primary point of contact for state and local firefighting units during national emergencies. We have expressed this message repeatedly, including in the Blue Ribbon Panel report presented to then-FEMA Director James Lee Witt in 1998 and most recently in a white paper, titled ''Protecting Our Nation'' that we presented to Congress last year. To ensure the success of this legislation, it is imperative that Congress appropriate additional dollars to carry-out this new role of the Administrator.

As the threats to our nation's security intensify, so must the level of training for our nation's first responders. We must expose our firefighters and rescue personnel to advanced levels of training and technologies so they can safely respond to all acts of terrorism and other major disasters. The final section of your legislation will help us attain this goal.

We look forward to working with you in advancing this legislation through Congress. Again, we thank you for your continued support.

Sincerely,

Congressional Fire Services Institute, International Association of Arson Investigators, International Association

of Fire Chiefs, International Association of Fire Fighters, International Fire Service Training Association, National Fire Protection Association, National Volunteer Fire Council.

NATIONAL VOLUNTEER FIRE COUNCIL,
WASHINGTON, DC, JULY 29, 2002.

Hon. JOHN MCCAIN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR MCCAIN: The National Volunteer Fire Council (NVFC) is a non-profit membership association representing the more than 800,000 members of America's volunteer fire, EMS, and rescue services. Organized in 1976, the NVFC serves as the voice of America's volunteer fire personnel in over 28,000 departments across the country. On behalf of our membership, I would like to express our full support for the Firefighting Research and Coordination Act.

This legislation would allow the U.S. Fire Administrator to develop measurement techniques and testing methodologies to evaluate the compatibility of new firefighting technology. In addition, it would require new equipment purchased under the FIRE Grant program to meet or exceed these standards.

The bill would also direct the U.S. Fire Administrator to establish a national plan for training and responding to national emergencies and it would designate the Administrator as the contact point for State and local firefighting units in the event of a national emergency. It would also direct the Administrator to work with state and local fire service officials to establish nationwide and state mutual aid systems for dealing with national emergencies that include threat assessment, and means of collecting asset and resource information for deployment.

Finally, the bill authorizes the Superintendent of the National Fire Academy to train fire personnel in building collapse rescue, the use of new technology, tactics and strategies for dealing with terrorist incidents, the use of the national plan for training and responding to emergencies, leadership skills, and new technology tactics for fighting forest fires.

Once again, the NVFC commends your efforts to train and equip America's volunteer firefighters and we thank you for the leadership role you have taken on this issue. We look forward to working with you in the 107th Congress to pass this important piece of legislation. If you have any questions or comments feel free to contact Craig Sharman, NVFC Government Affairs Representative at (202) 887–5700.

Sincerely,

PHILIP C. SITTLEBURG,
*Chairman.*

S. 2862

*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 ''Firefighting Research and Coordination Act''.

**SEC. 2. NEW FIREFIGHTING TECHNOLOGY.**

Section 8 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2207) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) DEVELOPMENT OF NEW TECHNOLOGY.—

''(1) IN GENERAL.—In addition to, or as part of, the program conducted under subsection (a), the Administrator, in consultation with the National Institute of Standards and Technology, the Inter-Agency Board for Equipment Standardization and Inter-Operability, national voluntary consensus standards development organizations, and other interested parties, shall—

''(A) develop new, and utilize existing, measurement techniques and testing methodologies for evaluating new firefighting technologies, including—

''(i) thermal imaging equipment;

''(ii) early warning fire detection devices;

''(iii) personal protection equipment for firefighting;

''(iv) victim detection equipment; and

''(v) devices to locate firefighters and other rescue personnel in buildings;

''(B) evaluate the compatibility of new equipment and technology with existing firefighting technology; and

''(C) support the development of new voluntary consensus standards through national voluntary consensus standards organizations for new firefighting technologies based on techniques and methodologies described in subparagraph (A).

''(2) NEW EQUIPMENT MUST MEET STANDARDS.—The Administrator shall, by regulation, require that equipment purchased through the assistance program established by section 33 meet or exceed applicable voluntary consensus standards.''.

**SEC. 3. COORDINATION OF RESPONSE TO NATIONAL EMERGENCY.**

(a) IN GENERAL.—Section 10 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2209) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b) COORDINATION OF RESPONSE FOR NATIONAL EMERGENCIES.—

''(1) IN GENERAL.—The Administrator shall establish a national plan for training and responding to national emergencies under which the Administrator shall be the primary contact point for State and local firefighting units in the event of a national emergency. The Administrator shall ensure that the national plan is consistent with the master plans developed by the several States and political subdivisions thereof.

''(2) MUTUAL AID SYSTEMS.—The Administrator shall work with State and local fire service officials to establish, as part of the national plan, nationwide and State mutual aid systems for dealing with national emergencies that—

''(A) include threat assessment and equipment deployment strategies;

''(B) include means of collecting asset and resource information to provide accurate and timely data for regional deployment; and

''(C) are consistent with the national plan established under paragraph (1) for Federal response to national emergencies.''.

(b) REPORT ON STRATEGIC NEEDS.—Within 90 days after the date of enactment of this Act, the Administrator of the United States Fire Administration shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science on the need for a strategy concerning deployment of volunteers and emergency response personnel (as defined in section 6 of the Firefighters' Safety Study Act (15 U.S.C. 2223e), including a national credentialing system, in the event of a national emergency.

**SEC. 4. TRAINING.**

(a) IN GENERAL.—Section 8(d)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(d)(1)) is amended—

(1) by striking ''and'' after the semicolon in subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (N); and

(3) by inserting after subparagraph (E) the following:

''(F) strategies for building collapse rescue;

''(G) the use of technology in response to fires, including terrorist incidents and other national emergencies;

''(H) response, tactics, and strategies for dealing with terrorist-caused national catastrophes;

''(I) use of and familiarity with the national plan developed by the Administrator under section 10(b)(1);

''(J) leadership and strategic skills, including integrated management systems operations and integrated response;

''(K) applying new technology and developing strategies and tactics for fighting forest fires;

''(L) integrating terrorism response agencies into the national terrorism incident response system;

''(M) response tactics and strategies for fighting fires at United States ports, including fires on the water and aboard vessels; and''.

(b) COORDINATION WITH OTHER PROGRAMS TO AVOID DUPLICATION.—The Administrator of the United States Fire Administration shall coordinate training provided under section 8(d)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(d)(1)) with the Attorney General, the Secretary of Health and Human Services, and the heads of other Federal agencies to ensure that there is no duplication of that training with existing courses available to fire service personnel.

By Mr. MCCAIN:

S. 2863. A bill to provide for deregulation of consumer broadband services; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I introduce the Consumer Broadband Deregulation Act of 2002. This legislation takes a comprehensive, deregulatory, but measured approach to providing more Americans with more broadband choices. By ensuring that the market, not government, regulates the deployment of broadband services, the legislation will promote investment and innovation in broadband facilities—and consumers will benefit.

The bill would create a new title in the Communications Act of 1934 that would ensure that residential broadband services exist in a minimally regulated environment. The new section of the Act would also make certain that providers of broadband services are treated in a similar fashion without regard to the particular mode of providing service. The bill includes provisions that would take the following actions:

Deregulate the retail provision of residential broadband services; dictate a hands-off approach to the deployment of new facilities by telephone companies while maintaining competitors' access to legacy systems; resist government-mandated open access while providing a safety net to ensure consumers enjoy a competitive broadband services market; ensure that local and state barriers to broadband deployment are removed; facilitate deployment of broadband services to rural and unserved communities by creating an information clearing house in the federal government; maximize wireless technology as a platform for broadband services; ensure access to broadband services by people with disabilities; enhance the enforcement tools

available to the FCC; and put the federal government in the role of stimulator, rather than regulatory, of broadband services.

In 1996, Congress passed the first major overhaul of telecommunications policy in 62 years. Supporters of the Telecommunications Act argued that it would create increased competition, provide consumers with a variety of new and innovative services at lower prices, and reduce the need for regulation. My principal objection to the Act was that it fundamentally regulated, not deregulated, the telecommunications industry and would lead inevitably to prolonged litigation. It has been six years since the passage of the Act, but consumers have yet to benefit. Competition denied by excessive regulation is costly to consumers.

The latest legislative debate in the communications industry has focused on the availability of high-speed Internet access services, often called ''broadband.'' Indeed, Federal Communications Commission Chairman, Michael Powell, has called broadband, ''the central communications policy objective in America.''

There is stark disagreement about the state of affairs of broadband services in the United States. Depending on who is speaking, there is a supply problem, a demand problem, a combination of the two, or no problem at all. All parties agree, however, that Americans and our national economy will benefit greatly from the widespread use of broadband services. Accelerated broadband deployment reportedly could benefit our nation's economy by hundreds of billions of dollars.

With such tremendous opportunity comes no shortage of ''solutions.'' Many want a national industrial policy to drive broadband deployment—they suggest multi-billion dollar central planning efforts aimed to deliver services to consumers regardless of whether those consumers want or need such services. Others have focused on narrow issues affecting only a subset of all providers of broadband services.

This legislation takes a different approach. It takes a comprehensive look at the proper role of the government with respect to these new services. It reduces government interference with market forces that lead to consumer welfare, and looks for ways that government can facilitate, not dictate or control, the development of broadband technologies.

Mr. President, I am a firm believe in free market principles. In 1995, I introduced a series of amendments during the floor debate on the Telecommunications Act that would have made the bill truly deregulatory. As I said at the time, I believe that ''[i]n free markets, less government usually means more innovation, more entrepreneurial opportunities, more competition, and more benefits to consumers.'' Likewise, in 1998, I introduced the Telecommunications Competition Act that would have allowed competition to flourish and brought true deregulation to the telecommunications market. In 1999, I introduced the Internet Regulatory Freedom Act that would have eliminated certain regulation of telephone companies' deployment of broadband facilities. And in 1999 and 2000, I was a leading advocate in the Senate for the Internet Tax Freedom Act ensuring a moratorium on taxation of the Internet.

I stand by the legislation and amendments I previously introduced and believe that they represented the right approach at the right time. In fact, if I had it my way, I would throw out the 1996 Act and start from scratch. I am mindful, however, that broadband has been an issue that has polarized policymakers to the point of legislative paralysis. Now is the time for a measured approach that focuses on achieving what can be done to improve the deployment of services to all consumers. I believe that this legislation is such an approach.

The bill has multiple components designed to address all aspects of broadband deployment and usage, and also provides adequate safety nets in the event that there proves to be a market failure that is harmful to consumers.

Broadband services can be provided over multiple platforms including telephone, cable, wireless, satellite, and perhaps one day soon, power lines, Each of these platforms is regulated differently based on the nature of the service the platform was originally designed to provide. This legislation would move us closer to a harmonization of regulatory ancestry of a particular platform.

First, the bill makes clear that the retail provision of high-speed Internet service remains unregulated. The Internet's tremendous growth is a testament to the exercise of regulatory restraint.

Some have suggested a need for government regulation of consumer broadband service quality. They allege that service deficiencies inhibit the development of these new offerings. But we must remember that these are new services, and new services will have problems. This legislation allows for these services to mature. If upon maturity, the FCC determines that there is a need to protect consumers from service quality shortcomings related to the technical provision of service. Then the states can enforce uniform requirements. This provides a measured approach to service quality—a safety net without a presumption of regulation.

Next, we must clarify that new services offered by varied providers, regardless of mode, will not be subject to the micromanagement of government regulation. Recognizing that upgrading networks requires substantial investment not free of risk, this bill begins this process by relaxing the obligations on telephone companies that invest in facilities that will bring better broadband services to more consumers. Nothing in this legislation, however, will undermine competitors' efforts to provide services using the telephone companies' legacy facilities. This approach strikes a balance between the interests of those who have invested capital on the promise of government-managed competition and those who will invest in the future of broadband facilities on the promise of government restraint and market-driven competition.

The bill also grapples with the government-managed wholesale market for consumer broadband services—the so-called ''open access'' debate. Mr. President, there is perhaps no more difficult issue addressed in this bill.

The Internet has thrived because it is an open platform. The presence of numerous ISPs in the narrowband market certainly contributed to the vitality of this open network, particularly at the inception of the Internet. Those providers have depended on access to customers guaranteed by FCC rules. As a result, many have suggested the need for government-mandated access to customers served over broadband connections. They raise significant concerns about carriers becoming screeners of content, and anti-competitive threats to web site operators if consumers do not have a choice of ISP or are limited in their ability to access particular web sites.

However tempting it may be to believe that government mandates will produce desired policy outcomes, such intervention too often comes at the price of market inefficiencies, stifled innovation, and increased regulatory costs. Moreover, regulators are often slow to respond to dynamic industry changes.

The bill would rely on market forces to resolve access issues by establishing the general rule that the FCC may not impose open access requirements on any provider—no matter what platform is used to provide the consumer broadband service. Again, the bill takes a measured approach by creating a safety net for consumers. Today a multitude of ISPs rely on access mandated by the FCC to serve their customers. The bill would allow the FCC to continue to enforce these obligations during a transition period, but would mandate the sunset of such requirements unless the FCC determines their continued enforcement is necessary to preserve competition for consumers.

I firmly believe that market forces will guide the development of a wholesale market producing sustainable, not government-managed, competition. The bill is sufficiently flexible to ensure that consumers are protected, whole sending a clear signal to those parties willing to make the significant investment necessary to provide broadband services that the government will not lie in wait only to reward their risk-taking with regulation.

I note again, however, that this issue raises challenging and complex policy questions. We should ensure the continued open nature of the Internet. To

the extent that market forces prove incapable of preventing restrictions on consumers' use of the Internet or limitations on devices that consumers wish to attach to their Internet connection, we may need to consider a different approach. I look forward to continue debate on these difficult questions.

The potential for government interference with market forces is not limited to federal regulation. State and local governments are also capable of obstructing the deployment of broadband. The bill would address this threat by precluding any state or local regulation from prohibiting the ability of any entity to provide consumer broadband service. It would also prevent localities from transforming their legitimate interest in managing their rights of way into an imposition of additional, revenue-generating financial burdens on broadband deployment.

Consumer broadband services should be accessible to all people, regardless of where they live, what they do, or how much they earn. We must be realistic, however, about how quickly this can occur. The bill recognizes the important role that government can play as facilitator to accelerate universal deployment by using its resources to allow communities to share information about successful efforts to attract broadband deployment.

Government can facilitate broadband deployment and use in other ways as well. Wireless technologies like Wi-Fi and mesh networks hold tremendous promise for the delivery of consumer broadband services. Given its role in the management of spectrum, the government can impact the use of these technologies. The bill would require the FCC to examine the best role for government in fully exploiting wireless technologies as a broadband platform for the benefit of consumers.

Although government should limit its role to those circumstances where market failure is demonstrated, Chairman Powell has suggested that the Commission must be prepared to better enforce its existing rules by increasing the Commission's ability to impose penalties on parties that act in a manner that is anticompetitive. This bill would given him the tools to do so.

Some claim that there is a demand ''problem'' with broadband that is caused by the dearth of available broadband content. Here, too, government can play an important role. Certainly content is one of the factors that will drive consumers to subscribe to high-speed Internet services. Given the prominent role that the federal government plays in the lives of most Americans, it can be a source of substantial broadband content. The bill would ensure that the federal government is fully exploiting its ability to provide this content.

Finally, I recognize that many will look at the bill and ask about broadband services used by businesses. Why treat those services differently? It is a fair question. I have stated previously that most of the advantages of the Telecommunications Act have accrued not to the average consumer who has seen only higher prices for existing services, but to business customers. It is these business customers that many competitors have attempted to serve using the facilities of the incumbent telephone companies. Moreover, whereas the cable platform is the source of robust, facilities-based competition in the consumer market, it has not developed to a similar extent in the market for business customers. Given these factors, and a desire to take a measured approach, I have generally limited the scope of this bill to the consumer broadband services market. This focus does not reflect my lack of support for a similarly deregulatory approach to the business market. Indeed, I strongly encourage Chairman Powell to be aggressive in using the tools at his disposal to remove regulations wherever appropriate in the business broadband services market.

Mr. President, technological progress has too often been constrained by government policies that seek to control it and dictate its course. Such policies have often had the perverse effect of slowing technological advancements. The growth of the Internet demonstrates what happens when governments choose to learn from the mistakes of the past in order to build a better and richer future for our citizens. The choice we have made is to adapt our mechanisms for governance to facilitate and encourage technological change—to facilitate rather than to control—to monitor rather than dominate. This bill continues that course.

I urge my colleagues to join with me in supporting this deregulatory legislation to help advance broadband in the United States.

Mr. President, I ask that the bill be printed in the RECORD.

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

S. 2863

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

**SECTION 1. SHORT TITLE; AMENDMENT OF COMMUNICATIONS ACT OF 1934; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Consumer Broadband Deregulation Act''.

(b) AMENDMENT OF COMMUNICATIONS ACT OF 1934.—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 Communications Act of 1934 (47 U.S.C. 151 et seq.).

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

Sec. 1. Short title; amendment of Communications Act of 1934; table of contents.
Sec. 2. Findings.
Sec. 3. Deregulation of consumer broadband services.
Sec. 4. Unbundled access and collocation requirements.
Sec. 5. National clearinghouse for high-speed Internet access.
Sec. 6. Enforcement.
Sec. 7. Spectrum reform study.
Sec. 8. Study on ways to promote broadband through e-government.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress finds the following:

(1) All consumer broadband service markets should be open to competition.

(2) Consumer broadband service can be provided over numerous different platforms.

(3) All providers of consumer broadband services should be able to provide such services and be subject to harmonized regulation when offering such services.

(4) Consumer broadband services can enhance the quality of life for Americans and promote economic development, job creation, and international competitiveness.

(5) Advancements in the nation's Internet infrastructure will enhance the public welfare by helping to speed the delivery of services such as telemedicine, distance learning, remote medical services, and distribution of health information.

(6) Government regulations that affect high-speed Internet access should promote investment and innovation in all technological platforms.

(b) PURPOSE.—It is the purpose of this Act to allow market forces to introduce investment and innovation in consumer broadband services for the benefit of all Americans.

**SEC. 3. DEREGULATION OF CONSUMER BROADBAND SERVICES.**

(a) IN GENERAL.—The Act is amended—

(1) by redesignating title VII as title VIII;

(2) by redesignating sections 701 through 714 as sections 801 through 814, respectively;

(3) by striking ''section 714'' in section 309(j)(8)(C)(iii) and inserting ''section 814'';

(4) by striking ''section 705'' in section 712(b) and inserting ''section 805''; and

(5) by inserting after title VI the following:

**''TITLE VII—CONSUMER BROADBAND SERVICES**

**''SEC. 701. RETAIL CONSUMER BROADBAND SERVICE.**

''(a) FREEDOM FROM REGULATION.—Except as provided in subsection (c), neither the Commission, nor any State, shall have authority to regulate the rates, charges, terms, or conditions for the retail offering of consumer broadband service.

''(b) OTHER SERVICES AND FACILITIES.—Nothing in this section precludes the Commission, or a State or local government, from regulating the provision of any service other than consumer broadband service, even if that service is provided over the same facilities as are used to provide consumer broadband service.

''(c) SERVICE QUALITY.—

''(1) COMMISSION DETERMINATION REQUIRED.—The Commission shall initiate a study within 2 years after the date of enactment of the Consumer Broadband Deregulation Act to determine whether State regulation of consumer broadband service quality is appropriate or necessary for the protection of consumers.

''(2) REGULATIONS; STATE ENFORCEMENT.—If the Commission determines that State regulation of consumer broadband service quality is appropriate or necessary for the protection of consumers, the Commission shall promulgate regulations establishing uniform national guidelines regulating consumer broadband service quality that may be enforced by States. Any regulations promulgated under this paragraph may not take effect before the date that is 2 years after the date of enactment of the Consumer Broadband Deregulation Act.

''(3) PREEMPTION OF OTHER STATE SERVICE QUALITY REGULATION.—

''(A) IN GENERAL.—Unless the Commission promulgates regulations under paragraph (2), no State may regulate the quality of consumer broadband services provided to its citizens or residents.

''(B) LIMITATION.—If the commission promulgates regulations under paragraph (2), no State may regulate the quality of consumer broadband services provided to its citizens or residents except as provided in those regulations.

''(4) NO INFERENCE.—Nothing in this section shall affect a State's ability to enforce consumer protection laws and regulations unrelated to the technical provision of consumer broadband service.

**''SEC. 702. WHOLESALE CONSUMER BROADBAND SERVICE.**

''(a) IN GENERAL.—Except as provided in subsection (b), neither the Commission nor any State or political subdivision thereof shall have authority to require a consumer broadband service provider to afford an Internet service provider access to its facilities or services for the purpose of offering a consumer broadband service.

''(b) EXCEPTION.—To the extent that any entity is required by the Commission to afford an Internet service provider access to its facilities or services for the purpose of providing consumer broadband service on the date of enactment of the Consumer Broadband Deregulation Act, the Commission may require that entity to continue to afford such access.

''(c) REPORT.—The Commission shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 2 years after the date of enactment of the Consumer Broadband Deregulation Act on the state of the wholesale market for consumer broadband services and its effect on retail competition for these services.

''(d) SUNSET PROVISION.—Subsection (b) shall cease to be effective 5 years after the date of enactment of such Act, unless the Commission finds that the continued exercise of its authority under that subsection is necessary to preserve and protect competition in the provision of consumer broadband services.

**''SEC. 703. LIMIT ON STATE AND LOCAL AUTHORITY; PUBLIC RIGHTS-OF-WAY CHARGES.**

''(a) REMOVAL OF BARRIERS TO ENTRY.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any consumer broadband service.

''(b) COST-BASED COMPENSATION FOR RIGHTS-OF-WAY.—A State or local government may not require compensation from consumer broadband service providers for access to, or use of, public rights-of-way that exceeds the direct and actual costs reasonably allocable to the administration of access to, or use of, public rights-of-way.

''(c) PUBLIC DISCLOSURE.—A State or local government shall disclose to the public, on a timely basis and in an easily understood format, any compensation required from consumer broadband service providers for access to, of use of, public rights-of-way.

**''SEC. 704. ACCESS BY PERSONS WITH DISABILITIES.**

''(a) MANUFACTURERS.—A manufacturer of equipment used for consumer broadband services shall ensure that equipment is designed, developed, and fabricated to be accessible to and usable by persons with disabilities, unless the manufacturer demonstrates that taking such steps would result in an undue burden.

''(b) CONSUMER BROADBAND SERVICE PROVIDERS.—A provider of consumer broadband services shall ensure that its services are accessible to and usable by persons with disabilities, unless the provider demonstrates that taking such steps would result in an undue burden.

''(c) COMPATIBILITY.—Whenever the requirements of subsections (a) and (b) constitute an undue burden, a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless the manufacturer or provider demonstrates that taking such steps would result in an undue burden.

''(d) REGULATIONS.—Within 18 months after the date of enactment of the Consumer Broadband Deregulation Act, the Commission shall prescribe such regulations as are necessary to implement this section. The regulations shall ensure consistency across multiple service platforms with respect to access by persons with disabilities. The regulations also shall provide that neither broadband services, broadband access services, nor the equipment used for such services may impair or impede the accessibility of information content when accessibility has been incorporated in that content for transmission through broadband services, access services, or equipment.

''(e) DEFINITIONS.—In this section—

''(1) DISABILITY.—The term 'disability' has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)).

''(2) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the requirements of this paragraph would result in an undue burden, the factors to be considered include—

''(A) the nature and cost of the steps required for the manufacturer or provider;

''(B) the impact on the operation of the manufacturer or provider;

''(C) the financial resources of the manufacturer or provider; and

''(D) the type of operations of the manufacturer or provider.''.

**''SEC. 705. RELATIONSHIP TO TITLES II, III, AND VI.**

''If the application of any provision of title II, III, or VI of this Act is inconsistent with any provision of this title, then to the extent the application of both provisions would conflict with or frustrate the application of the provision of this title—

''(1) the provision of this title shall apply; and

''(2) the inconsistent provision of title II, III, or VI shall not apply.''.

(b) CONSUMER BROADBAND SERVICES DEFINED.—Section 3 (47 U.S.C. 153) is amended by inserting after paragraph (12) the following:

''(12A) CONSUMER BROADBAND SERVICES.—

''(A) IN GENERAL.—The term 'consumer broadband services' means interstate residential high-speed Internet access services.

''(B) HIGH-SPEED.—The Commission shall establish by rule the criterion, in terms of megabits per second, to be used for the purpose of determining whether residential Internet services are high-speed Internet services. In establishing that criterion, the Commission shall consider whether the speed is sufficient to support existing applications and to encourage the development of new applications. The Commission shall revise the criterion as necessary and shall review any criterion established by it no less frequently than each 18 months.

''(C) INTERNET ACCESS SERVICE.—The term 'Internet access service' means a service that combines computer processing, information storage, protocol conversion, and routing with telecommunications to enable users to access Internet content and services.''.

**SEC. 4. UNBUNDLED ACCESS AND COLLOCATION REQUIREMENTS.**

(a) UNBUNDLED ACCESS.—Section 251(c)(3) (47 U.S.C. 251(c)(3)) is amended to read as follows:

''(3) UNBUNDLED ACCESS.—

''(A) IN GENERAL.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

''(B) EXCEPTION.—The duty to provide access under subparagraph (A) does not require an incumbent local exchange carrier to provide access to a fiber local loop or fiber feeder subloop to a requesting carrier to enable the requesting carrier to provide a telecommunications service that is an input to a consumer broadband service unless the incumbent local exchange carrier has removed or rendered useless a previously existing cooper loop necessary to provide such services.''.

(b) COLLOCATION.—Section 251(c)(6) (47 U.S.C. 251(c)(6)) is amended to read as follows:

''(6) COLLOCATION.—

''(A) IN GENERAL.—The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

''(B) EXCEPTION.—The duty to provide for collocation under subparagraph (A) does not require an incumbent local exchange carrier to provide for collocation in a remote terminal.''.

**SEC. 5. NATIONAL CLEARINGHOUSE FOR HIGH-SPEED INTERNET ACCESS.**

(a) IN GENERAL.—The Secretary of Commerce shall establish a national clearinghouse within the Department of Commerce that allows communities throughout the United States, particularly rural communities, to find data and information relating to the deployment of facilities capable of supporting high-speed Internet services.

(b) EXCHANGE FUNCTION.—The Secretary shall solicit and accept data, information, and advice from communities that have succeeded in attracting the deployment of broadband services and infrastructure in order to make that data, information, and advice available to other communities that are seeking to deploy high-speed Internet services.

**SEC. 6. ENFORCEMENT.**

(a) CEASE AND DESIST AUTHORITY.—Section 501 of the Communications Act of 1934 (47 U.S.C. 501) is amended—

(1) by striking ''Any person'' and inserting ''(a) FINES AND IMPRISONMENT.—Any person'';

(2) by adding at the end the following new subsection:

''(b) CEASE AND DESIST ORDERS.— If, after a hearing, the Commission determines that any common carrier or consumer broadband service provider is engaged in an act, matter,

or thing prohibited by this Act, or is failing to perform any act, matter, or thing required by this Act, the Commission may order such common carrier or provider to cease or desist from such action or inaction.''.

(b) FORFEITURE PENALTIES.—Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(1) in paragraph (2)(B)—

(A) by striking ''exceed $100,000'' and inserting ''exceed $1,000,000''; and

(B) by striking ''of $1,000,000'' and inserting ''of $10,000,000'';

(2) in paragraph (2)(C), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (C)'';

(3) by redesignating subparagraphs (C) and (D) of paragraph (2) as subparagraphs (D) and (E), respectively;

(4) by inserting after subparagraph (B) of paragraph (2) the following new subparagraph:

''(C) If a common carrier or consumer broadband service provider has violated a cease and desist order or has previously been assessed a forfeiture penalty for a violation of a provision of this Act or of any rule, regulation, or order issued by the Commission, and if the Commission or an administrative law judge determines that such common carrier has willfully violated the same provision, rule, regulation, that this repeated violation has caused harm to competition, and that such common carrier or consumer broadband service provider has been assessed a forfeiture penalty under this subsection for such previous violation, the Commission may assess a forfeiture penalty not to exceed $2,000,000 for each violation or each day of continuing violation; except that the amount of such forfeiture penalty shall not exceed $20,000,000.''; and

(5) in paragraph (6)(B), by striking ''1 year'' and inserting ''2 years''.

**SEC. 7. WIRELESS BROADBAND STUDY.**

(a) IN GENERAL.—The Federal Communications Commission shall conduct a study—

(1) on wireless technology to determine the appropriate role of the Federal government in facilitating greater consumer access to consumer broadband services using evolving advanced technology; and

(2) what, if any, action by the Federal government is needed to increase the deployment of new wireless technology to facilitate high-speed Internet access.

(b) FOCUS.—In conducting the study, the Commission shall focus on consumer broadband services utilizing wireless technology.

(c) CONSIDERATION OF WIRELESS INDUSTRY VIEWS.—In conducting the study, the Commission shall consider the views of, among other interested parties, representatives of the telecommunications industry (as defined in section 714(k)(3) of the Communications Act of 1934 (47 U.S.C. 614(k)(3)) involved in wireless communications.

(d) REPORT.—

(1) IN GENERAL.—The Commission shall transmit a report, containing its findings, conclusions, and recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 18 months after the date of enactment of this Act.

(2) REPORT TO BE AVAILABLE TO PUBLIC.—The Commission shall make its report available to the public.

**SEC. 8. STUDY ON WAYS TO PROMOTE BROADBAND THROUGH E-GOVERNMENT.**

The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 6 months after the date of enactment of this Act on how the Federal government can promote the use of broadband services through e-government, including—

(1) online delivery of government services;

(2) video-streaming of government press events and open public events, such as announcements and administrative proceedings;

(3) e-health and online education initiatives;

(4) access to government documents; and

(5) the ramifications of enhanced government online services on user privacy and the security of the Federal government's electronic infrastructure.

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By Mr. THURMOND:

S. 2865. A bill to establish Fort Sumter and Fort Moultrie National Historical Park in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. THURMOND. Mr. President, I introduced a bill establishing the Fort Sumter and Fort Moultrie National Historical Park. These sites are presently managed by the National Park Service as the Fort Sumter National Monument. The bill clarifies the boundaries of the park and will more accurately reflect the resources that are recognized, protected, and interpreted at these sites.

Both of these forts were pivotal sites in the history of South Carolina and the Nation. Fort Moultrie was the centerpiece of the Battle of Sullivan's Island on June 28, 1776, just six days prior to the signing of the Declaration of Independence. The valiant defense of the fort by South Carolina militia units resulted in the first decisive victory over British forces in the Revolutionary War. The fort is named after the commander of those units, Colonel William Moultrie.

Colonel Moultrie's forces constructed the first fort out of Palmetto trees and sand. The Palmettos were used because of the lack of proper building materials. Though initially thought to be inadequate for protection, the Palmettos repelled salvo after salvo from the British naval forces. Such excellent fortifications allowed Colonel Moultrie's militia to return fire with devastating results.

Fort Moultrie also played a part in the events leading up to the Civil War. It was the site of the batteries that bombarded Fort Sumter. After the war, the fort was to remain an integral part of America's coastal defenses until World War II, when it was used to guard the port of Charleston against German U-boats. Indeed, it is the only site in the National Park System that preserves the history of the Nation's coastal defense system from 1776 to 1947. Although its days of conflict are over, the fort stands as a reminder that the cost of freedom is constant vigilance and stalwart resolve, even in the face of overwhelming odds.

Fort Sumter is also an important part of American history. The bombardment of the fort on April 12, 1861 was the opening engagement of the Civil War. The evacuation of the fort by its commanding officer, Major Robert Anderson, left the fort in Confederate hands until the fall of Charleston in February of 1865. Fort Sumter was also an integral part of the Nation's coastal defense system until the end of World War II. Fort Sumter is a fine example of the historical significance of National Park Service work.

The passage of this bill will allow for the more efficient administration of the two forts. The present arrangement does not adequately reflect the boundaries or management authority for the site. For example, Fort Moultrie was acquired by the Secretary of the Interior from the State of South Carolina in 1960, but no boundaries were established for the property, nor were any directives given to the National Park Service for administering the site. This bill will establish the boundaries of the site and provide long-overdue management authority for the National Park Service.

Hopefully, this bill will facilitate more efficient management of the forts and allow many more Americans to learn from these living monuments to America's history. The Department of Interior supports this bill and has urged its enactment. I urge my colleagues to join me in supporting this bill.

I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 2865

*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 ''Fort Sumter and Fort Moultrie National Historical Park Act of 2002''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) Fort Sumter National Monument was established by the Joint Resolution entitled ''Joint Resolution to establish the Fort Sumter National Monument in the State of South Carolina'', approved April 28, 1948 (62 Stat. 204, chapter 239; 16 U.S.C. 450ee), to commemorate historic events in the vicinity of Fort Sumter, the site of the first engagement of the Civil War on April 12, 1861;

(2) Fort Moultrie—

(A) was the site of the first defeat of the British in the Revolutionary War on June 28, 1776; and

(B) was acquired by the Federal Government from the State of South Carolina in 1960 under the authority of the Act of August 21, 1935 (49 Stat. 666, chapter 593);

(3) since 1960, Fort Moultrie has been administered by the National Park Service as part of the Fort Sumter National Monument without a clear management mandate or established boundary;

(4) Fort Sumter and Fort Moultrie played important roles in the protection of Charleston Harbor and in the coastal defense system of the United States;

(5) Fort Moultrie is the only site in the National Park System that preserves the history of the United States coastal defense

system during the period from 1776 through 1947; and

(6) Sullivan's Island Life Saving Station, located adjacent to the Charleston Light—

(A) was constructed in 1896; and

(B) is listed on the National Register of Historic Places.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) CHARLESTON LIGHT.—The term ''Charleston Light'' means the Charleston Light and any associated land and improvements to the land that are located between Sullivan's Island Life Saving Station and the mean low water mark.

(2) MAP.—The term ''map'' means the map entitled ''Boundary Map, Fort Sumter and Fort Moultrie National Historical Park'', numbered 392/80088, and dated November 30, 2000.

(3) PARK.—The term ''Park'' means the Fort Sumter and Fort Moultrie National Historical Park established by section 4(a).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) STATE.—The term ''State'' means the State of South Carolina.

**SEC. 4. FORT SUMTER AND FORT MOULTRIE NATIONAL HISTORICAL PARK.**

(a) ESTABLISHMENT.—There is established the Fort Sumter and Fort Moultrie National Historical Park in the State as a unit of the National Park System to preserve, maintain, and interpret the nationally significant historical values and cultural resources associated with Fort Sumter and Fort Moultrie.

(b) BOUNDARY.—

(1) IN GENERAL.—The boundary of the Park shall be comprised of the land, water, and submerged land depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) ACQUISITIONS.—

(1) LAND.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire any land or interest in land (including improvements) located within the boundaries of the Park by—

(i) donation;

(ii) purchase with appropriated or donated funds;

(iii) exchange; or

(iv) transfer from another Federal agency.

(B) LIMITATION.—Any land or interest in land (including improvements) located within the boundaries of the Park that is owned by the State (including political subdivisions of the State) shall be acquired by donation only.

(2) PERSONAL PROPERTY.—The Secretary may acquire by donation, purchase with appropriated or donated funds, exchange, or transfer from another Federal agency, personal property associated with, and appropriate for, interpretation of the Park.

(d) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary, acting through the Director of the National Park Service, shall administer the Park in accordance with this Act and the laws generally applicable to units of the National Park System, including—

(A) the Act of August 25, 1916 (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(2) INTERPRETATION OF HISTORICAL EVENTS.—The Secretary shall provide for the interpretation of historical events and activities that occurred in the vicinity of Fort Sumter and Fort Moultrie, including—

(A) the Battle of Sullivan's Island on June 28, 1776;

(B)(i) the bombardment of Fort Sumter by Confederate forces on April 12, 1861; and

(ii) any other events of the Civil War that are associated with Fort Sumter and Fort Moultrie;

(C) the development of the coastal defense system of the United States during the period from the Revolutionary War to World War II; and

(D) the lives of—

(i) the free and enslaved workers who built and maintained Fort Sumter and Fort Moultrie;

(ii) the soldiers who defended the forts;

(iii) the prisoners held at the forts; and

(iv) captive Africans bound for slavery who, after first landing in the United States, were brought to quarantine houses in the vicinity of Fort Moultrie in the 18th Century, if the Secretary determines that the quarantine houses and associated historical values are nationally significant.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with public and private entities and individuals to carry out this Act.

**SEC. 5. CHARLESTON LIGHT.**

(a) IN GENERAL.—Subject to subsection (b), the Secretary of Transportation shall transfer to the Secretary, for no consideration, administrative jurisdiction over, and management of the Charleston Light for inclusion in the Park.

(b) CONDITION.—Before transferring the Charleston Light under subsection (a) the Secretary of Transportation shall repair, paint, remove hazardous substances from, and improve the condition of the Charleston Light in any other manner that the Secretary may require.

(c) IMPROVEMENTS.—The Secretary shall make improvements to the Charleston Light only to the extent necessary to—

(1) provide utility service; and

(2) maintain the existing structures and historic landscape.

**SEC. 6. REPEAL OF EXISTING LAW.**

Section 2 of the Joint Resolution entitled ''Joint Resolution to establish the Fort Sumter National Monument in the State of South Carolina'', approved April 28, 1948 (62 Stat. 204, chapter 239; 16 U.S.C. 450ee–1), is repealed.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

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By Mr. GREGG (for himself, Mr. HUTCHINSON, Mr. CRAIG, and Mr. BROWNBACK):

S. 2866. A bill to provide scholarships for District of Columbia elementary and secondary students, and for other purposes; to the Committee on Governmental Affairs.

Mr. GREGG. Mr. President, like many of my colleagues in the House and the Senate, I applaud the Supreme Court's recent ruling in Zelman v. Simmons-Harris. The Court found that a publically funded private school choice program was Constitutional and does not violate the establishment clause of the Constitution. The Court's decision finally puts to rest the constitutionality arguments which have long been raised by those who oppose providing choice to low-income families.

Within hours of the Court decision, Congressman Armey introduced H.R. 5033, the District of Columbia Student Opportunity Scholarship Act of 2002. I join my House colleague in introducing the companion bill, here in the Senate. Specifically, these bills provide scholarships to some of the District's poorest students to enable them to select the public or private school of their choice from participating schools in the District and the surrounding areas. This program, like the Cleveland program upheld by the Supreme Court, would allow families to choose from a wide variety of providers, including religious schools.

Both bills are nearly identical to the 1997 D.C. Student Scholarship Act. Although that bill had passed both houses of the Congress and more than a thousand D.C. families had expressed interest in the scholarship program, President Clinton vetoed the bill.

Why should we extend the option of private schools to poor families? Because, as is true in many urban areas, thousands of students in the District of Columbia are in need of high quality educational options. Seventy-two percent of D.C. fourth graders tested below basic proficiency in reading and seventy-six percent tested below basic proficiency in mathematics. This means that three quarters of 4th graders do not possess elementary reading skills and can not complete simple arithmetic problem. Unfortunately, these statistics do not improve dramatically as children grow older. Even in the older grades, the majority of students are found to be struggling with math and reading.

Tragically, lagging academic performance isn't the only problem plaguing many of the public schools in D.C., there is also the issue of safe, secure classrooms. In 1999, nearly one in five D.C high school students reported, that at some point in the preceding month, they felt too unsafe to go to school, while nearly one in every seven students admitted to bringing a weapon to school.

Although the creation of charter schools in the District has led to some choice for families lucky enough to get a spot for their child, there are simply not enough charter schools to accommodate the growing clamor of D.C. parents to obtain a better education for their children. Interestingly enough, the lack of space in charter schools is compounded by the City's refusal to free a handful of the 30 surplus public school buildings—buildings, which in some cases, are just sitting there abandoned and unused.

D.C. parents have witnessed superintendents come and go, and have been given the promise of education reform and improvements that never materialized. Yet, all the while their children remain trapped in failing schools. This is unacceptable to them and should be wholly unacceptable to my colleagues. The thousands of families clamoring for better educational opportunities for their children in our nation's capital need an immediate solution.

As Frederick Douglass, quoted by Justice Clarence Thomas in the recent Zelman decision, said, ''Education. . . . means emancipation. It means light and liberty. It means the uplifting of

the soul of the man into the glorious light of truth, the light by which men can only be made free.''

Unfortunately, for many families, that freedom remains unobtainable within D.C.'s current educational system. I encourage my colleagues to seriously consider this important bill. We have allowed too many students to languish in failing schools. Let's provide a way for real education, and doing so, help make the freedom Douglass refers to a reality for some of the district's neediest children.

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By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 2867. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, as everyone knows, I pushed the packer ban because I want more competition in the marketplace. While I don't think packers should be in the same business as independent livestock producers, it's not the fact that the packers own the livestock that bothers me as much as the fact that the packers' livestock competes for shackle space and adversely impacts the price independent producers receive.

My support of the packer ban is based in the belief that independent producers should have the opportunity to receive a fair price for their livestock. The last few years have led to widespread consolidation and concentration in the packing industry. Add on the trend toward vertical integration among packers and there is no question why independent producers are losing the opportunity to market their own livestock during profitable cycles in the live meat markets.

The past CEO of IBP in 1994 explained that the reason packers own livestock is that when the price is high the packers use their own livestock for the lines and when the price is low the packers buy livestock. This means that independent producers are most likely being limited from participating in the most profitable ranges of the live market. This is not good for the survival of the independent producer.

My new legislative concept would guarantee that independent producers have a share in the marketplace while assisting the mandatory price reporting system. The proposal would require that 25 percent of a packer's daily kill comes from the spot market. By requiring a 25 percent spot market purchase daily, the mandatory price reporting system which has been criticized due to reporting and accuracy problems would have consistent, reliable numbers being purchased from the spot market, improving the accuracy and transparency of daily prices. In addition, independent livestock producers would be guaranteed a competitive position due to the packers need to fill the daily 25 percent spot/cash market requirement.

This isn't the packer ban. The intent of this piece is to improve price transparency and hopefully the accuracy of the daily mandatory price reporting data. I feel strongly that packers should NOT be able to own or feed livestock, but this approach is not intended to address my concern with packer ownership.

The packs required to comply would be the same packs required to report under the mandatory price reporting system. Those are packs that kill either 125,000 head of cattle, 100,000 head of hogs, or 75,000 lambs annually, over a 5 year average.

Packers are arguing that this will hurt their ability to offer contracts to producers, but the fact of the matter is that the majority of livestock contracts pay out on a calculation incorporating mandatory price reporting data. If the mandatory price reporting data is not accurate, or open to possible manipulation because of low numbers on the spot market, contracts are not beneficial tools for producers to manage their risk. This legislative proposal will hopefully give confidence to independent livestock producers by improving the accuracy and viability of the mandatory price reporting system and secure fair prices for contracts based on that data.

It's just common sense, when there aren't a lot of cattle and pigs being purchased on the cash market, it's easier for the mandatory price reporting data to be inaccurate or manipulated. The majority of livestock production contracts are based on that data, so if that information is wrong the contract producers suffer. That's why the Iowa Pork Producers, Iowa Cattlemen, Iowa Farm Bureau, R–CALF, the Organization for Competitive Markets, and the Center for Rural Affairs have all endorsed this proposal.

Mr. President, this legislation will guarantee independent livestock producers market access and a fair price. It will accomplish these goals by making it more difficult for the mandatory price reporting system to be manipulated because of low numbers being reported by the packs.

I ask consent the bill be printed in the RECORD.

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

S. 2867

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

**SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS**

Chapter 5 of subtitle B of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636 et seq.) is amended by adding at the end the following:

**''SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS.**

''(a) DEFINITIONS.—In this section:

''(1) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term 'cooperative association of producers' has the meaning given the term in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(2) COVERED PACKER.—

''(A) IN GENERAL.—The term 'covered packer' means a packer that is required under this subtitle to report to the Secretary each reporting day information on the price and quantity of livestock purchased by the packer.

''(B) EXCLUSION.—The term 'covered packer' does not include a packer that owns only 1 livestock processing plant.

''(3) NONAFFILIATED PRODUCER.—The term 'nonaffiliated producer' means a producer of livestock—

''(A) that sells livestock to a packer;

''(B) that has less than 1 percent equity interest in the packer and the packer has less than 1 percent equity interest in the producer;

''(C) that has no officers, directors, employees or owners that are officers, directors, employees or owners of the packer;

''(D) that has no fiduciary responsibility to the packer; and

''(E) in which the packer has no equity interest.

''(4) SPOT MARKET SALE.—The term 'spot market sale' means an agreement for the purchase and sale of livestock by a packer from a producer in which—

''(A) the agreement specifies a firm base price that may be equated with a fixed dollar amount on the day the agreement is entered into;

''(B) the livestock are slaughtered not more than 7 days after the date of the agreement;

''(C) a reasonable competitive bidding opportunity existed on the date the agreement was entered into;

''(5) REASONABLE COMPETITIVE BIDDING OPPORTUNITY.—The term 'reasonable competitive bidding opportunity' means that

''(A) no written or oral agreement precludes the producer from soliciting or receiving bids from other packers; and

''(B) no circumstances, custom or practice exist that establishes the existence of an implied contract, as defined by the Uniform Commercial Code, and precludes the producer from soliciting or receiving bids from other packers.

''(b) GENERAL RULE.—Of the quantity of livestock that is slaughtered by a covered packer during each reporting day in each plant, the covered packer shall slaughter not less than the applicable percentage specified in subsection (c) of the quantity through spot market sales from nonaffiliated producers.

''(c) APPLICABLE PERCENTAGES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable percentage shall be:

''(A) 25 percent for covered packers that are not cooperative associations of producers; and

''(B) 12.5 percent for covered packers that are cooperative associations of producers.

''(2) EXCEPTIONS.—

''(A) In the case of covered packers that reported more than 75 percent captive supply cattle in their 2001 annual report to Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture, the applicable percentage shall be the greater of:

''(i) the difference between the percentage of captive supply so reported and 100; and

''(ii) the following numbers (applicable percentages):

''(a) during each of the calendar years of 2004 and 2005, 5 percent;

''(b) during each of the calendar years of 2006 and 2007, 15 percent; and

''(c) during the calendar year 2008 and each calendar year thereafter, 25 percent.

''(B) In the case of covered packers that are cooperative associations of producers and

that reported more than 87.5 percent captive supply cattle in their 2001 annual report to Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture, the applicable percentage shall be the greater of:

''(iii) the difference between the percentage of captive supply so reported and 100; and

''(iv) the following numbers (applicable percentages):

''(a) during each of the calendar years of 2004 and 2005, 5 percent;

''(b) during each of the calendar years of 2006 and 2007, 7.5 percent; and

''(c) during the calendar year 2008 and each calendar year thereafter, 12.5 percent.

''(d) NONPREEMPTION.—Notwithstanding section 259, this section does not preempt any requirement of a State or political subdivision of a State that requires a covered packer to purchase on the spot market a greater percentage of the livestock purchased by the covered packer than is required under this section.''

''(e) Nothing in this section shall affect the interpretation of any other provision of this Act, including but not limited to section 202 (7 U.S.C. §192).''.

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By Mr. DOMENICI (for himself, Mr. CAMPBELL, and Mr. ALLARD):

S. 2868. A bill to direct the Secretary of the Army to carry out a research and demonstration program concerning control of salt cedar and other nonnative phreatophytes; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, I rise today to introduce a piece of legislation that is of paramount importance to the State of New Mexico. Specifically, this bill will address the mounting pressures brought on by the growing demands, on all fronts, of a diminishing water supply.

As you may know the water situation in the west can be described at this time, as difficult at best. Annual snow packs were abnormally low this year causing many areas in the west to be plagued by severe drought conditions.

The seriousness of the water situation in New Mexico becomes more acute every single day. The chance of this drought effecting every New Mexican in some way is substantial. Wells are running dry, farmers are being forced to sell livestock, many of our cities are in various stages of conservation and many, many acres have been charred by catastrophic wildfires.

The drought conditions also have other consequences. For example, the lack of stream flow makes it very difficult for New Mexico to meet its compact delivery obligations to the state of Texas.

The bill that I am introducing today deals more specifically with the issue of in stream water flows. To compound the drought situation, New Mexico is home to a vast amount of Salt Cedar. Salt Cedar is a water-thirsty non-native tree that continually strips massive amounts of water out of New Mexico's two predominant water supplies—the Pecos and the Rio Grande rivers.

Estimates show that one mature salt cedar tree can consume as much as 200 gallons of water per day. In addition to the excessive water consumption, salt cedars increase fire and flood frequency, increase river channelization, decrease water flow and increase water and soil salinity along the river. Studies indicate that eradication of the salt cedars could increase river flows. Increasing river flows could help alleviate mounting pressure to meet compact delivery obligations—especially on the Pecos.

This bill that I am introducing today would authorize the Army Corps of Engineers to establish a research and demonstration program to help with the eradication of this non-native species. In addition to projects along the Pecos and the Rio Grande, the bill allows other states with similar problems, including Texas, Colorado, Utah and Arizona to develop and participate in similar projects as well.

The drought and the mounting legal requirements on both the Pecos and Rio Grande rivers are forcing us toward a severe water crisis. Solving such water problems has become one of my top priorities for the state.

I ask unanimous consent that a copy of the bill and my statement be printed in the RECORD.

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

S. 2868

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

**SECTION 1. SALT CEDAR CONTROL.**

(a) FINDINGS.—Congress finds that—

(1) States are having increasing difficulty meeting their obligations under interstate compacts to deliver water;

(2) it is in the best interest of States to minimize the impact of and eradicate invasive species that extort water in the Rio Grande watershed, the Pecos River, and other bodies of water in the Southwest, such as the salt cedar, a noxious and nonnative plant that can use 200 gallons of water a day; and

(3) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

(b) DEFINITIONS.—In this section:

(1) CONTROL METHOD.—

(A) IN GENERAL.—The term ''control method'' means a method of controlling salt cedar (Tamarix) or any other nonnative phreatophyte.

(B) INCLUSIONS.—The term ''control method'' includes the use of herbicides, mechanical means, and biocontrols such as goats and insects.

(2) DEMONSTRATION PROJECT.—The term ''demonstration project'' means a demonstration project carried out under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Army, acting through the Chief of Engineers.

(c) PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this section, the Secretary shall—

(A) complete a program of research, including a review of past and ongoing research, concerning a control method for use in—

(i) the Rio Grande watershed in the State of New Mexico;

(ii) the Pecos River in the State of New Mexico; and

(iii) other bodies of water in the States of Arizona, Colorado, New Mexico, Texas, and Utah that are affected by salt cedar or other nonnative phreatophytes; and

(B) commence a demonstration program of the most effective control methods.

(2) AVAILABLE EXPERTISE.—

(A) IN GENERAL.—In carrying out the programs under paragraph (1), the Secretary shall use the expertise of institutions of higher education and nonprofit organizations—

(i) that are located in the States referred to in paragraph (1)(A)(iii); and

(ii) that have been actively conducting research or carrying out other activities relating to the control of salt cedar.

(B) INCLUSIONS.—Institutions of higher education and nonprofit organizations under subparagraph (A) include—

(i) Colorado State University;

(ii) Diné College in the State of New Mexico;

(iii) Mesa State College in the State of Colorado;

(iv) New Mexico State University;

(v) Northern Arizona University;

(vi) Texas A&M University;

(vii) University of Arizona;

(viii) Utah State University; and

(ix) WERC: A Consortium for Environmental Education and Technology Development.

(d) FEDERAL EXPENSE.—The research and demonstration program under subsection (c) shall be carried out at full Federal expense.

(e) CONSULTATION.—The activities under this section shall be carried out in consultation with—

(1) the Secretary of Agriculture;

(2) the Secretary of the Interior;

(3) the Governors of the States of Arizona, Colorado, New Mexico, Texas, and Utah;

(4) tribal governments; and

(5) the heads of other Federal, State, and local agencies, as appropriate.

(f) RESEARCH.—To the maximum extent practicable, the research shall focus on—

(1) supplementing and integrating information from past and ongoing research concerning control of salt cedar and other nonnative phreatophytes;

(2) gathering experience from past eradication and control projects;

(3) arranging relevant data from available sources into formats so that the information is accessible and can be effectively brought to bear by land managers in the restoration of the Rio Grande watershed;

(4) using control methods to produce water savings; and

(5) identifying long-term management and funding approaches for control of salt cedar and watershed restoration.

(g) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary shall carry out not fewer than 10 demonstration projects, of which not fewer than 2 shall be carried out in each of the States referred to in subsection (c)(1)(A)(iii).

(2) COST.—Each demonstration project shall be carried out at a cost of not more than $7,000,000, including costs of planning, design, and implementation.

(3) RELATIONSHIP TO OTHER CONTROL PROJECTS.—Each demonstration project shall be coordinated with control projects being carried out as of the date of enactment of this Act by other Federal, State, tribal, or local entities.

(4) PERIOD OF PROJECT IMPLEMENTATION.—Each demonstration project shall be carried out—

(A) during a period of not less than 2 but not more than 5 years, depending on the control method selected; and

(B) in a manner designed to determine the time period required for optimum use of the control method.

(5) DESIGN.—

(A) CONTROL METHODS.—Of the demonstration projects—

(i) at least 1 demonstration project shall use primarily 1 or more herbicides;

(ii) at least 1 demonstration project shall use primarily mechanical means;

(iii) at least 1 demonstration project shall use a biocontrol such as goats or insects; and

(iv) each other demonstration project may use any 1 or more control methods.

(B) MEASUREMENT OF COSTS AND BENEFITS.—Each demonstration project shall be designed to measure all costs and benefits associated with each control method used by the demonstration project, including measurement of water savings.

(6) MONITORING AND MAINTENANCE.—After completion, each demonstration project shall be monitored and maintained for a period of not more than 5 years, at a cost of not more than $100,000 per demonstration project per year.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2003; and

(2) such sums as are necessary for each of fiscal years 2004 through 2007.

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By Mr. KERRY (for himself and Mr. BROWNBACK):

S. 2869. A bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; to the Committee on Commerce, Science, and Transportation.

Mr. KERRY. Mr. President, I am introducing legislation which I hope will create an equitable solution to the dilemma facing many wireless companies in America. Unfortunately, due to the uncertain legal status of licenses related to that FCC Auction No. 35, several companies have contingent liabilities in the millions or billions of dollars. These contingent liabilities are damaging the companies' ability to acquire additional spectrum to meet the urgent needs of wireless consumers and to roll out new and innovative services to consumers. The affected providers are the successful bidders for wireless spectrum that the Federal Communications Commission auctioned in Auction No. 35. Some of the spectrum had previously been licensed to companies, including NextWave Personal Communications Inc., whose bankruptcy filings and subsequent failure to pay amounts due to the FCC for their licenses led to the cancellation of those licenses.

The status of NextWave's licenses has been the subject of extended litigation in the Bankruptcy Court, the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States. In June 2001, after the FCC had conducted Auction No. 35, the D.C. Circuit held that ''the Commission violated the provision of the Bankruptcy Code that prohibits governmental entities from revoking debtors' licenses solely for failure to pay debts dischargeable in bankruptcy,'' effectively nullifying the FCC ability to deliver the licenses to winning bidder. In August 2001, after the issuance of that court's mandate, the FCC restored the NextWave licenses to active status. More recently, the Supreme Court granted the FCC's petition for a writ of certiorari to review the D.C. Circuit's judgment. The Supreme Court will not hear arguments in the case until the fall of 2002 and is unlikely to announce a decision until the spring of 2003. If the Court reverses the D.C. Circuit's decision, there will be further litigation on remand in the D.C. Circuit to resolve issues that the court did not reach in its first decision. The result is that there is not likely to be a final resolution of the status of the NextWave licenses and the FCC therefore will not be in a position to deliver licenses to the winners of Auction No. 35—until three or more years from the time the auction was concluded. Although the FCC recently returned most of the down payment funds previously deposited by successful bidders, it continues to hold without interest substantial sums equal to three percent of the total amount of the winning bids. It apparently intends to hold those sums indefinitely. Despite the lengthy delay in delivering the licenses, moreover, the FCC takes the position that the successful bidders remain obligated, on a mere 10 days' notice, to pay the full amount of their successful bids if and when the FCC at some unknown future date establishes its right to deliver those licenses.

The situation is grossly unfair to those who bid on these licenses in good faith. Companies calibrate their bids on the understanding, implicit in any commercial arrangement, that delivery of the licenses will occur in a reasonable time following the auction. That expectation is especially crucial in the context of spectrum licenses, given the recent volatility we have seen in market prices for spectrum. It is particularly burdensome to such companies for the FCC to hold even a portion of their enormous down payments without paying interest for such extended periods. Even more troubling, the companies' contingent obligation to pay on very short notice the remaining $16 billion they bid for the licenses at issue adversely affects their capacity to serve the needs of their customers. Such large contingent liabilities impede the companies' ability to take interim steps, such as building out its network further or leasing spectrum from others, that may be urgently needed to improve service for its customers. The FCC's failure to respond appropriately to alleviate these serious burdens disserves the public interest.

This bill addresses these problems in two ways. It requires the FCC promptly to refund to the winning bidders the full remaining amount of their deposits and down payments. In addition, it gives each winning bidder an opportunity to elect, within 15 days after enactment, to relinquish its rights and to be relieved of all further obligations under Auction No. 35. Those who choose to retain their rights and obligations under Auction No. 35 will nonetheless be entitled to the return of their deposits and down payments in the interim. If and when the FCC is in a position to deliver the licenses at issue to those who remain obligated, they will be required to pay the full amount of their bid in accordance with the FCC's existing regulations. Those who elect to terminate their rights and obligations under Auction No. 35 will be free to pursue other opportunities to acquire spectrum and serve consumers.

I want to make this next point especially clear, nothing in the bill's provisions would affect the FCC's legal position in the Supreme Court with respect to the validity of its original cancellation of the NextWave licenses. If the FCC prevails in the Supreme Court, it will reestablish its right to allocate the spectrum at issue. It may then grant licenses to Auction No. 35 winning bidders who have declined to relinquish their rights under the bill. It will also be free to conduct a re-auction of any spectrum won by Auction No. 35 bidders who have in the meantime elected to relinquish their auction rights.

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By Mr. KERRY:

S. 2870. A bill to amend titles 10 and 14, United States Code, to provide for the use of gold in the metal content of the Medal of Honor; to the Committee on Armed Services.

Mr. KERRY. Mr. President, today I rise to introduce legislation to bring greater honor and prestige to our most valiant veterans. This legislation, the Congressional Medal of Honor Act, will require the use of 90 percent gold in the metal content of the Medal of Honor.

You may be surprised to learn that while foreign dignitaries, famous singers, and other civilians receive an approximately $30,000 medal—the Congressional Gold Medal, our most valued veterans receive a $30 medal. The cost difference lies in that the Medal of Honor consists primarily of brass plated slightly with gold. These American heroes deserve better and it's certainly the least we can do to honor their service.

The cost of the proposal would be minimal. According to the Congressional Budget Office, the total cost of the bill would be $2 million for a five-year period during which the new medals would be designed, produced and stockpiled. Our legislation would allow the approximately less than 1,000 living recipients awarded the Medal, or their next of kin, to receive a replacement Medal.

Amelia Earhart once said that ''Courage is the price that life exacts for granting peace.'' In helping us win our peace, we should truly honor our bravest heroes by giving them the Medals they deserve.

By Mr. FITZGERALD:

S. 2872. A bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Natural Resources.

Mr. FITZGERALD. Mr. President, I introduce a bill to reinstate a license surrendered to the Federal Energy Regulatory Commission that authorized the construction of a hydroelectric power plant in Carlyle, Illinois. In order to facilitate the construction of the hydroelectric power plant, the bill also contains a provision that extends the deadline for beginning construction of the plant.

Carlyle, IL, is a small community of 3,406 people in Southwestern Illinois, fifty miles east of St. Louis. Carlyle is situated on the Kaskaskia River at the southern tip of Carlyle Lake, which was formed in 1967 when the U.S. Army Corps of Engineers completed construction of a dam on the river. Carlyle Lake is 15 miles long and 3½ miles wide—the largest man-made lake in Illinois.

When the Army Corps of Engineers constructed the dam, it failed to build a hydroelectric power plant to capitalize on the energy available from water flowing through the dam. A hydroelectric power facility in Carlyle would produce 4,000 kilowatts of power and provide a renewable energy source for surrounding communities. Furthermore, the environmental impact of adding a hydroelectric facility would be minimal, and such a facility, located at a site near the existing dam, would not produce harmful emissions.

In 1997, Southwestern Electric Cooperative obtained a license from the FERC to begin work on a hydroelectric project in Carlyle. In 2000, Southwestern Electric Cooperative surrendered their license because they were unable to begin the project in the required time period. The City of Carlyle is interested in constructing the hydroelectric power plant and is seeking to obtain Southwestern Electric Cooperative's license.

The bill I am introducing today is required for the construction of the facility. Legislation is necessary to authorize FERC to reinstate Southwestern Electric Cooperative's surrendered license. Because there is not enough time remaining on the license to conduct studies, produce a design for the facility, and begin construction of the project, the bill includes a provision that allows FERC to extend the applicable deadline.

This legislation is an easy and environmentally safe approach to meeting the energy needs of Southwestern Illinois. Please join me in supporting this measure to provide a clean alternative energy source for this part of the Midwest.

I ask unanimous consent that the bill be printed in the RECORD following the conclusion of my remarks.

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

S. 2872

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

**SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.**

Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 11214, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section—

(1) reinstate the license for the construction of the project as of the effective date of the surrender of the license; and

(2) extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods beyond the date that is 4 years after the date of issuance of the license.

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By Mr. WELLSTONE (for himself, Mr. DAYTON, and Ms. MIKULSKI):

S. 2875. A bill to amend the Employee Retirement Income Security Act of 1974 to increase the maximum levels of guaranteed single-employer plan benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. WELLSTONE. Mr. President, I introduced an extremely important bill, the Pension Guarantee Improvement Act of 2002. I urge my colleagues to join me in pressing for its swift consideration and passage.

For over a quarter of a century, the federal government has run an insurance system for private ''defined benefit'' pension plans. The agency that administers this system, the Pension Benefit Guarantee Corporation, PBGC, has worked hard to live up to its statutory obligations to protect benefits in the event that the plan sponsor goes bankrupt and is forced to terminate the plan.

In my home state of Minnesota, I have worked closely with former LTV workers whose plans have been taken over to facilitate a dialogue with the PBGC. I am very grateful to Joe Grant, Steven Kandarian, Michael Rae and all the other PBGC staff who have provided invaluable assistance to my office and my constituents over the past few moths. I have been greatly impressed with their responsiveness, dedication and hard work.

Yet the experiences of the LTV workers in Minnesota—and other manufacturing workers around the country I suspect—have exposed some serious though limited gaps in the guarantees that PBGC is permitted to provide.

These guarantees are predicated on a certain set of assumptions regarding retirement that unfortunately do not hold true for all workers. For example, the vast majority of all workers that retire at age 65 having earned a defined benefit pension are guaranteed their full earned pension, regardless of whether or not the sponsoring company is still in business. In most white-collar jobs this arrangement works well; the nature of the employment permits most employees to continue in their jobs through age 65 and the terms of their private pension plans are generally set up for retirement at that age.

In labor-intensive industries such as steel and other manufacturing sectors, however,workers have never been expected to endure as many years of active employment as their white-collar counterparts. Again, the expectations of workers as they enter these industries are well-known. Employees are generally promised a secure retirement in exchange for their 25–30 years of service and they work for decades under the assumption that that promise will be kept.

What has happened to many of the former LTV employees in Minnesota is their hard-earned benefits have been unexpectedly—and in a few cases, dramatically—reduced as a result of their company being forced into bankruptcy. This is because their plan was taken over by the PBGC which is not allowed to provide as comprehensive a guarantee to these workers as they can offer to their white-collar counterparts.

The shorter working lives of steelworkers and others who labor in our rapidly-shrinking manufacturing sector effectively means that they will often not receive the full measure of their earned benefit if their company happens to go bankrupt before they reach age 65. The reductions in benefits that many of these workers suffer occur regardless of how hard they worked, how productive an employee they were—anything that they have any control over.

These losses are inflicted on these workers because they labored in the manufacturing sector and because they happened to be employed by a company that was forced into bankruptcy. There is no other reason. Given that we insure defined benefit plans, I see no reason why we should have one standard of coverage for white-collar workers and another, lesser guarantee for manufacturing workers. If a worker has fully earned the pension that they were originally promised I see no reason why we should pull the rug out from under them just because their company happens to go under.

Mr. President, we must strengthen the guarantees that the PBGC is required to provide in order to protect this small subset of all workers from unfair and unreasonable cuts in their earned benefits—cuts that all too often come at a tremendously difficult time in their lives when health or geographic location may prevent them from finding alternative employment. In my state of Minnesota, I saw firsthand how LTV workers in their 50s, who had qualified for a full retirement benefit under the terms of their original plan, had to struggle to survive the loss of their health insurance, and

some substantial reduction in their earned benefits as a result of PBGC takeover of their plan.

This legislation is designed to provide some relief to those workers who often suffer unexpected benefit reductions as a result of a PBGC takeover. Let me be quite clear that the affected workers represent only a very small fraction of all those covered by PBGC. The CBO has issued a preliminary score for this proposal that puts its cost at $110 million over the next ten years. Colleagues, this very modest proposal would allow PBGC to provide guarantees to these workers that more closely reflect what they earned under the terms of the plan that they had signed onto. It would help bring the level of guarantees provided to manufacturing-sector workers closer to that provided to their white-collar counterparts.

This bill involves three changes to the rules that determine how much of an earned benefit is guaranteed by the PBGC.

First, it would increase the maximum benefit guarantee level for single employer plans by adjusting an indexed formula that would boost the monthly maximum payable for retired workers of all ages by some 13 percent. This would translate into an increase of approximately $150–200/month for retirees over the age of 50 whose benefits are often reduced by the current maximum payable limitation.

Second, this bill directs the PBGC to cover supplemental benefits such as social security ''bridge'' payments as basic pension benefits. Again, this benefit is often earned by workers in steel and other labor-intensive industries and is specially provided to tide them over until they become eligible for Social Security.

Finally, this proposal would index the $20/year option on the 5-yr phase-in rule for recent benefit increases—which would put it at $95 using the same 4.773 social security index multiplier as is used to calculate the maximum payable. The current $20/year figure was part of the original 1975 ERISA statute and was intended to represent normal benefit increase. It has become essentially meaningless because it has never been increased. This would allow workers who received a ''normal'' benefit increase within the last 5 years to receive the entire raise instead of a percentage of it.

Mr. President, defined benefits plans and the manufacturing sector have both suffered serious declines in recent years. At the very least we owe it to these hard-working men and women to improve their access to meaningful pensions guarantees should their company be forced out of business. This bill would make a huge difference to people who need it the most—and do so without in any way threatening the solvency of the PBGC. I urge my colleagues to join me in supporting this modest yet meaningful relief for these workers.

By Mrs. MURRAY (for herself and Mr. WELLSTONE):

S. 2876. A bill to amend part A of title IV of the Social Security Act to promote secure and healthy families under the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

Mrs. MURRAY. Mr. President since the 1996 welfare reform, our nation has experienced one of the longest economic booms in history, but families are still struggling to make ends meet, and children are still living in poverty.

Now, with the recession, working families are facing even more barriers on the path toward self-sufficiency, and states are struggling to maintain their existing programs. In my own state of Washington, we've seen the results of the recession: good jobs are more difficult to find, welfare rolls are up, and state budget cuts have taken a chunk out of childcare and other critical supports for our most disadvantaged families. It is with this in mind that I introduce Senate bill S. 2876, the Secure and Healthy Families Act of 2002.

The Secure and Healthy Families Act will help build on the successes of welfare reform. This bill gives us an important opportunity to reaffirm that we value America's families and that we will protect our children. This bill takes what we know from our own experiences as parents, aunts, uncles, and grandparents and what research has proven to be effective to help us move toward the goal of building healthy families. It does not impose inflexible top-down strategies. Instead, it allows states to support work and engage families on assistance. It will help build secure and healthy families in a number of ways.

First, this legislation will create the Promoting Healthy Families Fund that enables the Secretary of HHS to fund state activities to promote and support secure families. For example, the fund would support state and local efforts to provide family counseling, income enhancement programs for working poor families—like the successful Minnesota Family Investment Program, or teen pregnancy prevention programs that help young people avoid the poverty that often comes with these unplanned pregnancies.

Second, this act will ensure states recognize that secure and healthy families come in all shapes and sizes. The federal government has long led the way in opposing discrimination, and this bill will continue that critical role.

Next, this bill puts in place several provisions to help the parents build a better future for themselves and their children. The bill encourages teen parents to remain in school by not counting the time that they are in school against their five-year lifetime limit. Under this legislation, a teen mother would also be given the chance to get on her feet, get settled in school, and find a safe place for her and her baby to live without losing assistance.

Mr. President, in families where children are chronically ill or disabled, parents are confronted with special challenges. Most cannot find appropriate affordable care, and cannot leave sick and vulnerable children alone. They run from the doctor's office and emergency rooms—trying to keep their jobs while dealing with the sudden and frequent life-threatening health problems that these children face. This bill would offer support for these families by recognizing that full time care of a chronically sick or disabled child is hard work, and by giving parents the opportunity to meet their children's special needs.

The bill also strengthens support for those families who are victims of domestic or sexual violence. We know that as many as 70 percent of welfare recipients are or have been victims of domestic violence. This bills sends a clear message to states that they must protect there vulnerable families in several ways including: having comprehensive standards and procedures to address domestic and sexual violence, training caseworkers so that they are sensitive to the unique needs of victims of domestic violence, and informing survivors of domestic and family violence of the existing protections to ensure their privacy and safety.

Most states are approaching domestic violence prevention and assistance in interesting and innovative ways. The bill will provide funding for a national study of best practices on the ways states are addressing domestic violence. In addition, states will be able to continue to provide services to domestic and family violence survivors without worrying about federal exemption caps. The bill will allow these survivors to receive the services they need when they are making the transition out of dangerous situations to safe and successful lives.

Finally, the bill would support relatives who take in underprivileged children. A growing number of children, 2.16 million in 2000, are being cared for solely by grandparents and other relatives. Although some of these children are involved with the child welfare system, many more of these children are able to remain outside of the system because their relatives are able to care for them.

Last week a young man named Eustaquito Beltran came to my office to talk to me about the importance of supporting foster children. He told me that he had lived in more than one hundred homes since he was a toddler. The results for children like him are heartbreaking. Fewer than half graduate from high school, and many become homeless after they turn 18.

Prior to being abandoned by or taken away from their parents, most of these children live in poverty with families devastated by substance abuse, mental health disorders, poor education, unemployment, violence, lack of parenting skills, and involvement with the criminal justice system. A 1990 study

found that the incidence of emotional, behavioral, and developmental problems among children in foster care was three to six times greater than the incidence of these problems among children not in care.

If care by a relative can help children like Eustaquito avoid the foster care system, then we should be grateful for the assistance that relative is offering. Instead, relatives who care for children with support form TANF are often trapped in a Catch-22. If a grandmother takes in her grandchild, but needs support herself and receives TANF assistance, federal time limits and work requirements apply. It doesn't make sense to require this grandmother, who may have worked for years and finally reached retirement, to return to work in order to help her grandchild stay out of the foster care system.

My bill would exempt kinship care families from federal time limits and work requirements to help ensure ongoing support for these children. This will allow relative caregivers to provide the additional supervision and care that children who have been abused and neglected often need.

Mr. President, the strength of our nation lies in how we care for our most vulnerable. Coming together to support victims of domestic violence, children abandoned by their parents, and teen mothers can make it clear that welfare reform is about helping all Americans succeed, not about punishing the needy.

The Senate must focus our crucial federal welfare dollars on programs and practices that create a bridge to self-sufficiency and productivity while keeping families secure and healthy. I am committed to strengthening the safety net our families depend on so that parents have the skills they need to find work and succeed once they are in the workplace. This bill will ensure that children grow up in secure and healthy families. It is a critical step in our work to leave no child behind.

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By Mr. LIEBERMAN (for himself and Mrs. BOXER):

S. 2877. A bill to amend the Internal Revenue Code of 1986 to ensure that stock options of public companies are granted to rank and file employees as well as officers and directors, and for other purposes; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, I rise in strong support of stock option reforms, and propose legislation that will make stock options, a powerful tool in the democratization of capitalism, even more effective as an incentive to spur innovation and create wealth.

The waves of corporate abuse that our economy has suffered over the past ten months have been devastating to so many employees, shareholders, and families across America. The investments that people have counted upon to safeguard their retirement, send their children to college, buy a home, start a business-trillions of dollars have gone up in smoke, turned to ash while, for a few executives, those misfortunes turned to cash.

That's maddening, as a result, the most productive economy in the world-in the history of the world-has been scarred. The American corporation, a great institution of democratic capitalism in which the public owns the company, has been stained. Potentially empowering innovations that enable individual investment, like the 401-k account, have been skewered.

Today, I want to talk about another fundamentally decent idea that has been dragged into the quicksand of corporate corruption: stock options. We've discovered over the last ten months that too many companies and executives have been misusing and abusing them. In far too many cases, options have been turned into mere feed in the corporate trough by the greed of corporate executives.

Stock options are a hammer. They can be used well or used poorly. We've seen corporate executives use this hammer to weaken the foundations of their companies, build rickety and top-heavy structures ready to collapse, and build themselves nice, secure shelters from the damage. That's unconscionable.

The bill I propose today will correct this abuse by ensuring that the tool of stock options is put in the hands of more and more employees so it can be used as it was initially intended-to construct wealth, to build fortunes, to strengthen companies, and to incentivize the long-term soundness and stability of a company.

The way to fix this problem is not, as some have suggested, to require stock option expensing at the time an option is granted. That would, in fact, make the problem worse. It would disincentive the dissemination of options in the first place-and in the end, those at the top of the corporate food chain will still take care of themselves. No, the way to fix this problem is to ensure that stock options are more broadly shared by more and more employees of American corporations-that they truly are the democratizing tool that they can be.

Our challenge is to fix the flaws that have been exposed without hurting stock options themselves. In the name of addressing this serious crisis in corporate accountability, let's not make the mistake of pushing through unwise reforms that threaten to further confuse investors and endanger the engines of entrepreneurship that make America's economy, for all its faults and flaws, the envy of history and of the world. It would be a terrible shame if we threw out the stock options baby with the corporate corruption bathwater.

That's the spirit of my legislation: to mend, not end, stock option distribution.

My legislation focuses on three critical reform issues regarding stock options, distribution, shareholder approval, and disposition by senior executives. I believe that my proposed reforms will ensure that stock options serve their highest purpose: that we give shareholders more control to ensure that stock options are issued consistent with their interests, while we do away with the perverse incentive for senior executives to cash in and bail out of their companies.

The bill does not address the elephant in the room-the issue of whether or not companies should be required to account for stock options. That is because I remain firmly convinced that would fail to address the fundamental problems we face-and would, in fact, create new problems with which we will have to grapple.

If the Congress were to require expensing of stock options, we can be sure that the fat cats would still get their milk. Top corporate executives would still take care of themselves. But the middle-income employees, who represent the vast majority of Americans who benefit from stock options, would have no option but to accept no options.

Requiring the expensing of options will not give shareholders a greater say in approving stock option plans or ensuring that they are focused on effective incentives for growth. The reforms I propose today will. And requiring the expensing of options will not address the incentives that executives may have to manipulate earnings immediately prior to selling shares acquired through a stock option plan. The reforms I propose today will.

The reform issues addressed in my bill are ones that are well suited for Congress because they are policy matters, not accounting rules.

I have little doubt that FASB will again take up the stock option accounting issue. When it does, I think it will find, again, that expensing options at the time they are granted is not possible. This is the unsung issue with stock option accounting.

There is no doubt that stock options are a form of compensation, but this happens when they are exercised, not when they are granted. Options that go ''underwater'', when the stock price drops, never become compensation and the options are worthless. We only know if options are compensation when they are exercised and only then do we know how much compensation has been received.

This is the issue I have raised about expensing, not whether they are compensation, but when they become compensation and when the amount of the compensation can be measured. I said in 1994 and I say it again today, I do not believe at the time an option is granted that we know if or how much it is worth as compensation.

I doubt if the champions of expensing can point to a single case where a company's disclosure of stock option costs at grant, now included in footnotes to the company's P&L statement, proved

to be accurate. The Enron footnotes estimated stock option costs that proved to wildly inflated and inaccurate because they did not anticipate the decline in Enron's stock price. In this bear market, I would think that every company's footnote estimates have proven to be wildly inflated and inaccurate.

I doubt if the champions of expensing can cite a single stock broker or analyst who uses the Black-Scholes estimating method to pick stocks.

I do not believe that these champions would be willing to put their own money behind a stock based on the Black-Scholes estimates. Anyone who finds a reliable way to estimate the price of a stock three to ten years in the future is bound to be rich, and will certainly win the Nobel Prize for Economics.

These are issues that FASB will review and it is not an appropriate subject for this or any other legislation. This legislation focuses on reforms that address abuses. Expensing of stock options, whatever its merits as an accounting standard, do not address any of the key reform issues addressed in this legislation. Expensing is quite irrelevant to these reforms; it's a sideshow and a diversion. It's a false surrogate for reform.

I have long championed broad-based stock option plans and I believe they are a great spur to productivity and competitiveness. A study by two Rutgers University professors found that over a three-year post-plan period, companies that grant options to most or all employees show a 17 percent improvement in productivity over what would have been expected had they not set up such a plan. The return on assets of these companies went up 2.3 percent per year over what would have been expected, while their stock performance is either better or about the same than comparable companies, depending on how performance is measured. These were companies that granted options broadly, which unfortunately is still not the norm.

On June 29, 1993, I introduced the ''Equity Expansion Act,'' S. 1175, to provide a tax incentive in favor broad-based stock option plans, options I referred to as ''performance'' stock options. The incentives were available only for options where ''immediately after the grant of the option, employees who are not highly compensated employees hold * * * share options which permit the acquisition of at least 50 percent of all shares which may be acquired * * *:

In my statement about this bill I stated that the bill could ''spur the competitiveness and profitability of American companies by expanding the number of employees in all industries who will have the opportunity to receive part of their remuneration in the form of stock options.'' I argued that that bill was appealing because it ''America's best companies learned long ago that the key to success in the world's toughest markets is a dedicated work force that shares the common goals for their company.'' The bill required shareholders to approve the plans and the employees were required to hold the shares for at least two years. I noted that ''much of the criticism of stock options revolves around horror stories about a small number of extravagantly compensated executives.''

My 1993 bill provided incentives for broad-based plans. It proposed a special capital gains incentive for the stock option shares. At the time, there was no capital gains preference; it had been repealed in 1986. Since then, of course, the capital gains preference has been restored. At that time, and at all times since then, companies can deduct the ''spread'' on an option at the time the option is exercised. The ''spread'' is the difference between the grant price and the market price, the discount.

There is a trend in favor of broad-based stock option plans. The National Center for Employee Ownership estimates that 7–10 million employees now hold stock options. The number of people who hold options has grown dramatically since 1992, when only about one million people held options. Stock options are a way to provide productivity incentives to many middle-class employees.

Despite the trend in favor of broad-based stock option plans, I am not satisfied with the status quo. In companies with broad-based plans, NCOE finds that 34 percent of the options go to senior management, the average grant value for senior executives was more than $500,000 compared to only about $8,000 for hourly employees and $35,000 for technical employees. In non-broad-based plans, of course, the distribution is even more skewed to senior management. The NCOE estimates that ''While the growth of broad-based options has been an important economic trend, our data nonetheless indicate that even in plans that do share options widely, executives still get an average of 65 percent to 70 percent of the total options granted.''

Similarly, estimates by the National Association Stock Plan Professionals finds in a 2000 survey that 26 percent of the plans only grant options to senior and middle management, and 43 percent to all employees. For high tech companies, the percentage of these top-heavy plans is only 4 percent, and 73 percent of the plans provide options to all of the employees. For non-high tech companies, the percentage of these top-heavy plans is 36 percent, and 29 percent of the plans provide options to all of the employees. So the prevalence of top-heavy plans seems to be concentrated in the non-high tech companies.

If options are justified as incentives for company performance and as a way of giving employees a stake in the company performance, which I believe they are, then this is not fair and not appropriate. This is why we need to go beyond enacting an incentive in favor of broad-based plans. As the NCOE has stated, ''Options for ordinary employees can work out to a new car, college tuition, a down payment on a house, a great vacation, and maybe even a more secure retirement. Options for executives can amount to enough money to fund a small nation. The option packages some executives have received would amount to tens of thousands of dollars per employee in their company.'' This imbalance is not good public policy.

In addition, if it turns out that companies are forced to expense their options at the time of grant, many of us fear that the first options that would be cut are those for middle-income and rank and file employees. We fear that the senior executives and their allies on the Board would take care of themselves, and drop or not enact broad-based plans. The legislation I propose here would help to ensure that this will not happen.

The bill I introduce today takes a direct and forceful approach and provides that this tax deduction is limited to the spread on options that are granted on a broad-basis to the employees of the firm. The intent and thrust of the bill is the same as the one I introduced in 1993, and the definitions are the same. The approach is more direct and forceful.

The bill, called the ''Rank and File Stock Option Act'', states that the ordinary and necessary business expense deduction attributed to the spread on the exercise of stock options (deducting the ''spread'' between the strike and exercise price) is limited on a pro rata basis to the extent stock option grants for the taxpayer are not broad-based. So, when the three-year average of the stock option grants is broad-based, as defined in the bill, there is no limitation on the deduction. In terms of a pro-rata reduction, the deduction would be limited by the same percentage to which the percentage of highly compensated employees options exceeded the broad-based standard.

This test goes to the number of options granted, not the exercise price or any other weighting or valuation. No deduction is allowed if the options granted to senior management are different in form and superior to those granted to rank and file employees, which will help ensure that there are no efforts to evade the purpose of this legislation.

The stock option grants are deemed to be broad-based when, immediately after the grant of the options, employees who are not highly compensated employees hold share options that permit the acquisition of at least 50 percent of all shares that may be acquired pursuant to all stock options outstanding (whether or not exercisable) as of such time. The bill does not require that stock option grants be made to literally every employee, but as a practical matter such grants to every employee may be necessary to meet

the test. Requiring that all employees receive some options involves complex issues about part-time employees and new employees. The 50 percent test is tough enough to ensure that the options are broad-based.

The definition of a ''highly compensated employee'' includes all employees who earn $90,000 or more and are among the firm's top 20 percent highest paid employees. This is similar to the current test applied to prevent ''discrimination'' in 401K plans.

In addition, under the legislation no deduction is allowed if more than 5 percent of the total number of options is granted to any one individual. And no deduction is allowed if more than 15 percent of the stock option grants go to the top 10 officers and directors of the firm.

The legislation applies only to public companies. The Treasury Department shall issue regulations to implement this provision. The effective date is for stock grants after December 31 of this year. During the remainder of the year, corporations granting stock options must disclose grants in filings to the SEC within 3 days.

To be clear, the legislation does not prevent a company from adopting a stock option plan that does not meet the terms of this legislation. It simply denies them a tax deduction on the spread when they do so. This should ensure that broad-based stock option plans become the norm and that senior executives do not hoard the options for themselves to the detriment of their companies and shareholders.

There is ample precedent for the limitation on deductions. Deductions are only permitted for ''ordinary and necessary'' business expenses and Congress has frequently intervened to define what this means. There is no right for corporations, or any other taxpayer, to avoid taxes on any and all expenses that they choose to incur.

There is also ample precedent for limiting the deduction for non-broad based stock option plans. We have similar limitations in the law defining contributions for 401K plans, the compensation in closely held corporations is regulated to prevent abuse, and we have limits on excessive compensation paid to executives of non-profit entitles.

To make sure that an employer's 401(k) plan does not unfairly favor its higher-paid workers, there are also rules governing highly-compensated employees or HCEs. The term highly-compensated employees may include a person who was a 5 percent owner at any time during the current or prior year or an employee who earned more than $90,000. An employee whose salary ranked in the top 20 percent of payroll for the prior year might also be considered an HCE. Generally, to make sure a 401(k) plan is compliant, each year the plan must pass a non-discrimination test.

These tests generally compare the amounts contributed by and on behalf of highly compensated employees to those contributed by and on behalf of the non-highly compensated employees. As long as the difference between the percentages of these two groups is within the Internal Revenue Code's guidelines, the plan retains its tax-qualified status. If the plan does not pass the tests, the plan must take corrective action or lose its tax-favored status.

With regard to closely held corporations, the deduction for ordinary and necessary expenses is limited to ''reasonable'' compensation for services performed by the shareholders/employees. A corporation paying excessive compensation to a shareholder-employee is required to reclassify the excess as a dividend (provided there are adequate corporate earnings and profits). This has unfavorable tax consequences, since dividends are not deductible. In addition to an employee's salary, employer-provided benefits should be considered in determining whether an employee's compensation is reasonable. This includes pension and welfare benefits, as well as fringe benefits such as the use of a company car.

Finally, the 1993 Taxpayer's Bill of Rights enacted Section 4958 which imposes an excise tax on transactions that provide excessive economic benefits to top executives of non-profit charitable groups. The Internal Revenue Service finalized regulations implementing this law on January 10, 2001. The regulations define what constitutes excessive compensation and benefits.

The limitation on the deduction proposed in my legislation serves a constructive public policy purpose. The only purpose of the limitation on deduction we find in S. 1940, the lead bill on expensing of stock options, is to coerce companies into expensing their options at grant. If the companies do not expense options at grant, as S. 1940 prefers that they do despite FASB's current rule that this is not necessary, then they lose their tax deduction. If this legislation is effective, and companies are forced to expense their options at grant, the likely result is that fewer options will be granted, especially to rank and file employees, although not for top executives. My legislation is directed at protecting the stock options of rank and file employees.

In addition to ensuring that stock options are broad-based and performance oriented and not just allocated to the top executives, we need to make sure that shareholders are involved in the decision to implement these stock option plans.

The legislation provides that not later than one year after the date of enactment of this Act, the Commission shall finalize rules pursuant to the Securities and Exchange Act of 1934 to ensure that shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange.

This approval would apply to any stock option plan, not just a stock option plan that meets the terms for a broad-based plan.

In securing this approval, prior to submission of such plans to shareholders for approval, the company must give its shareholders detailed information about the stock option plans and grants, including (a) the economic rationale and interest of shareholders in the plan or grant; (b) a detailed description of the anticipated distribution of the plan or grant among directors, officers, and employees and the rationale such distribution; (c) the total number of options reserved or intended for grants to each director and officer, and to different classes of employees; (d) the maximum potential future earnings per share dilution of investors' shareholdings assuming the exercise of all in-the-money options with no adjustment for the use of the Treasury stock method, as stock price varies; (e) the terms under which stock option grants may be cancelled or reissued; and (f) the number, weighted average exercise prices, and vesting schedule of all options previously approved or outstanding.

The Commission shall ensure that all disclosures required by this Section shall increase the reliability and accuracy of information provided to shareholders and investors.

Such shareholder approval requirement may exempt stock option grants to individual employees under terms and conditions specified by the Commission. Such exemptions shall be available only where the grant is (1) made to an individual who is not a director or officer of the company at the time the grant is approved; (2) necessary, based on business judgment; (3) represents a deminimus potential dilution of future earnings per share of investors' shareholdings; and (4) made on terms disclosed to shareholders of the grant that is made in the next filing with the Securities and Exchange Commission.

Such approval requirement may exempt stock option plans and grants of any registrant that qualifies as a small business issuer under applicable securities laws and regulations or to such additional small issuers as the Commission determines would be unduly burdened by such requirements as compared to the benefit to shareholders. The Commission is authorized to phase in the applicability of this rule both as to the applicability and to its effective date so that it can determine the size of issuer to which this rule will apply and the extent to which the rule should apply to plans that exclude officers and directors.

The bill also focuses on the issue of the incentives stock options give to executives as they manage a company.

Questions have been raised about whether the options are partly responsible for the deception and fraud that has occurred at Enron and other companies. The charge is that the options gave these executives an irresistible rationale to deceive shareholders and investors to pump up the stock price and increase the value of the options. Charges have been made that these manipulations were timed to occur immediately before options were exercised and shares were sold.

While there is intuitive appeal to this argument, it is difficult to establish the role of stock options in these acts of deceptions, fraud and manipulation. The concerns are sufficient, however, that we need to turn to the Securities and Exchange Commission to evaluate them and determine what restrictions might be imposed on the sale of stock acquired through stock options. The bill directs the SEC to conduct an analysis and make regulatory and legislative recommendations on the need for new stock holding period requirements for senior executives. The Commission is directed to make recommendations regarding minimum holding periods after exercise of options to purchase stock and maximum percentage of stock purchased through options that may be sold. These recommendations would include transactions involving sales to company, sales on public markets, and derivative sales.

We need the expertise of the Commission on this complicated issue. It would probably not be reasonable to bar executives from selling any shares during their employment with the firm. Executives may need the proceeds of these sales to finance the college education of their children and many other completely legitimate reasons. The Commission is in a better position to evaluate the incentives, the opportunities for fraud, and other key factual and policy questions.

Stock options have been under attack. We need to focus on how to prevent abuse of stock options, not just abandon these incentives. They are a uniquely American idea, they provide a way to increase productivity and broaden the winner's circle. As with any economic incentive, they can be abused and we need to focus on these abuses. By reforming stock options, we can ensure that these incentives will be even more effective.

I believe that the reforms I have proposed will address the abuses we have seen. It is unfortunate that the accounting for stock options has become a surrogate for any and all issues regarding stock options. I continue to believe that accounting for stock options as an expense at the time they are granted is not appropriate or possible. But irrespective of the outcome of this debate, the reforms I have proposed here address the real issues, the real abuses, and the real opportunities to ensure that stock options continue to provide a powerful incentive in favor of economic growth and democratic capitalism.

I ask unanimous consent than the following outline of the legislation and the text of the legislation be printed in the RECORD.

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

RANK AND FILE STOCK OPTION ACT

Legislation focuses on three critical reform issues regarding stock options—distribution, shareholder approval, and disposition by senior executives.

Requiring expensing of stock options at the time they are granted is likely to discourage the use of stock options, but it will not prevent senior executives from hoarding options—it will probably encourage it. It will not give shareholders a greater say in approving stock option plans and ensuring that they are focused on effective incentives for growth. And expensing will not address the incentives that executives may have to manipulate earnings immediately prior to selling shares acquired through a stock option plan.

A. Broad-based Options. This provision of the bill is based on the structure and elements of a bill introduced by Senator LIEBERMAN on June 29, 1993, the ''Equity Expansion Act,'' S. 1175.

This bill limits the ordinary and necessary business expense deduction attributed to the spread on the exercise of stock options to the extent stock option grants for the taxpayer are not broad-based.

The stock option grants are deemed to be broad-based when, immediately after the grant of the options, employees who are not highly compensated employees hold share options that permit the acquisition of at least 50 percent of all shares that may be acquired pursuant to all stock options outstanding (whether or not exercisable) as of such time. The bill does not require that stock option grants be made to literally every employee, but as a practical matter such grants to every employee may be necessary to meet the test. Requiring that all employees receive some options involves complex issues about part-time employees and new employees. The 50% test is tough enough to ensure that the options are broad-based.

The definition of a highly compensated employee includes all employees who earn $90,000 or more and are among the firm's top 20 percent highest paid employees. This is similar to the current test applied to prevent ''discrimination'' in 401K plans.

B. Shareholder Approval. The bill provides that not later than one year after the date of enactment of this Act, the Commission shall finalize rules pursuant to the Securities and Exchange Act of 1934 to ensure that shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange.

C. Holding Period For Executives. Finally, the bill requires the Securities and Exchange Commission to conduct an analysis and make regulatory and legislative recommendations on the need for new stock holding period requirements for senior executives to reduce incentives for earnings manipulations.

S. 2877

*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 ''Rank and File Stock Option Act of 2002''.

**SEC. 2. DENIAL OF DEDUCTION FOR STOCK OPTION PLANS DISCRIMINATING IN FAVOR OF HIGHLY COMPENSATED EMPLOYEES.**

(a) IN GENERAL.—Section 162 of the Internal Revenue Code of 1986 (relating to deduction for trade and business expenses) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) DEDUCTIBILITY OF STOCK OPTIONS NOT WIDELY AVAILABLE TO ALL EMPLOYEES.—

''(1) IN GENERAL.—If—

''(A) an applicable taxpayer grants stock options during any taxable year, and

''(B) the taxpayer fails to meet the overall concentration test of paragraph (2) or the individual concentration tests of paragraph (3) for such taxable year with respect to the granting of such options,

then the deduction allowable to such taxpayer for any taxable year in which any such option is exercised shall be limited as provided in this subsection.

''(2) OVERALL CONCENTRATION TEST.—If the total number of shares which may be acquired pursuant to options granted to applicable highly compensated employees by an applicable taxpayer during a taxable year exceeds 50 percent of the aggregate share amount, then the deduction allowable under this chapter with respect to the exercise of any option granted by the applicable taxpayer during such taxable year to any employee shall be reduced by the product of—

''(A) the amount of such deduction computed without regard to this subsection, and

''(B) a percentage equal to the number of percentage points (including any fraction thereof) by which such total number exceeds 50 percent.

''(3) INDIVIDUAL CONCENTRATION TESTS.—

''(A) OPTIONS GRANTED TO SINGLE EMPLOYEE.—If the total number of shares which may be acquired pursuant to options granted to any applicable highly compensated employee by an applicable taxpayer during a taxable year exceeds 5 percent of the aggregate share amount, then no deduction shall be allowable under this chapter with respect to the exercise of any options granted by the applicable taxpayer to such employee during such taxable year.

''(B) OPTIONS GRANTED TO TOP EMPLOYEES.—

''(i) IN GENERAL.—If the total number of shares which may be acquired pursuant to options granted to employees who are members of the top group by an applicable taxpayer during a taxable year exceeds 15 percent of the aggregate share amount, then no deduction shall be allowable under this chapter with respect to the exercise of any options granted by the applicable taxpayer to such employees during such taxable year.

''(ii) TOP GROUP.—For purposes of this subparagraph, an employee shall be treated as a member of the top group if the employee is a covered employee (within the meaning of section 162(m)(3)).

''(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply to any taxable year if the applicable taxpayer granted an equal number of identical options to each employee without regard to whether the employee was highly compensated or not.

''(4) RULES RELATING TO TESTS.—For purposes of this subsection—

''(A) AGGREGATE SHARE AMOUNT.—

''(i) IN GENERAL.—The aggregate share amount for any taxable year is the total number of shares which may be acquired pursuant to options granted to all employees by an applicable taxpayer during the taxable year.

''(ii) CERTAIN OPTIONS DISREGARDED.—Except as provided in regulations, if the terms of any option granted to an employee other than a highly compensated employee during

any taxable year are not substantially the same as, or more favorable than, the terms of any option granted to any highly compensated employee, then such option shall not be taken into account in determining the aggregate share amount.

''(B) OPTIONS GRANTED ON DIFFERENT CLASSES OF STOCK.—Except as provided in regulations, this subsection shall be applied separately with respect to each class of stock for which options are granted.

''(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) APPLICABLE TAXPAYER.—The term 'applicable taxpayer' means any taxpayer which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934; 15 U.S.C. 78c)—

''(i) the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or

''(ii) which—

''(I) is required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78o(d)), or

''(II) will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et seq.), unless its securities are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) on or before the end of such fiscal year.

''(B) APPLICABLE HIGHLY COMPENSATED EMPLOYEE.—The term 'applicable highly compensated employee' means—

''(i) any highly compensated employee who is described in subparagraph (B) of section 414(q)(1), and

''(ii) any director of the applicable taxpayer.

''(C) INCENTIVE STOCK OPTIONS NOT TAKEN INTO ACCOUNT.—An incentive stock option (as defined in section 422(b)) shall not be taken into account for purposes of applying this section.

''(D) AGGREGATION.—All corporations which are members of an affiliated group of corporations filing a consolidated return shall be treated as 1 taxpayer.

''(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to prevent the avoidance of this subsection through the use of phantom stock, restricted stock, or similar instruments.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

**SEC. 3. SHAREHOLDER APPROVAL.**

(a) RULES REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall finalize rules pursuant to the Securities Exchange Act of 1934 to ensure that—

(1) shareholder approval is required for stock option plans and grants, stock purchase plans, and other arrangements by public companies by which any person may acquire an equity interest in the company in exchange for consideration that is less than the fair market value of the equity interest at the time of the exchange; and

(2) prior to submission of such plans to shareholders for approval, such shareholders are given detailed information about the stock option plans and grants, including—

(A) the economic rationale and interest of shareholders in the plan or grant;

(B) a detailed description of the anticipated distribution of the plan or grant among directors, officers, and employees and the rationale of such distribution;

(C) the total number of options reserved or intended for grants to each director and officer, and to different classes of employees;

(D) the maximum potential future earnings per share dilution of investors' shareholdings, assuming the exercise of all in-the-money options with no adjustment for the use of the Treasury stock method, as stock price varies;

(E) the terms under which stock option grants may be canceled or reissued; and

(F) the number, weighted average exercise prices, and vesting schedule of all options previously approved or outstanding.

(b) RELIABILITY AND ACCURACY.—The Commission shall ensure that all disclosures required by this section shall increase the reliability and accuracy of information provided to shareholders and investors.

(c) EXEMPTION AUTHORITY.—Shareholder approval rules issued in accordance with this section—

(1) may exempt stock option grants to individual employees under terms and conditions specified by the Commission, except that such exemptions shall be available only in cases in which the grant—

(A) is made to an individual who is not a director or officer of the company at the time the grant is approved;

(B) is necessary, based on business judgment;

(C) represents a de minimus potential dilution of future earnings per share of investors' shareholdings; and

(D) is made on terms disclosed to shareholders in the next filing with the Commission; and

(2) may exempt stock option plans and grants of any registrant that qualifies as a small business issuer under applicable securities laws and regulations, or to such additional small issuers as the Commission determines would be unduly burdened by such requirements as compared to the benefit to shareholders, except that such exemption may be phased in, both as to applicability and to its effective date, so that the Commission may determine the size of issuer to which such exemptions will apply and the extent to which the rule should apply to plans that exclude officers and directors.

**SEC. 4. HOLDING PERIOD FOR EXECUTIVES.**

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall conduct an analysis of, and make regulatory and legislative recommendations on, the need for new stock holding period requirements for senior executives, including—

(1) recommendations to set minimum holding periods after the exercise of options to purchase stock and to set a maximum percentage of stock purchased through options that may be sold; and

(2) an analysis of sales to company, sales on public markets, and derivative sales.

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By Mr. FEINGOLD:

S. 2878. A bill to amend part A of title IV of the Social Security Act to ensure fair treatment and due process protections under the temporary assistance to needy families program, to facilitate enhanced data collection and reporting requirements under that program, and for other purposes; to the Committee on Finance.

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

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

S. 2878

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.**

(a) SHORT TITLE.—This Act may be cited as the ''Fair Treatment and Due Process Protection Act of 2002''.

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

Sec. 1. Short title; table of contents; references.

TITLE I—ACCESS TO TRANSLATION SERVICES AND LANGUAGE EDUCATION PROGRAMS

Sec. 101. Provision of interpretation and translation services.

Sec. 102. Assisting families with limited English proficiency.

TITLE II—SANCTIONS AND DUE PROCESS PROTECTIONS

Sec. 201. Sanctions and due process protections.

TITLE III—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec. 301. Data collection and reporting requirements.

Sec. 302. Enhancement of understanding of the reasons individuals leave State TANF programs.

Sec. 303. Longitudinal studies of TANF applicants and recipients.

Sec. 304. Protection of individual privacy.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

(c) REFERENCES.—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

**TITLE I—ACCESS TO TRANSLATION SERVICES AND LANGUAGE EDUCATION PROGRAMS**

**SEC. 101. PROVISION OF INTERPRETATION AND TRANSLATION SERVICES.**

(a) IN GENERAL.—Section 408(a) (42 U.S.C. 608(a) is amended by adding at the end the following:

''(12) PROVISION OF INTERPRETATION AND TRANSLATION SERVICES.—A State to which a grant is made under section 403(a) for a fiscal year shall, with respect to the State program funded under this part and all programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)), provide appropriate interpretation and translation services to individuals who lack English proficiency if the number or percentage of persons lacking English proficiency meets the standards established under section 272.4(b) of title 7 of the Code of Federal Regulations (as in effect on the date of enactment of this paragraph).''.

(b) PENALTY.—Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

''(15) PENALTY FOR FAILURE TO PROVIDE INTERPRETATION AND TRANSLATION SERVICES.—

''(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(12) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

''(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.''.

**SEC. 102. ASSISTING FAMILIES WITH LIMITED ENGLISH PROFICIENCY.**

(a) IN GENERAL.—Section 407(c)(2) is amended by adding at the end the following:

''(E) INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY.—In the case of an adult recipient who lacks English language proficiency, as defined by the State, the State shall—

''(i) advise the adult recipient of available programs or activities in the community to address the recipient's education needs;

''(ii) if the adult recipient elects to participate in such a program or activity, allow the recipient to participate in such a program or activity; and

''(iii) consider an adult recipient who participates in such a program or activity on a satisfactory basis as being engaged in work for purposes of determining monthly participation rates under this section, except that the State—

''(I) may elect to require additional hours of participation or activity if necessary to ensure that the recipient is participating in work-related activities for a sufficient number of hours to count as being engaged in work under this section; and

''(II) shall attempt to ensure that any additional hours of participation or activity do not unreasonably interfere with the education activity of the recipient.''.

(b) PENALTY.—Section 409(a) (42 U.S.C. 609(a)), as amended by section 101(b), is amended by adding at the end the following:

''(16) PENALTY FOR FAILURE TO PROVIDE INTERPRETATION AND TRANSLATION SERVICES.—

''(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 407(c)(2)(E) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

''(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.''.

## TITLE II—SANCTIONS AND DUE PROCESS PROTECTIONS

### SEC. 201. SANCTIONS AND DUE PROCESS PROTECTIONS.

(a) IN GENERAL.—Section 408(a) (42 U.S.C. 608(a)), as amended by section 101(a), is amended by adding at the end the following:

''(13) SANCTION PROCEDURES.—

''(A) PRE-SANCTION REVIEW PROCESS.—Prior to the imposition of a sanction against an individual or family receiving assistance under the State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for failure to comply with program requirements, the State shall take the following steps:

''(i) Provide or send notice to the individual or family, and, if the recipient's native language is not English, through a culturally competent translation, of the following information:

''(I) The specific reason for the proposed sanction.

''(II) The amount of the proposed sanction.

''(III) The length of time during which the proposed sanction would be in effect.

''(IV) The steps required to come into compliance or to show good cause for noncompliance.

''(V) That the agency will provide assistance to the individual in determining if good cause for noncompliance exists, or in coming into compliance with program requirements.

''(VI) That the individual may appeal the determination to impose a sanction, and the steps that the individual must take to pursue an appeal.

''(ii)(I) Ensure that, subject to clause (iii)—

''(aa) an individual other than the individual who determined that a sanction be imposed shall review the determination and have the authority to take the actions described in subclause (II); and

''(bb) the individual or family against whom the sanction is to be imposed shall be afforded the opportunity to meet with the individual who, as provided for in item (aa), is reviewing the determination with respect to the sanction.

''(II) An individual to which this subclause applies may—

''(aa) modify the determination to impose a sanction;

''(bb) determine that there was good cause for the individual or family's failure to comply;

''(cc) recommend modifications to the individual's individual responsibility or employment plan; and

''(dd) make such other determinations and take such other actions as may be appropriate under the circumstances.

''(iii) The review required under clause (ii) shall include consideration of the following:

''(I) To the extent applicable, whether barriers to compliance exist, such as a physical or mental impairment, including mental illness, substance abuse, mental retardation, a learning disability, domestic or sexual violence, limited proficiency in English, limited literacy, homelessness, or the need to care for a child with a disability or health condition, that contributed to the noncompliance of the person.

''(II) Whether the individual or family's failure to comply resulted from failure to receive or have access to services previously identified as necessary in an individual responsibility or employment plan.

''(III) Whether changes to the individual responsibility or employment plan should be made in order for the individual to comply with program requirements.

''(IV) Whether the individual or family has good cause for any noncompliance.

''(V) Whether the State's sanction policies have been applied properly.

''(B) SANCTION FOLLOW-UP REQUIREMENTS.—If a State imposes a sanction on a family or individual for failing to comply with program requirements, the State shall—

''(i) provide or send notice to the individual or family, in language calculated to be understood by the individual or family, and, if the individual's or family's native language is not English, through a culturally competent translation, of the reason for the sanction and the steps the individual or family must take to end the sanction;

''(ii) resume the individual's or family's full assistance, services, or benefits provided under this program (provided that the individual or family is otherwise eligible for such assistance, services, or benefits) once the individual who failed to meet program requirements that led to the sanction complies with program requirements for a reasonable period of time, as determined by the State and subject to State discretion to reduce such period;

''(iii) if assistance, services, or benefits have not resumed, as of the period that begins on the date that is 60 days after the date on which the sanction was imposed, and end on the date that is 120 days after such date, provide notice to the individual or family, in language calculated to be understood by the individual or family, of the steps the individual or family must take to end the sanction, and of the availability of assistance to come into compliance or demonstrate good cause for noncompliance with program requirements.''.

(b) PENALTY.—Section 409(a) (42 U.S.C. 609(a)), as amended by section 102(b), is amended by adding at the end the following:

''(17) PENALTY FOR FAILURE TO FOLLOW SANCTION PROCEDURES.—

''(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(13) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

''(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.''.

(c) STATE PLAN REQUIREMENT TO DESCRIBE HOW STATES WILL NOTIFY APPLICANTS AND RECIPIENTS OF THEIR RIGHTS UNDER THE PROGRAM AND OF POTENTIAL BENEFITS AND SERVICES AVAILABLE UNDER THE PROGRAM.—Section 402(a)(1)(B)(iii) (42 U.S.C. 602(a)(1)(B)(iii)) is amended by inserting '', and will notify applicants and recipients of assistance under the program of the rights of individuals under all laws applicable to program activities and of all potential benefits and services available under the program'' before the period.

(d) REQUIREMENT TO PROVIDE NOTICE TO APPLICANTS AND RECIPIENTS OF RIGHTS AND OF POTENTIAL PROGRAM BENEFITS AND SERVICES, AND TO TRAIN PROGRAM PERSONNEL TO RESPECT SUCH RIGHTS.—

(1) IN GENERAL.—Section 408(a) (42 U.S.C. 608(a)), as amended by subsection (a), is amended by adding at the end the following:

''(14) REQUIREMENT TO PROVIDE NOTICE TO APPLICANTS AND RECIPIENTS OF RIGHTS AND OF POTENTIAL PROGRAM BENEFITS AND SERVICES, AND TO TRAIN PROGRAM PERSONNEL TO RESPECT SUCH RIGHTS.—A State to which a grant is made under section 403 shall—

''(A) notify each applicant for, and each recipient of, assistance under the State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)) of the rights of applicants and recipients under all laws applicable to the activities of such program (including the right to claim good cause exceptions to program requirements), and shall provide the notice—

''(i) to a recipient when the recipient first receives assistance, benefits, or services under the program;

''(ii) to all such recipients on a semiannual basis; and

''(iii) orally and in writing, in the native language of the recipient and at not higher than a 6th grade level, and, if the recipient's native language is not English, through a culturally competent translation; and

''(B) train all program personnel on a regular basis regarding how to carry out the program consistent with such rights.''.

(2) PENALTY.—Section 409(a) (42 U.S.C. 609(a)), as amended by subsection (b), is amended by adding at the end the following:

''(18) PENALTY FOR FAILURE TO PROVIDE NOTICE TO APPLICANTS AND RECIPIENTS OF RIGHTS AND OF POTENTIAL PROGRAM BENEFITS AND SERVICES, AND TO TRAIN PROGRAM PERSONNEL TO RESPECT SUCH RIGHTS.—

''(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has violated section 408(a)(14) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to up to 5 percent of the State family assistance grant.

''(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.''.

## TITLE III—DATA COLLECTION AND REPORTING REQUIREMENTS

### SEC. 301. DATA COLLECTION AND REPORTING REQUIREMENTS.

Section 411(a)(1) (42 U.S.C. 611(a)(1)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking ''(except for information relating to activities carried out under section 403(a)(5))'' and inserting '', and, in complying with this requirement, shall ensure that such information is reported in a manner that permits analysis of the information by race, ethnicity or national origin, primary language, gender, and educational level, including analysis using a combination of these factors, and that all data, including Federal, State, and local data (whether collected by public or private local agencies or entities that administer or operate the State program funded under this part) is made public and easily accessible'';

(B) by striking clause (v) and inserting the following:

''(v) The employment status, occupation (as defined by the most current Federal Standard Occupational Classification system, as of the date of the collection of the data), and earnings of each employed adult in the family.'';

(C) in clause (vii), by striking ''and educational level'' and inserting '', educational level, and primary language'';

(D) in clause (viii), by striking ''and educational level'' and inserting '', educational level, and primary language''; and

(E) in clause (xi), in the matter preceding subclause (I), by inserting '', including, to the extent such information is available, information on the specific type of job, or education or training program'' before the semicolon;

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

(3) by inserting after subparagraph (A), the following:

''(B) INFORMATION REGARDING APPLICANTS.—

''(i) IN GENERAL.—Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, disaggregated case record information on the number of individuals who apply for but do not receive assistance under the State program funded under this part, the reason such assistance were not provided, and the overall percentage of applications for assistance that are approved compared to those that are disapproved with respect to such month.

''(ii) REQUIREMENT.—In complying with clause (i), each eligible State shall ensure that the information required under that clause is reported in a manner that permits analysis of such information by race, ethnicity or national origin, primary language, gender, and educational level, including analysis using a combination of these factors.''.

### SEC. 302. ENHANCEMENT OF UNDERSTANDING OF THE REASONS INDIVIDUALS LEAVE STATE TANF PROGRAMS.

(a) CASE CLOSURE REASONS.—Section 411(a)(1) (42 U.S.C. 611(a)(1)), as amended by section 301, is amended—

(1) by redesignating subparagraph (C) (as redesignated by such section 301) as subparagraph (D); and

(2) by inserting after subparagraph (B) (as added by such section 301) the following:

''(C) DEVELOPMENT OF COMPREHENSIVE LIST OF CASE CLOSURE REASONS.—

''(i) IN GENERAL.—The Secretary shall develop, in consultation with States and individuals or organizations with expertise related to the provision of assistance under the State program funded under this part, a comprehensive list of reasons why individuals leave State programs funded under this part. In developing such list, the Secretary shall consider the full range of reasons for case closures, including the following:

''(I) Lack of access to specific programs or services, such as child care, transportation, or English as a second language classes for individuals with limited English proficiency.

''(II) The medical or health problems of a recipient.

''(III) The family responsibilities of a recipient, such as caring for a family member with a disability.

''(IV) Changes in eligibility status.

''(V) Other administrative reasons.

''(ii) OTHER REQUIREMENTS.—The list required under clause (i) shall be developed with the goal of substantially reducing the number of case closures under the State programs funded under this part for which a reason is not known.

''(iii) PUBLIC COMMENT.—The Secretary shall promulgate for public comment regulations that—

''(I) list the case closure reasons developed under clause (i);

''(II) require States, not later than October 1, 2004, to use such reasons in accordance with subparagraph (A)(xvi); and

''(III) require States to report on efforts to improve State tracking of reasons for case closures, including the identification of additional reasons for case closures not included on the list developed under clause (i).

''(iv) REVIEW AND MODIFICATION.—The Secretary, through consultation and analysis of quarterly State reports submitted under this paragraph, shall review on an annual basis whether the list of case closure reasons developed under clause (i) requires modification and, to the extent the Secretary determines that modification of the list is necessary, shall publish proposed modifications for notice and comment, prior to the modifications taking effect.''.

(b) INCLUSION IN QUARTERLY STATE REPORTS.—Section 411 (a)(1)(A) (42 U.S.C. 611(a)(1)(A)) is amended—

(1) in clause (xvi)—

(A) in subclause (IV), by striking ''or'' at the end;

(B) in subclause (V), by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(VI) a reason specified in the list developed under subparagraph (C), including any modifications of such list.'';

(2) by redesignating clause (xvii) as clause (xviii); and

(3) by inserting after clause (xvi), the following:

''(xvii) The efforts the State is undertaking, and the progress with respect to such efforts, to improve the tracking of reasons for case closures.''.

### SEC. 303. LONGITUDINAL STUDIES OF TANF APPLICANTS AND RECIPIENTS.

(a) IN GENERAL.—Section 413 (42 U.S.C. 613) is amended by striking subsection (d) and inserting the following:

''(d) LONGITUDINAL STUDIES OF APPLICANTS AND RECIPIENTS TO DETERMINE THE FACTORS THAT CONTRIBUTE TO POSITIVE EMPLOYMENT AND FAMILY OUTCOMES.—

''(1) IN GENERAL.—The Secretary, directly or through grants, contracts, or interagency agreements, shall conduct longitudinal studies in at least 5, and not more than 10, States (or sub-State areas, except that no such area shall be located in a State in which a Statewide study is being conducted under this paragraph) of a representative sample of families that receive, and applicants for, assistance under a State program funded under this part or under a program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)).

''(2) REQUIREMENTS.—The studies conducted under this subsection shall—

''(A) follow families that cease to receive assistance, families that receive assistance throughout the study period, and families diverted from assistance programs; and

''(B) collect information on—

''(i) family and adult demographics (including race, ethnicity or national origin, primary language, gender, barriers to employment, educational status of adults, prior work history, prior history of welfare receipt);

''(ii) family income (including earnings, unemployment compensation, and child support);

''(iii) receipt of assistance, benefits, or services under other needs-based assistance programs (including the food stamp program, the medicaid program under title XIX, earned income tax credits, housing assistance, and the type and amount of any child care);

''(iv) the reasons for leaving or returning to needs-based assistance programs;

''(v) work participation status and activities (including the scope and duration of work activities and the types of industries and occupations for which training is provided);

''(vi) sanction status (including reasons for sanction);

''(vii) time limit for receipt of assistance status (including months remaining with respect to such time limit);

''(viii) recipient views regarding program participation; and

''(ix) measures of income change, poverty, extreme poverty, food security and use of food pantries and soup kitchens, homelessness and the use of shelters, and other measures of family well-being and hardship over a 5-year period.

''(3) COMPARABILITY OF RESULTS.—The Secretary shall, to the extent possible, ensure that the studies conducted under this subsection produce comparable results and information.

''(4) REPORTS.—

''(A) INTERIM REPORTS.—Not later than October 1, 2005, the Secretary shall publish interim findings from at least 12 months of longitudinal data collected under the studies conducted under this subsection.

''(B) SUBSEQUENT REPORTS.—Not later than October 1, 2007, the Secretary shall publish findings from at least 36 months of longitudinal data collected under the studies conducted under this subsection.''.

(b) ANNUAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Section 411(b) (42 U.S.C. 611(b)) is amended—

(A) in paragraph (2)—

(i) by inserting ''(including types of sanctions or other grant reductions)'' after ''financial characteristics''; and

(ii) by inserting '', disaggregated by race, ethnicity or national origin, primary language, gender, education level, and, with respect to closed cases, the reason the case was closed'' before the semicolon;

(B) in paragraph (3), by striking ''and'' at the end;

(C) in paragraph (4), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(5) the economic well-being of children and families receiving assistance under the State programs funded under this part and of children and families that have ceased to receive such assistance, using longitudinal matched data gathered from federally supported programs, and including State-by-State data that details the distribution of earnings and stability of employment of such families and (to the extent feasible) describes, with respect to such families, the distribution of income from known sources

(including employer-reported wages, assistance under the State program funded under this part, and benefits under the food stamp program), the ratio of such families' income to the poverty line, and the extent to which such families receive or received noncash benefits and child care assistance, disaggregated by race, ethnicity or national origin, primary language, gender, education level, whether the case remains open, and, with respect to closed cases, the reason the case was closed.''.

(2) CONFORMING AMENDMENTS.—Section 411(a) (42 U.S.C. 611(a)) is amended—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6), the following:

''(7) REPORT ON ECONOMIC WELL-BEING OF CURRENT AND FORMER RECIPIENTS.—The report required by paragraph (1) for a fiscal quarter shall include for that quarter such information as the Secretary may specify in order for the Secretary to include in the annual reports to Congress required under subsection (b) the information described in paragraph (5) of that subsection.''.

**SEC. 304. PROTECTION OF INDIVIDUAL PRIVACY.**

Section 411 of the Social Security Act (42 U.S.C. 611) is amended by adding at the end the following:

''(c) PROTECTION OF INDIVIDUAL PRIVACY.—With respect to any information concerning individuals or families receiving assistance, or applying for assistance, under the State programs funded under this part that is publicly disclosed by the Secretary, the Secretary shall ensure that such disclosure is made in a manner that protects the privacy of such individuals and families.''.

**TITLE IV—EFFECTIVE DATE**

**SEC. 401. EFFECTIVE DATE.**

The amendments made by this Act take effect on October 1, 2002.

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By Mr. BINGAMAN:

S. 2880. A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes; to the Committee on Energy and Natural Resources

Mr. BINGAMAN. Mr. President, I introduce legislation to designate Fort Bayard in New Mexico as a national historic landmark. I am excited to offer this bill because I believe that the history of the fort deserves Federal recognition. Fort Bayard is significant not only for the role it played as a military post in fostering early settlement in the region, but for its role as a nationally important tuberculosis sanatorium and hospital. During the 99 years spanning its establishment in 1866 through its closing as a Veterans Administration hospital in 1965, Fort Bayard served as the most prominent evidence of the Federal government's role in Southwestern New Mexico. Fort Bayard has recently been listed on the National Register of Historic Places in recognition of the historical significance of the site.

From 1866 to 1899, Fort Bayard functioned as an Army post while its soldiers, many of them African-American, or Buffalo Soldiers, protected settlers working in nearby mining district. These Buffalo Soldiers were a mainstay of the Army during the late Apache wars and fought heroically in numerous skirmishes. Like many soldiers who served at Fort Bayard, some of the Buffalo Soldiers remained in the area following their discharge. Lines of headstones noting the names of men and their various Buffalo Soldier units remain in the older section of what is now the National Cemetery. In 1992, these soldiers were recognized for their bravery when a Buffalo Soldier Memorial statue was dedicated at the center of the Fort Bayard parade ground. It gradually became apparent that the Army's extensive frontier fort system was no longer necessary. By 1890, it was clear that the era of the western frontier, at least from the Army's perspective, had ended. Fort Bayard was scheduled for closure in 1899.

Even as the last detachment of the 9th U.S. Cavalry prepared to depart the discontinued post, new Federal occupants were arriving at Fort Bayard. On August 28, 1899, the War Department authorized the surgeon-general to establish a general hospital for use as a military sanatorium. This would be the first sanatorium dedicated to the treatment of officers and enlisted men of the Army suffering form pulmonary tuberculosis. At 6,100 ft. and with a dry, sunny climate, the fort lay within what proponents of climatological therapy termed the ''zone of immunity.'' By 1919, the cumulative effect of over 15 years of construction and improvement projects was the creation of a small, nearly self-sufficient community.

In 1920, the War Department closed the sanatorium and the United States Public Health Service assumed control of the facility. A second phase occurred in 1922 when a new agency, the Veterans' Bureau, was created within the Treasury Department and charged with operating hospitals throughout the country whose clientele were veterans requiring medical services. As a result, in the summer of 1922 the United States General Hospital at Fort Bayard was transferred to the Veterans' Bureau and became known as United States Veterans' Hospital No. 55. Its mission of treating those afflicted with tuberculosis, however, remained the same.

By 1965, there was no longer a need for a tuberculosis facility located at a high elevation in a dry climate, and the Veterans' Administration decided to close the hospital in that year. However, in part because of the concerns of the local communities that depended upon the hospital, the State of New Mexico assumed responsibility for the facility and 484 acres of the former military reservation. Since then, the State has used it for geriatric, as well as drug and alcohol rehabilitation and orthopedic programs. Because of the extensive cemetery dating to the fort and sanatorium eras at Fort Bayard, the State of New Mexico transferred 16 acres in 1975 for the creation of the Fort Bayard National Cemetery, administered by the Veterans' Administration.

For these and many other reasons, believe it is clear that Fort Bayard is historically significant and merits recognition as a national historic landmark. Fort Bayard illuminates a rich and complex story that is important to the entire nation.

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By Mr. CRAIG:

S. 2883. A bill to allow States to design a program to increase parental choice in special education, to fully fund the Federal share of part B of the Individuals with Disabilities Education Act, to help States reduce paperwork requirements under part B of such Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAIG. Mr. President, I introduce The Choice IDEA Act, which would reform the Individuals with Disabilities Education Act, IDEA. The federal government began dealing with special education in the 1970's, and on the whole what has come to be known as IDEA had proven to be a remarkable success. Before federal legislation, many times a child with a disability received little or no education. And if the child did receive an education, it was often sub-standard. IDEA has undoubtedly been a success, and you will find no stronger champion of educating the disabled than I. However, the success of IDEA should not blind us to the problems it, in its current form, causes.

These problems come up every time I meet with educators and education administrators from my state. When we sit down and discuss what we in the federal government can do for them, the discussion invariably turns to IDEA. These educators and school personnel want two things: full funding of the federal government's share of IDEA, like we promised back in the 1970's, and a reduction in paperwork. I have also talked to numerous parents about their experiences with IDEA. While many are happy with the current system, there are also many who are dissatisfied and who want more control and more choice over how their children are educated.

Some of the stories I hear are truly incredible and illustrate the serious need for IDEA reform. For example, there is a school district in North Idaho—in a county which has had very high unemployment and below average per-capita income since the early 1990's—which has well above the national average of children in special education. This district is doing a great job educating those children, but the high costs associated with doing so, and the time it takes to complete the reams of paperwork that must be filled out for every child, are severe drains on that district. I've also heard from a school superintendent in Idaho who is going through a particularly sticky due process hearing and who laments that the paperwork required by this hearing is costly, unnecessary, and takes away teachers' time from the

classroom. Parents have also contacted me with their stories of how school districts have mistreated them and how they can only find the proper program for their special child at a private school. The Choice IDEA Act would help out these parents, teachers, and school administrators by fully funding IDEA by Fiscal Year 2010, giving parents significantly more control over how their children are educated, and by reducing the onerous burden of paperwork that hampers the special education process.

The centerpiece of the bill is a proposal to allow states to set up a special education system based on parental choice. States that want to reform would draw up a list of disability categories and how much it costs to educate and accommodate a child who has that disability. The states would also draw up a menu outlining the educational services each pubic school in the state offers to children with those disabilities, and how much those services costs. These services must equal the quality of the services they offer today, and the states' programs would be approved by the Department of Education. If the Department of Education approves a state's plan, parents of special education children in that state would get a voucher for each child to choose from schools' menus to meet the needs of their children. Or, if parents did not find satisfactory services from the public schools, they could take their vouchers to any private school that could meet their children's needs.

As you can see, parents would have the ultimate control over how their child is educated. Since parents would have the option of taking their voucher and leaving a school if their child was not being educated properly, the due process requirements under IDEA would not be necessary and the school personnel would have their paperwork burden dramatically reduced. Parents and school personnel could work together to find a proper diagnosis for a student who had a disability and to find the right ways to educate this child, instead of being forced into an adversarial relationship as they are today.

It is important to point out, though, that this bill has no mandate on states that they must design the system outlined above. My bill would strengthen states' rights by allowing states one more option in dealing with special education. If states want to design such a special education system, they should have the freedom to do so. As welfare reform has shown us, states are often more innovative than the federal government in solving problems. This bill would give them one more tool to deal with the problems that are associated with IDEA.

Another important provision of this bill is that it would set up a grant program (up to $1 million) within the Department of Education to help school districts which have 15 percent or more of their students in special education hire para-professionals to help deal with the paperwork.

The Choice IDEA Act is not intended to be the final say on IDEA reform. I agree with many of the Presidential Commission's suggestions for IDEA reauthorization and hope to see them enacted into law; however, this reauthorization should include a provision giving states the option of pursuing their own reforms within the structure outlined above. When the Senate begins debating IDEA reauthorization, it is my hope that my bill will be considered and the Senate will reform IDEA so that the concept of ''no child is left behind'' truly includes every child.

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By Mr. BAUCUS (for himself, Mr. CRAPO, Mr. JOHNSON, Mr. THOMAS, Mr. CRAIG, Mr. ENZI, Mr. CONRAD, Mr. BINGAMAN, and Mr. ALLARD):

S. 2884. A bill to improve transit service to rural areas, including for elderly and disabled; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BAUCUS. Mr. President I introduce a bill to help rural America. Now I am always trying to help Montana, but this bill will help every state. Today I introduce the MEGA RED TRANS Act. Maximum Economic Growth for America Through Investment in Rural, Elderly and Disabled Transit.

Quite simply, there are transit needs not being met nationwide. This bill addresses those needs.

This is the second bill in a series that I am introducing to highlight my proposals on reauthorization of TEA 21—the Transportation Equity Act for the 21st Century.

Last month I introduced the MEGA TRUST Act—Maximum Growth for America Through the Highway Trust Fund. Today its MEGA RED TRANS.

The Maximum Economic Growth for America Through Investment in Rural, Elderly and Disabled Transit Act or MEGA RED TRANS Act would ensure, that as Federal transit programs are reauthorized, increased funding is provided to meet the needs of the elderly and disabled and of rural and small urban areas.

There is no question that our nation's large metropolitan areas have substantial transit needs that will receive attention as transit reauthorization legislation is developed. But the transit needs of rural and smaller areas, and of our elderly and disabled citizens, also require additional attention and funding.

The bill would provide that additional funding in a way that does not impact other portions of the transit program. For example, while the bill would at least double every State's funding for the elderly and disabled transit program by FY 2004, nothing in the bill would reduce funding for any portion of the transit program or for any State.

To the contrary, the bill would help strengthen the transit program as a whole by providing that the mass Transit Account of the Highway Trust Fund is credited with the interest on its balance. This is a key provision in the MEGA TRUST Act and is also included here in the MEGA RED TRANS Act.

Specifically, the bill would set modest minimum annual apportionments, by State, for the elderly and disabled transit program, the rural transit program, and for urbanized areas with a population of less than 200,000.

It would ensure that each state gets a minimum of $11 million for these three programs.

For my state of Montana that is double what we get for those programs currently. For some other states it is more than four times what they receive.

The bill would also establish a $30 million program for essential bus service, to help connect citizens in rural communities to the rest of the world by facilitating transportation between rural areas and airports and passenger rail stations.

I am very aware of the role that public transit plays in the lives of rural citizens and the elderly and disabled. When most people hear the word ''transit'' they think of a light rail system. But in rural areas transit translates to buses and vanpools. Take Elaine Miller for example.

Elaine is 73 years old and lives in Missoula, MT. She depends upon the city's Mountain Line public transit system for virtually all of her transportation needs. ''It's my car!'' she says.

Twelve years ago, Elaine suffered a stroke and decided that it was simply too dangerous to drive anymore. Today she takes transit to the doctor and to shop. She gets her prescriptions and meets family and friends, all using public transit.

As a regular rider, however, Elaine also understands the current limitations of transit in Missoula. ''Our bus service here needs to offer more service, particularly on the weekends and the evenings. I'd like to be able to take the bus to church,'' she says.

The frequency of bus service in Missoula, too, can often be an issue for Elaine. Last week, for example, she was left waiting more than two hours at a local store for the next bus to take her home.

''We seniors know how important the bus is to our quality of life. We really need more bus service. Without the bus, I know that myself and others would just have to stay home,'' says Elaine.

For Elaine, increased Federal investment in public transit in Montana would mean increased bus service in Missoula. Weekend service and increased frequency on current routes, she believes, are a great need.

I'd like to discuss another example of how rural transit and transit for the elderly and disabled is crucial to Montana. And I am sure we could easily find similar examples in every state.

Let's talk about Kathy Collins of Helena, MT.

Kathy moved to Helena in 1982 from Butte, MT, an area with no accessible transportation. In Helena, she discovered the Dial-A-Ride system, where lift-equipped vehicles could easily transport her in her wheelchair.

''It was terrific. I could get to work on time. And I could even get home on time!'' lauds Collins.

While she owns a minivan that she can drive to the middle school where she teaches, she is thankful to have a transportation option in inclement weather.

''Transit gets me to and from work in the winter time. I couldn't do it without them,'' she says, ''And for people who don't work, it's a godsend. They can't afford a taxi.''

While the Dial-A-Ride system provides Collins with dependable employment transportation on weekdays, she would like to see operations expanded to evenings and weekends.

''The service is essential. You need to give people access. You need to give people control over their lives. You need to give people the mobility that the rest of the country enjoys. Just because we live in the boondocks doesn't mean we don't need to go anywhere.'' she says.

I couldn't agree with her more. The MEGA RED TRANS Act will help these people and millions of others around the country. Considering the enormous impact the MEGA RED TRANS Act will have on the country, it is actually a very modest proposal.

The bill would not set funding levels for the transit program as a whole, or for large transit systems.

Moreover, the call for increases in the elderly and disabled, rural, and small urban area programs are not made in a static setting, but in the context of reauthorization.

In reauthorization the overall transit program undoubtedly will grow by more than the modest increases required by the provisions of this bill. So, nothing in the bill would preclude growth in other aspects of the transit program.

In sum, the bill stands for the proposition that, as the transit program is likely to continue to grow, no less than the funding increases proposed in this bill should be provided in order to better meet the needs of rural and small urban area transit systems and the transit needs of the elderly and disabled.

I would like to thank Senators CRAPO, THOMAS, JOHNSON, ENZI, CONRAD, BINGAMAN and CRAIG for joining me on this important piece of legislation.

I'd also like to thank both the members and staff of the American Bus Association, The Community Transportation Association and the Amalgamated Transit Union, for their assistance with this legislation.

I urge my colleagues to cosponsor this bill and to work to include it in the highway and transit reauthorization, next year.

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By Mr. CORZINE (for himself and Mr. AKAKA):

S. 2885. A bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, along with my distinguished colleague from Hawaii, Senator AKAKA, I am introducing The Wire Transfer Fairness and Disclosure Act, legislation that will protect consumers who send cash remittances through international money wire transfer companies by providing greater disclosure of the fees, including hidden costs, charged for those services.

Every year, thirty million Americans send their friends and relatives $40 billion in cash remittances through wire transfers. The majority of these transfers are remittances sent to their native countries by immigrants to the United States. For these individuals, many of whom are in low-to-minimum wage jobs, sending this money only increases their own personal financial burdens—but they do so to aid their families and their loved ones.

Unfortunately, these immigrants increasingly find themselves being preyed upon by the practices of some money wire transfer providers who not only charge consumers an upfront charge for the transfer service, but also hit them on the back end with hidden costs. Many of these charges are extracted when the dollars sent by the consumer are converted to the foreign currency value that is supposed to be paid out to the friend of the family member.

This exploitation is especially pervasive in Latin American and Caribbean countries. In fact, as many as 10 million Hispanic immigrants in the U.S. send remittances to their family and friends back home. Cumulatively, these individuals send $23 billion annually to some of our hemisphere's poorest economies. This money is used to pay for such basic needs such as food, medicine, and schooling.

In most Latin American and Caribbean countries, remittances far exceed U.S. development assistance. In the case of Nicaragua, Haiti, Jamaica, Ecuador and El Salvador, cash remittances account for more than 10 percent of national GDP.

These large cash flows have proven to be a powerful incentive for greed in the case of some wire transfer companies. Customers wiring money to Latin America and elsewhere in the world lose billions of dollars annually to undisclosed ''currency conversion fees.'' In fact, many large companies aggressively target immigrant communities, often advertising ''low fee'' or ''no fee'' rates for international transfers. But these misleading ads do not always clearly disclose the fees charged when the currency is exchanged.

While large wire service companies typically obtain foreign currencies at bulk rates, they charge a significant currency conversion fee to their U.S. customers. For example, customers wiring money to Mexico are charged an exchange rate that routinely varies from the benchmark by as much as 15 percent. These hidden fees create staggering profits, allowing companies to reap billions of dollars on top of the stated fees they charge for the wire transfer services.

While this practice may not be illegal, it is wrong, and it must be stopped. The Wire Transfer Fairness and Disclosure Act requires financial institutions or money-transmitting businesses that initiate international money transfers to disclose all fees charged in an international wire transfer.

The legislation also requires these companies to provide consumers with important disclosures regarding the exchange rate used in connection with the transaction; the exchange rate prevailing at a major financial center in the foreign country whose currency is involved in the transaction; or the official exchange rate, if any, of the government or central bank of that foreign country.

The bill would additionally require disclosure to the consumer who initiates the transaction of any fees or commissions charged by transfer service providers in connection with any transaction and the exact amount of foreign currency to be received by the recipient in the foreign country, which shall be disclosed to the consumer before the transaction is consummated and printed on the receipt given to customer.

This legislation does more than merely provide better information to consumers—it should also help them financially. Consumers will see increased competition among wire transfer companies because they are better-informed and more knowledgeable. That competition will result in lower fees for the wire transfer services that will free up a greater portion of these cash remittances to go to the friends and families that they were originally intended for.

In short, this is sound public policy that empowers those who do their part to help America's economy move forward.

I hope that my colleagues will support this legislation.

Mr. AKAKA. Mr. President, I cosponsor the Wire Transfer Fairness and Disclosure Act of 2002, introduced by my colleague, Senator CORZINE. I thank Senator CORZINE and Representative LUIS GUTIERREZ for their leadership on this issue. I also want to express my appreciation to the Chairman of the Banking Committee, Senator SARBANES, for conducting a hearing on the issue of remittances.

Immigrants nationwide often send a portion of their hard-earned wages to

relatives and their communities abroad. Remittances can be used to improve the standard of living of recipients by increasing access to health care and education.

Unfortunately, people who send remittances are often unaware of the fees and exchange rates used in the transaction that reduce the amount of money received by their family members. In many cases, fees for sending remittances can be ten to twenty percent of the value of the transaction. In addition to the fees, the exchange rate used in the transaction can be significantly lower than the market rate. The exchange rate used in the transaction is typically not disclosed to customers.

Consumers cannot afford to be uneducated regarding financial service options and fees placed on their transactions. This legislation is needed to provide the necessary information to consumers so that they may make informed decisions about sending money. The Wire Transfer Fairness and Disclosure Act would ensure that each customer is fully informed of all of the fees and the exchange rates used in the transaction.

If consumers are provided additional information about the transaction costs involved with sending money, they may be more likely to utilize banks and credit unions which often can provide lower cost remittances. If unbanked immigrants use the remittance services offered by banks and credit unions, they may be more likely to open up an account. Many immigrants are unbanked and lack a relationship with a mainstream financial services provider. The unbanked are more likely to use check-cashing services which charge an average fee of over nine percent. They are also more likely to utilize the services provided by pay-day and predatory lenders. The unbanked miss the opportunities for saving and borrowing at mainstream financial institutions.

This legislation is particularly important to my home State of Hawaii. Hawaii is home to significant numbers of recent immigrants from many nations, including the Philippines. The Philippines is one of the largest destinations for remittances from the United States. The gross value of remittances to the Philippines is $3.7 billion and a large portion of that amount comes from people in Hawaii.

Mr. President, I encourage all of my colleagues to support this much needed legislation and I ask unanimous consent that a copy of the bill be printed in the RECORD at this point.

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

S. 2885

*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 ''Wire Transfer Fairness and Disclosure Act of 2002''.

**SEC. 2. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.**

(a) IN GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 918 through 921 as sections 919 through 922, respectively; and

(2) by inserting after section 917 the following new section:

**''SEC. 918. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.**

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) INTERNATIONAL MONEY TRANSFER.—The term 'international money transfer' means any money transmitting service involving an international transaction which is provided by a financial institution or a money transmitting business.

''(2) MONEY TRANSMITTING SERVICE.—The term 'money transmitting service' has the same meaning as in section 5330(d)(2) of title 31, United States Code.

''(3) MONEY TRANSMITTING BUSINESS.—The term 'money transmitting business' means any business which—

''(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, or other similar instruments; and

''(B) is not a depository institution (as defined in section 5313(g) of title 31, United States Code).

''(b) EXCHANGE RATE AND FEES DISCLOSURES REQUIRED.—

''(1) IN GENERAL.—Any financial institution or money transmitting business which initiates an international money transfer on behalf of a consumer (whether or not the consumer maintains an account at such institution or business) shall disclosure, in the manner required under this section—

''(A) the exchange rate used by the financial institution or money transmitting business in connection with such transactions;

''(B) the exchange rate prevailing at a major financial center of the foreign country whose currency is involved in the transaction, as of the close of business on the business day immediately preceding the date of the transaction (or the official exchange rate, if any, of the government or central bank of such foreign country);

''(C) all commissions and fees charged by the financial institution or money transmitting business in connection with such transaction; and

''(D) the exact amount of foreign currency to be received by the recipient in the foreign country, which shall be disclosed to the consumer before the transaction is consummated and printed on the receipt referred to in paragraph (3).

''(2) PROMINENT DISCLOSURE INSIDE AND OUTSIDE THE PLACE OF BUSINESS WHERE AN INTERNATIONAL MONEY TRANSFER IS INITIATED.—The information required to be disclosed under subparagraphs (A), (B), and (C) of paragraph (1) shall be prominently displayed on the premises of the financial institution or money transmitting business both at the interior location to which the public is admitted for purposes of initiating an international money transfer, and on the exterior of any such premises.

''(3) PROMINENT DISCLOSURE IN ALL RECEIPTS AND FORMS USED IN THE PLACE OF BUSINESS WHERE AN INTERNATIONAL MONEY TRANSFER IS INITIATED.—All information required to be disclosed under paragraph (1) shall be prominently displayed on all forms and receipts used by the financial institution or money transmitting business when initiating an international money transfer in such premises.

''(c) ADVERTISEMENTS IN PRINT, BROADCAST, AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING.—The information required to be disclosed under subparagraphs (A) and (C) of subsection (b)(1) shall be included—

''(1) in any advertisement, announcement, or solicitation which is mailed by the financial institution or money transmitting business and pertains to international money transfers; or

''(2) in any print, broadcast, or electronic medium or outdoor advertising display not on the premises of the financial institution or money transmitting business and pertaining to international money transfers.

''(d) DISCLOSURES IN LANGUAGES OTHER THAN ENGLISH.—The disclosures required under this section shall be in English and in the same language as that principally used by the financial institution or money transmitting business, or any of its agents, to advertise, solicit, or negotiate, either orally or in writing, at that office, if other than English''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 3 months after the date of enactment of this Act.

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By Mr. SMITH of New Hampshire (for himself, Mr. HELMS, and Mr. HUTCHINSON):

S. 2886. A bill to amend the Internal Revenue Code of 1986 to ensure the religious free exercise and free speech rights of churches and other houses of worship to engage in an insubstantial amount of political activities; to the Committee on Finance.

Mr. SMITH of New Hampshire. Mr. President, along with my colleagues Senators TIM HUTCHINSON and JESSE HELMS, to introduce the Houses of Worship Political Speech Protection Act.

This bill, introduced by my friend Congressman WALTER B. JONES of North Carolina, H.R. 2357, enjoys broad support on the House side with 128 bipartisan cosponsors.

This bill amends the Internal Revenue Code to permit a church to participate or intervene in a political campaign and maintain its tax-exempt status as long as such participation is not a substantial parts of its activities.

The bill replaces the absolute ban on political intervention with the ''no substantial part of the activities'' test currently used in the lobbying context. This bill would give clergy the freedom to speak out on moral and political issues of our day and to fully educate their congregation on where the candidates stand on the issues without the threat of losing their tax exempt status.

Senator Lyndon Johnson inserted the ban on political speech in 1954 as a floor amendment in order to hamstring certain anticommunist organizations that were opposing him in the Democratic Party. No hearings took place nor was any congressional record developed in order to explain the reasons for the ban. There is no indication that Senator Johnson intended to target churches.

Before 1954, pastors and members of many churches spoke freely about candidates and political issues. The slavery abolitionist organizations and the

civil rights movement are great examples of church inspired political success.

Had the current law been enforced earlier in American history, William Lloyd Garrison could not have spoken out against slavery, nor could Martin Luther King, Jr. have spoken out against segregation.

Currently, the ban on political speech has a dramatic chilling effect on the ability of houses of worship to speak out on moral and political issues, since under Section 501(C)(3), houses of worship may not engage in even a single activity that might be regarded as participating in, or intervening in a campaign on behalf of or in opposition to a candidate for public office.

Thus ultimately restricts the clergy's freedom of speech by threatening to revoke the church's tax-exempt status if they dare to speak out on moral and political questions of our day.

Additionally, the bill seeks to shift the burden of proof from houses of worship to the IRS. Rather than require the house of worship to prove that its activities are not political at all, this bill will force the IRS to prove that its activities are in fact substantially political.

Nothing in this bill ''makes'' a church speak on political issues; it merely gives them the freedom to do so if they choose to.

Since so many of the issues that are debated in the halls of Congress have a moral or religious aspect to them, those who ask for help from a higher power should not be absent from the political process.

America is a religious nation. Religion affects every aspect of our culture, and yes, even our government. The views of our church-going members and their clergy are vital to a well-rounded debate on the important issues of our day.

This substantial portion of the American people who consider themselves religious and practice that religion should not be shut out of the process.

I hope more of my colleagues will join us and cosponsor this important legislation.

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By Mrs. FEINSTEIN:

S. 2887. A bill to provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I introduce the Homeland Security Information Sharing Act, a bill to increase state and local access to security information that could save American lives. The House has already passed similar legislation bill sponsored by Representatives HARMAN and CHAMBLISS, and it is my understanding that the Administration supports this legislation as well.

The bill I introduce today will not solve our intelligence problems—we have a long road ahead of us before we can accomplish that. But this legislation will send a clear signal to our federal agencies that information gathered at the federal level must be shared with states and localities if we are to triumph in the battle against terrorism.

State and local law enforcement are first-line defenders of our homeland security. Too often, though, state and local officials do not receive information necessary for them to protect us. If, for instance, there were a terrorist threat against the Golden Gate Bridge in San Francisco, we would want a cooperative effort between the Federal government and local officials.

This bill would:

Direct the President to establish procedures for federal agencies to share homeland security information with state and local officials, and for all government officials to be able to communicate with each other. Local officials should quickly have access to relevant intelligence necessary to prevent or respond to attacks in their communities.

Direct the President to address concerns about too much dissemination of classified or sensitive information, by setting procedures to protect this material. This could include requiring background checks of local officials who seek access to classified information, or perhaps even non disclosure agreements so that secret information stays secret.

Direct the President to ensure that our current information sharing systems and computers are capable of sharing relevant homeland security information with each other and with state and local systems.

Mr. President, we can improve information sharing without re-inventing the wheel. The legislation applies technology already used to share information with our NATO allies and with Interpol. The information can be shared through existing networks, such as the National Law Enforcement Telecommunications System, the Regional Information Sharing Systems, and the Terrorist Threat Warning System. These systems already reach law enforcement offices throughout America.

Better information sharing will result in better homeland security. As a Congress, we are already working on making intelligence gathering and dissemination work better within the federal government. We must not forget to improve communications with state and local law enforcement as well.

I urge my colleagues to support this legislation, and I hope that we can pass it quickly in September. It is non-controversial, and would help send a clear signal that information gathering and dissemination may be our best defense against terror.

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By Mrs. BOXER:

S. 2888. A bill to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that country; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, I introduced a bill that will convey the B.F. Sisk Federal Building in Fresno, California to the County of Fresno, when the new federal courthouse is completed and occupied.

Fresno County is a rapidly growing county in the heart of California's Great Central Valley. The County of Fresno's Superior Court has a serious need for new court space that will grow in the years ahead. The Sisk Building contains courtrooms and related space that will help the people of Fresno County meet those needs. The Sisk's building existing security measures are a perfect fit for Fresno County's justice system.

This legislation is a common sense measure that will allow appropriate utilization of the Sisk Building, while contributing to the ongoing revitalization of downtown Fresno. I am proud that it is yet another opportunity for the federal government to improve the lives of Fresno County's people.

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By Mr. HUTCHINSON:

S. 2889. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance; to the Committee on Finance.

Mr. HUTCHINSON. Mr. President, there are 39 million uninsured people in America, and that number is predicted to grow to 50 million by 2010. Surprisingly, 80 percent of the uninsured are members of working families, who work hard everyday but simply cannot afford the rising cost of health care.

According to a recent survey by Hewitt Associates, the average insurance premium will increase more than 20 percent in 2003. This is a sharp increase from earlier forecasts. Such an increase is in addition to the double digit increase in premiums anticipated this year.

I am pleased today to introduce the Securing Access Value and Equality in Health Care Act, or SAVE Act. This bill will provide every American with a pre-payable, fully refundable tax credit toward the purchase of health insurance.

The tax credit will be $1,000 for individuals, $2,000 for married couples, and $500 per dependent, up to $3,000 per family. An additional 50 percent will be added for any additional premiums to assist those with higher costs. By being pre-payable, the credit will be available to individuals at the time of purchase, instead of when they receive their annual tax return.

A study by Professor Mark Pauly at the Wharton School at the University of Pennsylvania showed that a credit like that contained in the SAVE Act would remove 20 million Americans from the ranks of the uninsured.

The SAVE Act will provide direct assistance to millions of Americans, and

over 498,000 uninsured Arkansans, in affording health insurance. I urge my colleagues to support this important legislation.

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By Mr. DODD (for himself and Mr. DEWINE):

S. 2890. A bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I join with my colleague, Senator MIKE DEWINE, to introduce legislation to protect the most vulnerable members of our society: newborn infants. About 2 months ago, many families across the country celebrated Father's Day. As a first-time dad of a 10-month-old baby girl, I now know the joy of being able to experience that holiday and every other pleasure that comes along with being a father. What I also now share with parents everywhere is a constant sense of worry about whether our kids are doing well, are feeling well, and are safe. Nothing is of greater importance than the health and well-being of our children.

Thanks to incredible advances in medical technology, it is now possible to test newborns for at least 30 genetic and metabolic disorders. Many of these disorders, if undetected, would lead to severe disability or death. However, babies that are properly diagnosed and treated can go on to live healthy lives. In the most direct sense, newborn screening saves lives.

Frighteningly, the disorders that newborn screening tests for can come without warning. For most of these disorders, there is no medical history of the condition in the family, no way to predict the health of a baby based on the health of the parents. Although the disorders that are tested for are quite rate, there is a chance that any one newborn will be affected. In that sense, this is an issue that has a direct impact on the lives of every family.

Fortunately, screening has become common practice in every state. Each year, over four million infants have blood taken from their heel to detect these disorders that could threaten their life and long-term health. As a result, about one in 4,000 babies is diagnosed with one of these disorders. That means that newborn screening could save approximately 1,000 lives each year. That is 1,000 tragedies that can possibly be averted—families left with the joy of a new infant rather than absolute heartbreak.

That is the good news. However, there is so much more to be done. More than 2,000 babies born are estimated to be born every year in the United States with potentially detectable disorders that go undetected because they are not screened. These infants and their families face the prospect of disability or death from a preventable disorder. Let me repeat that—disability or death from a preventable disorder. The survival of a newborn may very well come down to the state in which it is born. Only two states, including my home state of Connecticut thanks to recent legislation, will test for all 30 disorders. The vast majority test for eight or fewer.

I recently chaired a hearing on this issue during which I related a story that illustrates the impact of newborn screening, or the lack of newborn screening, in a very personal sense. Jonathan Sweeney is a three-year-old from Brookfield, CT. At the time of his birth, the state only tested for eight disorders. He was considered a healthy baby, although he was a poor sleeper and needed to be fed quite frequently. One morning in December of 2000, Jonathan's mother, Pamela, found Jonathan with his eyes wide open but completely unresponsive. He was not breathing and appeared to be having a seizure. Jonathan was rushed to the hospital where, fortunately, his life was saved. He was later diagnosed with L–CHAD, a disorder that prevents Jonathan's body from turning fat into energy.

Despite this harrowing tale, Jonathan and his family are extremely fortunate. Jonathan is alive, and his disorder can be treated with a special diet. He has experienced developmental delays that most likely could have been avoided had he been tested and treated for L–CHAD at birth. This raises a question. Why was he not tested? Why do 47 states still not test for L–CHAD?

The primary reason for this unfortunate reality is the lack of consensus on the federal level about what should be screened for, and how a screening program should be developed. Twenty of the thirty disorders can only be detected using a costly piece of equipment called a tandem mass spectrometer. Currently, only nine states have this resource. Many health care professionals are unaware of the possibility of screening for disorders beyond what their state requires. Parents, and I include myself, are even less well-informed. My daughter Grace was born in Virginia, where they screen for nine disorders. I was extremely relieved when all of those tests came out negative. However, at that time I did not know that this screening was not as complete as it could have been. My ignorance had nothing to do with my love for my daughter or my capability as a parent. The fact is that the majority of parents do not realize that this screening occurs at all, nor are they familiar with the disorders that are being screened for. For that reason, one of the most important first steps that we can take to protect our children is to educate parents and health care professionals.

In the Children's Health Act of 2000, I supported the creation of an advisory committee on newborn screening within the Department of Health and Human Services. The purpose of this committee would be to develop national recommendations on screening, hopefully eliminating the disparities between states that currently exist. The Children's Health Act also included a provision to provide funding to states to expand their technological resources for newborn screening. Unfortunately, funds were not appropriated for either of these provisions. We are told that $25 million in appropriations is needed for this crucial initiative and we need to fight for these dollars as we develop the FY03 budget.

The legislation that we are introducing today, the Newborn Screening Saves Lives Act of 2002, seeks to address the shocking lack of information available to health care professionals and parents about newborn screening. Every parent should have the knowledge necessary to protect their child. The tragedy of a newborn's death is only compounded by the frustration of learning that the death was preventable. This bill authorizes $10 million in fiscal year 2003 and such sums as are necessary through fiscal year 2007 to HRSA for grants to provide education and training to health care professionals, state laboratory personnel, families and consumer advocates.

Our legislation will also provide states with the resources to develop programs of follow-up care for those children diagnosed by a disorder detected through newborn screening. While these families are the fortunate ones, in many cases they are still faced with the prospect of extended and complex treatment or major lifestyle changes. We need to remember that care does not stop at diagnosis. For that reason, this bill authorizes $5 million in fiscal year 2003 and such sums as are necessary through FY 2007 to HRSA for grants to develop a coordinated system of follow-up care for newborns and their families after screening and diagnosis.

Finally, the bill directs HRSA to assess existing resources for education, training, and follow-up care in the states, ensure coordination, and minimize duplication; and also directs the Secretary to provide an evaluation report to Congress two and a half years after the grants are first awarded and then after five years to assess impact and effectiveness and make recommendations about future efforts.

I urge my colleagues to support this important initiative and look forward to working together to accomplish its passage.

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By Mr. KERRY (for himself, Mr. HARKIN and Ms. LANDRIEU):

S. 2891. A bill to create a 4-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, we have shortage of childcare in this country, and it is a problem for our families, a

problem for our businesses, and a problem for our economy. The Census Bureau estimates that there are approximately 24 million school age children with parents who are in the workforce or pursuing education, and the numbers are growing. There has been a 43 percent increase in dual-earner families and single parent families over the last half a century. As parents leave the home for work and education, the need for quality childcare in America continues to increase.

As Chairman of the Small Business and Entrepreneurship, I think we can foster the establishment and expansion of existing child care businesses through the Small Business Administration. Today with Senators HARKIN and LANDRIEU, I am introducing, the Child Care Lending Pilot Act, a bill to create a four-year pilot that allows small, non-profit child care businesses to access financing through SBA's 504 loans.

Non-profit child care small businesses already have access to financing through the SBA's microloan program, which many of us made possible through legislation in 1997. Microloans help with working capital and the purchase of some equipment, but there is also a need to help finance the purchase of buildings, expand existing facilities to meet child care demand, or improve facilities. It is appropriate to provide financing through the 504 program because it was created to spur economic development and rebuild communities, and child care is critical to businesses and their employees. Financing through 504 could spur the establishment and growth of child care businesses because the program requires the borrower to put down only between 10 and 20 percent of the loan, making the investment more affordable.

As anyone with children knows, quality childcare comes at a very high cost to a family, and it is especially burdensome to low-income families. The Children's Defense Fund estimates that childcare for a 4-year-old in a childcare center averages $4,000 to $6,000 per year in cities and states around the nation. In all but one state, the average annual cost of childcare in urban area childcare centers is more than the average annual cost of public college tuition.

These high costs make access to child care all but non-existent for low-income families. While some states have made efforts to provide grants and loans to assist childcare businesses, more must be done to increase the supply of childcare and improve the quality of programs for low-income families. According to the Child Care Bureau, state and federal funds are so insufficient that only one out of 10 children in low-income working families who are eligible for assistance under federal law receives it.

For parts of the country, when affordable child care is available, it is provided through non-profit child care businesses. I formed a task force in my home State of Massachusetts to study the state of child care, and of the many important findings, we discovered that more than 60 percent of the child care providers are non-profit and that there is a real need to help them finance the purchase of buildings or expand their existing space. Child care in general is not a high earning industry, and the owners don't have spare money lying around. Asking centers to charge less or cut back on employees is not the way to make childcare more affordable for families and does not serve the children well. An adequate staff is needed to make sure children receive proper supervision and support. Furthermore, if centers are asked to lower their operating costs in order to lower costs to families, the safety and quality of the childcare provided would be in jeopardy.

I urge my colleagues to support this legislation so non-profit childcare providers can access funds to start new centers or expand and improve upon existing centers.

Allowing non-profit childcare centers to receive SBA loans will be the first step toward improving the availability of childcare in the United States. Non-profit childcare centers provide the same quality of care as the for-profit centers, and non-profit centers often serve our nation's most needy communities. I hope that my colleagues will recognize the vital role that early education plays in the development of fine minds and productive citizens and realize that in this great nation, childcare should be available to all families in all income brackets.

I ask unanimous consent that the text of the bill and several letters of support be printed in the RECORD. These letters demonstrate that this is a good investment that is good for our country.

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

S. 2891

*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 ''Child Care Lending Pilot Act''.

**SEC. 2. CHILD CARE BUSINESS LOAN PROGRAM.**

(a) LOANS AUTHORIZED.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''The Administration'' and inserting the following:

''(a) AUTHORIZATION.—The Administration'';

(B) by striking ''and such loans'' and inserting ''. Such loans''; and

(C) by striking '': *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:'' and inserting a period; and

(D) by adding at the end the following:

''(b) RESTRICTIONS AND LIMITATIONS.—The authority under subsection (a) shall be subject to the following restrictions and limitations:''; and

(2) in paragraph (1)—

(A) by inserting after ''USE OF PROCEEDS.—'' the following:

''(A) IN GENERAL.—''; and

(B) by adding at the end the following:

''(B) LOANS TO SMALL, NON-PROFIT CHILD CARE BUSINESSES.—The proceeds of any loan described in subsection (a) may be used by the borrower to assist, in addition to other eligible small business concerns, small, non-profit child care businesses, provided that—

''(i) the loan will be used for a sound business purpose that has been approved by the Administration; and

''(ii) each such business receiving financial assistance meets all of the same eligibility requirements applicable to for-profit businesses under this title, except for status as a for-profit business.''.

(b) REPORTS.—

(1) SMALL BUSINESS ADMINISTRATION.—

(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter until September 30, 2006, the Administrator of the Small Business Administration shall submit a report on the implementation of the program under subsection (a) to—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business of the House of Representatives.

(B) CONTENTS.—The report under subparagraph (A) shall contain—

(i) the date on which the program is implemented;

(ii) the date on which the rules are issued pursuant to subsection (c); and

(iii) the number and dollar amount of loans under the program applied for, approved, and disbursed during the previous 6 months.

(2) GENERAL ACCOUNTING OFFICE.—

(A) IN GENERAL.—Not later than March 31, 2006, the Comptroller General of the United States shall submit a report on the child care small business loans authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act, to—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business of the House of Representatives.

(B) CONTENTS.—The report under subparagraph (A) shall contain information gathered during the first 2 years of the loan program, including—

(i) an evaluation of the timeliness of the implementation of the loan program;

(ii) a description of the effectiveness and ease with which Certified Development Companies, lenders, and small businesses have participated in the loan program;

(iii) a description and assessment of how the loan program was marketed;

(iv) the number of child care small businesses, categorized by status as a for-profit or non-profit business and a new business or an expanded business, that—

(I) applied for loans under the program;

(II) were approved for loans under the program; and

(III) received loan disbursements under the program.

(v) of the businesses under clause (iv)(III)—

(I) the number of such businesses in each State;

(II) the total amount loaned to such businesses under the program; and

(III) the average loan amount and term.

(c) RULEMAKING AUTHORITY.—Not later than 120 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue final rules to carry out the loan program authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act.

(d) SUNSET PROVISION.—The amendments made by this section shall remain in effect until September 30, 2006, and shall apply to all loans authorized by section 502(b)(1)(B) of the Small Business Investment Act of 1958, as added by this Act, that are made during the period beginning on the date of enactment of this Act and ending on September 30, 2006.

OMNIBANK, N.A.,
*Houston, TX, July 30, 2002.*

Re: Proposed Senate Bill

Hon. JOHN F. KERRY,
*U.S. Senate, Washington, DC.*

DEAR SENATOR KERRY: Please accept this letter as my full support of the bill, soon to be introduced, proposing a Pilot Program, operating through the Small Business Administration's 504 Loan Program, that would allow Day Care facilities designated as non-profits to be eligible for the program.

I believe the demand for such a product is strong, and is fiscally sound. My reasons are as follows:

1. Day Care Centers must carry a non-profit designation in order to accept children to the center from low-income families.
2. These business benefit low-income neighborhoods and enterprise zones by purchasing property, improving the physical appearance of the community and providing safe facilities for the children. The ability to utilize the SBA–504 program would enable these businesses to decrease lease/payment expense and hence, help more children.
3. These families are in the most need for quality day care facilities in their community, since many use mass transit to get to work.
4. Small businesses have provided most of the job growth in this country in the last ten years. By enabling these Day Care Centers to operate efficiently and provide quality facilities, we will be helping small business gain and maintain employees.
5. Designation as a non-profit business does not equate to an inability to pay loans, or other business expenses.

OMNIBANK, a 50-year-old community bank in Houston, Texas, has experienced a consistent demand for loans to Day Care Centers. Most loan requests from these entities are for the purpose of acquiring or expanding property (real-estate) or acquiring transportation equipment. An example of a specific, recent request follows:

The Executive Director and Owner of Teeter Totter Day Care Center approached OMNIBANK about a loan to purchase the building used to house the Center. The owner an African-American woman, was experienced in this business. Cash flow to service the debt was sufficient and appropriate under prudent lending guidelines. The only deterrent from making a conventional loan was the amount available for down payment. Twenty percent or more is usually required.

Under the SBA–504 Program, a ten percent down payment is allowed and standard procedure for multi-use buildings. Additionally, it offers a fixed rate on the SBA portion of the loan. Most small businesses do not have access to fixed rate mortgages, due to the size of the loan requests, which enhances to attractives of the SBA 504 Program even further.

As we were preparing the request package, we realized that a non-profit did not qualify. The owner would personally guarantee the loan, and even agreed to form a for profit corporation to hold the property, because the underlying tenant was non-profit it would not work. The owner could not change Teeter Totter into a for profit corporation without jeopardizing its subsidies for low-income children.

OMNIBANK and the day care center are located in Houston's fifth ward, most of which is classified as low to moderate income. Its population is primarily low-income African Americans and Hispanics. The project was viewed by the Bank as a good loan from a business perspective, with many additional benefits to the community at large.

Ultimately, after appealing to SBA for a exception, and spending a great deal of time on the project, the loan was not completed. This delayed a good project from improving many aspects of an already underscored community, due to a simple tax classification.

As stated earlier, OMNIBANK receives consistent requests from day care centers, most of which are non-profit. I believe that a Pilot Program as proposed, will prove that these are viable and valuable businesses. I would recommend that all other standard criteria, proven track record, cash flow, management expertise, etc. remain.

I look forward to any questions you may have, or any further examples I can provide.

Sincerely,

JULIE A. CRIPE,
*President and Chief Operating Officer.*

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NEIGHBORHOOD BUSINESS BUILDERS,
*Boston, MA, July 10, 2002.*

Senator JOHN KERRY,
*Chairman, Senate Committee on Small Business and Entrepreneurship, Washington DC.*

DEAR CHAIRMAN SENATOR KERRY, I am writing on behalf of Neighborhood Business Builders and the Jewish Vocational Service of Boston in support of legislation to expand availability of SBA 504 loans to non-profit child care centers.

I am currently the Director of Loan Funds at Neighborhood Business Builders, which is an economic development program and US SBA Intermediary Microlender. I have been lending and consulting to small businesses for the past year after fifteen years in the private sector as founder of three different companies in Boston and Los Angeles. I have an MPA from the Kennedy School at Harvard University.

I am on Senator Kerry's Child Care and Small Business Advisory Committee, and am Co-chair of the Sub Committee on Family Child Care.

I support legislative change to the 504 loan program because our committee has uncovered a need for government support of non-profit child care centers. The basic reason for this is that, while we recognize a demand for child care in every part of the country, we do not consider that the market fails to profitably supply child care in every part of the country.

For-profit entities are able to access the capital they need by (1) Demonstrating demand for the service provided and (2) Demonstrating ability to serve market rate debt with acceptable risk. Non-profit centers emerge when (1) Demonstrated demand for the service is evident but (2) The market will not support the true cost of the service provided. These non-profit centers are unable to access traditional forms of capital because they cannot demonstrate an ability to service debt at an acceptable risk.

The SBA 504 loan program would help mitigate the risk to lenders who will then be able to provide the necessary capital for the service that we know is in demand. The tax status of a child care center should be irrelevant, since the 501(C)3 status is only granted when there is evidence of a public good being provided.

Sincerely,

ERIC KORSH,
*Director of Loan Funds, Neighborhood Business Builders.*

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WESTERN MASSACHUSETTS ENTERPRISE FUND INC.,
*Greenfield, MA, July 12, 2002.*

Senator JOHN KERRY,
*Chairman, Senate Committee on Small Business and Entrepreneurship, Washington, DC.*

DEAR SENATOR KERRY: I am writing in strong support of the legislation to expand the use of the SBA 504 program to include the financing of non-profit children centers.

As a member of Senator Kerry's Childcare Advisory Committee and the Executive Director of the Western Massachusetts Enterprise Fund (which makes loans to non-profits), I have seen a clear need for both more flexible and lower cost financing.

The SBA 504 program meets both those needs. By providing up to 40 percent financing, the SBA 504 program can help children centers more easily leverage bank financing. Additionally, the program offers highly competitive interest rates.

Finally, allowing the SBA to make loans to non-profit childcare centers is not new to the agency. The SBA is already making working capital loans to non-profit childcare centers through its Microenterprise Loan Fund Program.

If you have any questions, please do not hesitate to contact me.

Sincerely,

CHRISTOPHER SIKES,
*Executive Director.*

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THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES,
*Boston, MA, July 11, 2002.*

Hon. JOHN KERRY,
*Senate Committee on Small Business and Entrepreneurship, Washington, DC.*

DEAR CHAIRMAN KERRY:

The Massachusetts Office of Child Care Services (OCCS) fully supports expansion of the SBA 504 loan program to include non-profit child care programs. OCCS is the state's licensing agency responsible for setting and enforcing strong health, safety and education standards for child care programs throughout the Commonwealth. OCCS is also the lead state agency responsible for the administration and purchase of all human services child care subsidies across the state. As a result, this agency is greatly invested in the viability of these child care programs and in increasing the capacity of child care services to benefit more families in the Commonwealth.

Currently there are approximately 17,000 licensed child care facilities in the Commonwealth which can provide services to over 200,000 children. Many of these facilities are non-profit programs[1] that serve low-income families that are receiving child care subsidies to help them become or remain employed, and families that are or were receiving TANF. The availability and accessibility of child care is one of the main reasons that families can continue to successfully transition from welfare to work. There are currently approximately 18,000 children on the waiting list for a child care subsidy. The reauthorization of TANF may further increase the number of families seeking subsidized child care and Massachusetts must be ready to provide quality care. Accordingly, current and future non-profit programs will greatly benefit from the expansion of the SBA 504 loan program, as will the families that they serve.

OCCS is a member of the Advisory Committee on Child Care and Small Business and fully supports the Committee's mission of uniting the small business and child care communities to help providers maximize their income while providing quality child care. Expansion of the SBA 504 loan program will undoubtedly help expand the availability and accessibility of quality child

care. Thank you for your support of this important legislation. If I can be of further assistance please do not hesitate to contact me.

Sincerely,

ARDITH WIEWORKA,
*Commissioner.*

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SOUTH EASTERN ECONOMIC DEVELOPMENT CORPORATION,
*Taunton, MA, July 10, 2002.*

Re: Non Profit Child Care Center Eligibility Under the SBA 504 Program

Chairman JOHN KERRY,
*Senate Committee on Small Business and Entrepreneurship, Russell Building, Washington, DC.*

DEAR SENATOR KERRY: As a member of the Advisory Committee on Child Care and Small Business as well as Vice President at South Eastern Economic Development (SEED) Corporation, I am writing in support of the idea of expanding the SBA 504 program to allow for non profit child care centers to be eligible for financing under the program. SEED Corporation is a Certified Development Company certified and accredited to administer the SBA 504 program throughout southeastern Massachusetts. Over the past 2 years, SEED has been the number one SBA 504 lender in the State. SEED is also an approved SBA Microenterprise Intermediary and we have enjoyed and made use of the ability to provide micro loans to non-profit child care businesses since the microenterprise intermediary legislation made the special provision for non profit child care providers to be eligible for SBA micro loan funds. My primary responsibilities at SEED include origination, underwriting and closing SBA 504 loans as well as the oversight and development of SEED's micro loan and business assistance activities.

Over the past five years, SEED has assisted over 10 FOR-PROFIT child care businesses to obtain SBA 504 financing for their start-up or expansion projects. However, we have also had to turn away an equal number of non-profit child care centers that were seeking similar assistance due to the fact that non profit entities are not eligible under the SBA 504 program.

As we have learned from discussions and analysis within the Advisory Committee on Child Care and Small Business, access to long term, fixed market or below-market rate financing is essential to any child care center. The slim margins that characterize this industry limit any child care center's ability to grow. The SBA 504 program offers the type of fixed rate financing that not only assists the business to keep its occupancy costs under control but also serves to stabilize its operations over the long term. The program also provides an incentive to a bank to provide fixed asset financing to a business that might not otherwise be able to afford a conventional commercial mortgage. The non-profit child care centers provide the same quality of care as the for-profit centers. Preventing non-profit child care center from making use of the SBA 504 program when their for profit competitiors are able to do results in discrimination against the children they serve, and, in general, the majority of child care centers operating in our state's neediest areas are non-profit.

For these reasons, I would like to support your efforts to expand the SBA 504 program enabling non-profit child care centers to be eligible for fixed asset financing under the 504 program. Thank you for your efforts.

Sincerely,

HEATHER DANTON,
*Vice President.*

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ACCION USA,
*Boston, MA, June 8, 2002.*

Hon. JOHN KERRY,
*Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR KERRY:

My name is Erika Eurkus, and as a member of your Advisory Committee on Child Care and Small Business, I writing to voice my support of expanding the SBA 504 loan program to include nonprofit child care centers.

I am the greater Boston program director for ACCION USA, a nonprofit ''micro'' lender whose mission is to make access to credit a permanent resource to low- and moderate-income small business owners in the United States—helping to narrow the income gap and provide economic opportunity to small business owners throughout the country. Many of the struggling entrepreneurs we serve are the owners of small, family-based day care centers.

At ACCION, I regularly come into contact with women and men whose dream is to operate a successful child care center—to provide a service to the community while making a better life from something they love to do. Often, what keeps these hardworking entrepreneurs from fully realizing that dream is a lack of working capital to begin and grow their businesses. Microlenders like ACCION are the only place they can turn for the crucial capital they need for their businesses. Mauro Leija, an ACCION client in San Antonio, Texas, has tried—and failed—to secure capital from commercial banks. ''The loan officer at the bank said, 'Be realistic—you'll never get a loan. You have no college diploma, no capital, no history with any bank,' '' Mauro remembers. This lack of economic opportunity is too often the reality for countless child care providers—most of whom earn an average of $3 per hour for their services.

With increased access to capital through the expansion of the SBA 504 loan program, small, nonprofit day care centers can continue to provide their valuable services to the community—and build a better life for their own families at the same time. Suzanne Morris of Springfield, Massachusetts, a longtime ACCION USA borrower, already illustrates the potential successes that an expanded SBA 504—and an opportunity for capital—will bring to day care owners across the country. After years of hard work and several small loans from ACCION, Suzanne has moved her day care out of the home and has expanded her staff to include seven members of the community. The business supports her family of four. She also gives back by training other local home-based day care providers in federal nutrition guidelines.

It is my hope that we can all witness more successes like those of Suzanne by opening the door to funding for small day care providers. Please include nonprofit child care centers in the scope of SBA 504.

Sincerely,

ERIKA EURKUS,
*Greater Boston Program Director.*

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GUILD OF ST. AGNES,
CHILD CARE PROGRAMS,
*Worcester, MA, July 3, 2002.*

Senator JOHN KERRY,
*Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Building, Washington, DC.*

DEAR SENATOR KERRY, It has come to my attention that your committee is working on legislation that would expand the SBA 504 loan program to non-profit child care centers.

As the Executive Director of the Guild of St. Agnes Child Care Agency and a member of The Advisory Committee on Child Care and Small Business, I wholeheartedly support this legislation. The Guild of St. Agnes is a non-profit child care agency providing child care in Worcester, MA and its surrounding towns. Presently we care for 1200 children aged four weeks to twelve years in child care centers, family care provider's home and public schools. Of our seven centers, we currently own one.

Four of our centers are in old, worn-down buildings, causing us difficulty in recruiting new clients. As we look towards the future, the Guild of St. Agnes has set a goal of replacing these centers with new buildings. In order to accomplish this goal, we need to look for creative funding sources to support our capital campaign. The SBA 504 loan program would allow us to invest 10% of our own funds for capital expenses, borrow 50% from the government and secure a bank loan for 40%. Not only is this loan program attractive to banking institutions, it allows child care agencies like the Guild of St. Agnes to continue to grow during these economically challenging times.

I urge you to support the SBA 504 loan program legislation. The future of non-profit child care agencies such as the Guild of St. Agnes depends on it!

Sincerely,

EDWARD P. MADAUS,
*Executive Director.*

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By Mr. KENNEDY (for himself, Mrs. CLINTON, and Mr. ROCKEFELLER):

S. 2892. A bill to provide economic security for America's workers; to the Committee on Finance.

Mr. KENNEDY. Mr. President, the U.S. is in the midst of another ''jobless recovery,'' similar to the early 1990s, with the unemployment rate showing few signs of falling in the coming months. Over the past three months, the jobless rate has hovered around 6 percent and long-term unemployment levels now exceed those reached in any recent recession. Last month, nearly one in five unemployed workers remained out of work for six months or more. Some 150,000 jobs have been lost since the beginning of this year and 8.4 million people are currently unemployed.

The recent spate of corporate scandals has only made it worse. Sadly, Enron and WorldCom were not isolated events of corporate greed that hurt America's workers. Tens of thousands have lost their jobs because of the disgrace and mistrust company leaders created, or because of company mismanagement. At Lucent, 77,000 workers were laid off. At Kmart, 22,000 workers were laid off. At Xerox, over 13,000 workers were laid off. At Tyco, almost 10,000 workers were laid off. At Global Crossing, over 9,000 workers were laid off. At Polaroid, over 4,000 workers were laid off.

As new corporate scandals lead to additional mass lay-offs and Americans remain unemployed longer, workers are losing their unemployment benefits with no hope for a new job in sight. Too many low-wage and part-time workers remain without unemployment benefits. And benefit levels remain too low to keep families out of poverty in many states. Today, I along with Senators CLINTON and ROCKEFELLER, am

introducing the Economic Security Act 2002 to protect those unemployed workers and reinvigorate the economy.

Last year, Senate Democrats responded to the recession with an immediate plan to stimulate the economy and help laid-off workers get back on their feet. In March, House Republicans finally relented and we extended unemployment benefits for millions of workers. It was a significant step forward, but it did not go far enough.

This week, economists confirmed that recovery is slow at best. Economic growth fell from 5.0 percent in the first quarter of 2002 to 1.1 percent in the second quarter. Business investment still has not recovered and continues to decline, while the trade deficit soared to record highs. Job growth, the last area of the economy to recover after a recession, continues to lag. As hundreds of thousands of workers exhaust their extended benefits, it's time to close the gaps in the extended benefit program. The Economic Security Act of 2002 will provide additional extended benefits for millions of workers who remain unemployed.

The bill will also help those workers currently left out of the unemployment insurance system, part-time and low-wage workers. Part-time work is a significant part of our modern economy and women and low-wage workers disproportionately comprise the part-time workforce. Yet, the majority of states do not provide benefits to unemployed workers seeking part-time work. The twenty States that already provide benefits to unemployed part-time workers have not found their inclusion overly costly.

In addition, according to the GAO, low-wage workers are half as likely to receive unemployment benefits than other unemployed workers, even though low-wage workers as twice as likely to be unemployed. In all but 12 States, most unemployed low-wage workers are not eligible for benefits because their most recent earnings are not counted. Failing to count a worker's most recent earnings not only denies unemployed workers benefits, but also cuts down on the duration and amount of benefits that some unemployed workers receive.

These part-time and low-wage workers pay into the unemployment system, but fail to receive benefits. In January, Democratic Senators were joined by ten of our Republican colleagues in a vote to provide temporary benefits to part-time and low-wage workers, as well as increasing benefit levels and extending benefits. The Economic Security Act of 2002 incorporates these important provisions.

Too often, those who receive unemployment find that unemployment checks are not sufficient to meet basic needs. In some states, the maximum weekly benefit amount is less than the poverty level for a one-parent, two-child family. Raising benefit levels helps families stay out of poverty and invests more in the economy. After all, unemployed workers immediately spend unemployment insurance benefits in their communities, providing immediate economic stimulus. This bill would give a boost to workers and the economy by raising temporary extended benefit levels by the greater of 15 percent or $25 a week.

As Americans exhaust their benefits in greater numbers, we must ensure that all workers can put food on their families' tables and keep a roof over their heads when jobs are scarce. And we must ensure that unemployment insurance serves the purpose for which it was created, to serve as a safety net for all workers during tough economic times and stimulate economic growth. The Economic Security Act of 2002 will be a giant leap forward for America's workers.

Mr. ROCKEFELLER. Mr. President, despite some signs of an improving economy, for hard-working Americans, it is, unfortunately, a ''jobless recovery.'' While we see some positive economic indicators, the unemployment rate continues to rise and shows few signs of falling. For working Americans, that is bad news. Too many people are finding themselves without a job, and without a source of income.

The Labor Department reports that over the past few months, the unemployment rate has hovered around 6 percent, with 8.4 million people officially counted as unemployed. My home State of West Virginia reported an unemployment rate of 6.8 percent in June, which is only somewhat higher than the national average, but some of our counties are struggling with unemployment rates in the double digits.

Not only are more people being laid off, they are also remaining unemployed for longer. From January to May 2002, the proportion of unemployed workers who were still looking for work after 27 weeks increased by 41 percent, and unemployment levels now exceed those reached in any recent recession. Workers are suffering unemployment for longer periods, and are losing benefits before they can find new jobs. In January 2002, a total of 373,000 workers exhausted their benefits, a sizeable 11 percent increase from the same time last year.

We faced similar troubles in the early 1990s, when, amidst a recession, Congress enacted an emergency Federal extended benefits program designed to help unemployed workers and their families. Some analysts suggest that without that program, approximately 70 percent of unemployed families would have ended up with incomes below the federal poverty line. When our Nation faces such an economic downturn, action is essential to help hard-working Americans get back on their feet after a devastating layoff. Now, in the midst of another economic downturn, we must also act to provide American families with the assistance they need.

I rise today in support of a bill to be introduced by my colleague, Senator KENNEDY, that would remedy several flaws in the current unemployment benefits program. This is an enormously important piece of legislation, one that should be enacted immediately for the sake of working families who have been put out of jobs through no fault of their own.

The measure would give States administrative funding so they can distribute benefit checks punctually and accurately. It would ensure that all unemployed workers receive a full 13 weeks of benefits. And it would repeal the 20-weeks-of-work prerequisite to receiving benefits that primarily punishes low-wage workers and newer entrants to the job market.

Beginning in 1986, Federal and State governments began withholding taxes from the benefit checks of all aid recipients. However, no accommodations were made to offset these deductions, and recipients saw a significant reduction in benefits. To ameliorate this problem, Senator KENNEDY's legislation would raise benefit levels by 15 percent or $25 a week, whichever is higher.

Finally, a majority of States currently refuse benefits to unemployed workers seeking part-time work. West Virginia does cover part-time workers, but I believe every state should do this as well. Part-time work is an enormously important component of our economy, particularly as it involves large numbers of women and low-wage earners. Senator KENNEDY's bill would require states to base eligibility on a worker's most recent earnings. This seemingly technical provision would greatly expand eligibility to benefits for many workers, in my state, and across the country.

Millions of Americans are still struggling, and they do not have a steady source of income. I urge my colleagues to support this bill to reform America's unemployment insurance program; it is urgently needed and should be passed with great haste. This bill is the right thing to do for working Americans, and it is an essential measure for those still suffering from the effects of our uncertain economy.

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By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2893. A bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I am pleased to be joined by Senator BINGAMAN in introducing legislation that declares the United States holds certain public domain lands in trust for the Pueblos of San Ildefonso and Santa Clara in New Mexico.

In 1988 the Bureau of Land Management (BLM), pursuant to the Federal Lands Policy and Management Act, declared approximately 4,484 acres located in the eastern foothills of the Jemez Mountains in north central New

Mexico, including portions of Garcia and Chupadero Canyons, to be ''disposal property.'' The Garcia Canyon surplus lands qualify for disposal partially because the tract is an isolated tract of land almost inaccessible to the general public. It is surrounded on three sides by the reservations of Santa Clara Pueblo and the Pueblo of San Ildefonso, and by U.S. Forest Service land on the remaining side. The only road access consists of unimproved roads through the two Pueblo's reservations. These factors have resulted in minimal or no public usage of the Garcia Canyon surplus lands in recent decades.

I understand that currently there are no resource permits, leases, patents or claims affecting these lands. It is unlikely that any significant minerals exist with the Garcia Canyon transfer lands. The Garcia Canyon transfer lands contain a limited amount of lesser quality forage for livestock and have not been actively grazed for over a decade. However, the Garcia Canyon surplus lands constitute an important part of the ancestral homelands of the Pueblos of Santa Clara and San Ildefonso.

Santa Clara and San Ildefonso are two of the Tewa-speaking federally-recognized Indian Pueblos of New Mexico. Both Pueblos have occupied and controlled the areas where they are presently located since many centuries before the arrival of the first Europeans in the area in late 16th century. Their homelands are defined by geographical landmarks, cultural sites, and other distinct places whose traditional Tewa names and locations have been known and passed down in each Pueblo through the generations. Based upon these boundaries, about 2,000 acres of the Garcia Canyon surplus lands is within the aboriginal domain of the Pueblo of San Ildefonso. The remaining lands, approximately 2,484 acres are in Santa Clara's aboriginal lands.

The Bureau of Land Management currently seeks to dispose of the Garcia Canyon surplus lands and the Pueblos of Santa Clara and San Ildefonso seek to obtain these lands. In addition, the BLM and Interior Department for years have supported the transfer of the land to the two Pueblos, provided the Pueblos agree upon a division of the Garcia Canyon surplus lands. In response, the two Pueblos signed a formal agreement affirming the boundary between their respective parcels on December 20, 2000.

The Pueblos of Santa Clara and San Ildefonso have worked diligently in arriving at this agreement. They have also worked collaboratively in seeking community support and garnering supporting resolutions from Los Alamos, Rio Arriba and Santa Fe Counties, the National Congress of American Indians and supporting letters from the National Audubon Society's New Mexico State Office, the Quivira Coalition and the Santa Fe Group of the Sierra Club.

This unique situation presents a win-win opportunity to support more efficient management of public resources while restoring to tribal control isolated tracts of federal disposal property. Upon transfer, the Pueblos of Santa Clara and San Ildefonso intend to maintain these lands in their natural state and use them for sustainable traditional purposes including cultural resource gathering, hunting and possibly livestock grazing. Where appropriate, both tribes are interested in performing work to restore and improve ecosystem health, particularly to support habitat for culturally significant animal and plant species. Both Pueblos have experienced Natural Resource Management and Environmental Protection programs and are capable of managing these lands for both ecologic health and community benefits.

We want to secure Congressional authorization to transfer control of these lands to the two Pueblos, with legal title being held in trust by the Secretary of Interior for each of the Pueblos for their respective portions of the property. I urge my colleagues to support this legislation. 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. 2893

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

**SECTION 1. DEFINITIONS.**

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 4(a).

(3) GOVERNORS.—The term ''Governors'' means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term ''Pueblos'' means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 2(a) or 3(a).

**SEC. 2. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.**

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., Sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., Sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., Sec. 25, excluding the 5–acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., Sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., Sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

**SEC. 3. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.**

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., Sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., Sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

**SEC. 4. SURVEY AND LEGAL DESCRIPTIONS.**

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 2(b) and 3(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 2(b) and 3(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions

shall be the official legal descriptions of the trust land.

**SEC. 5. ADMINISTRATION OF TRUST LAND.**

(a) IN GENERAL.—Beginning on the date of enactment of this Act—

(1) the land held in trust under section 2(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 3(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

**SEC. 6. EFFECT.**

Nothing in this Act—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

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By Mrs. FEINSTEIN (for herself, Mr. KYL, Mrs. HUTCHISON, and Ms. SNOWE):

S. 2895. A bill to enhance the security of the United States by protecting seaports, and for other purposes; to the Committee, Science, and Transportation.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Comprehensive Seaport and Container Security Act of 2002 to protect against terrorist attacks on or through our Nation's seaports. I would like to thank Senators Kyl, Hutchison, and Snowe for joining me in sponsoring this bill.

Currently, our seaports are the gaping hole in our Nation's defense against terrorism. Of the over 18 million shipping containers that enter our ports each year, 6 million come from overseas. However, only 1 or 2 percent of these containers are inspected, and inspections almost invariably occur after the containers arrive in the United States.

The problem is that single container could contain 60,000 pounds of explosives, 10 to 15 times the amount in the Ryder truck used to blow up the Murrah Federal Building in Oklahoma city, and a single container ship can carry as many as 8,000 containers at one time. Containers could easily be exploited to detonate a bomb that would destroy a bridge, seaport, or other critical infrastructure, causing mass destruction and killing thousands.

Worse, a suitcase-sized nuclear device or radiological ''dirty bomb'' could also be installed in a container and shipped to the United States. The odds that the container would never be inspected. And, even if the container was inspected, it would be too late. The weapon would already be in the United States—most likely near a major population center.

There is no doubt in my mind that terrorists are seeking to exploit vulnerabilities at our seaports right now.

For example, a recent article in the Bangkok Post notes that ''Al-Qaeda is among international terrorist organisations responsible for an increase in piracy against ships carrying radioactive materials through the Malacca Straits. . . . The terrorist groups' main aims were to obtain substances such as uranium and plutonium oxide for use in so-called dirty bombs.''

In addition, any attack on or through a seaport could have devastating economic consequences. Every year U.S. ports handle over 800 million tons of cargo valued at approximately $600 billion.

Excluding trade with Mexico and Canada, America's ports handle 95 percent of U.S. trade. Two of the busiest ports in the world are in my home State of California: Los Angeles/Long Beach and at Oakland.

We cannot inspect every container coming into the United States, but we can do a better job devoting our attention to cargo that could put our national security at risk. The legislation we introduce today will ensure that we devote the limited resources we do have to inspect cargo in the most efficient and effective manner. It will allow us to reduce the size of the haystack to make it easier to find the needle.

Since September 11th, the Federal Government has taken steps to secure our airports and our borders, however, we still have not adopted a blueprint for helping protect America's 361 seaports. While the Senate passed S. 1214, a bill written by Senator Hollings last December, and the House has also passed a port security bill, conference negotiations are still ongoing.

I hope the conferees will adopt the provisions in this bill before they complete their work in conference because I believe that this bill is the only legislation that thoroughly addresses the issue of port security from the point cargo is loaded in a foreign country to its arrival on land in the United States.

We have known for a long time that America's ports needed an extensive security strategy and upgrade. In the fall of 2000, a comprehensive report was issued by the Interagency Commission on Crime and Security in U.S. Seaports. I testified before the commission and I believe its report makes a number of sensible suggestions on how we can improve security and fight crime at seaports.

Before the September 11 terrorist attacks, S. 1214 was drafted to try to implement many of the commission's recommendations. Before the bill passed the Senate in December 2001, the sponsors made some additional changes to help prevent a terrorist attack. However, I believe that there is much more Congress can do to prevent terrorists from launching a terrorist attack through our seaports.

The legislation I am introducing today will complement the Hollings bill and the seaport security legislation passed by the House. Together, I believe the provisions in these three bills will erect a formidable security barrier at our seaports.

I believe that Al Qaeda is planning to attack the United States again soon and that it may well try to do so through a U.S. seaport. Indeed, the Al Qaeda training manual specifically mentions seaports as a point of vulnerability in our security.

In addition, we know that Al Qaeda has succeeded in attacking American interests at and through seaports in the past. Let me mention some examples.

In June, the FBI issued a warning for Americans to be on the lookout for suspicious people wanting training in scuba diving or trying to rent underwater gear. Law enforcement officials fear that Al Qaeda operatives could try to blow up ships at anchor or other waterfront targets.

In May the FBI received reports that Al Qaeda terrorists may be making their way toward Southern California from a Middle Eastern port via merchant ships. Catalina Island—22 miles off the coast of Los Angles, was mentioned as a possible destination for about 40 Al Qaeda terrorists.

In October 2001, Italian authorities found an Egyptian man suspected for having ties to Al Qaeda in a container bound for Canada. He had false identifications, maps of airports, a computer, a satellite phones, cameras, and plenty of cash on hand.

In October 2000, Al Qaeda operatives successfully carried out a deadly bombing attack against the U.S.S. Cole in the port of Yemen.

In 1998, Al Qaeda bombed the American Embassies in Kenya and Tanzania. Evidence suggests that the explosives the terrorists used were shipped to them by sea. And the investigation of the embassy bombings concluded that Bin Laden has close financial tries to various shipping companies.

I believe that this legislation would go far to make the United States less vulnerable to a terrorist attack. The main provisions will: 1. Establish a risk profiling plan for the Customs Service to focus their limited inspection capabilities on high-risk cargo and containers, and 2. Push U.S. security scrutiny beyond our Nation's borders to monitor and inspect cargo and containers before they arrive near America's shores.

These provisions complement and extend a strategy Customs Commissioner Robert C. Bonner is already in the process of implementing. To prevent a weapon of mass destruction from getting to the U.S. in the first place, Customs has entered into formal agreements with a handful of foreign governments to station U.S. inspectors at ports overseas to profile high risk cargo and target suspicious shipments for inspection.

The Comprehensive Seaport and Container Security Act will also: Designate an official at each U.S. port as the primary authority responsible for security. This will enable all parties involved in business at a port to understand who has final say on all security matters.

Require the FBI to collect and make available data relating to crime at and affecting seaports. With more data, law enforcement agencies will be able to better identify patterns and weaknesses at particular ports.

Require ports to provide space to Customs so that the agency is able to use its non-intrusive inspection technology. In many cases, Customs has to keep this technology outside the port and bring it in every day, which prevents some of the best inspection technology, which is not portable, from being used.

Give Customs responsibility of licensing and overseeing regulated intermediaries in the international trade process, these intermediaries handle over 80 percent of all cargo in international trade. Currently, the U.S. Federal Maritime Commission oversees most of these intermediaries, but Customs will have more resources to oversee this regulation.

Require shippers bound for U.S. ports to transmit their cargo manifests with more detailed information at least 24 hours prior to departing from a foreign port.

Impose steep monetary sanctions for failure to comply with information filing requirements, including filing incorrect information, the current penalty is only a maximum of $1000 or $5000, depending on the offense. The Seaport Commission found that about half of the information on ship manifests was inaccurate.

Require all port employees to have biometric smart identification cards.

Restrict private vehicle access to ports.

Prohibit guns and explosives at ports, except when authorized.

Mandate that radiation detection pagers be issued to each inspector.

Requires the Transportation Security Administration to set standards to ensure each port has a secure port perimeter, secure parking facilities, controlled points of access into the port, sufficient lighting, buildings with secure doors and windows and an alarm.

Require all ports to keep sensitive information on the port secure and protected. Such information would include, but not be limited to maps, blueprints, and information on the Internet.

Require the use of high security seals on all containers coming into the U.S.

Require that each container to be transported through U.S. ports receive a universal transaction number that could be used to track container movement from origin to destination. Require shippers to have similar universal numbers.

Require all empty containers destined for U.S. ports to be secured.

Fund pilot programs to develop high-tech seals and sensors, including those that would provide real-time evidence of container tampering to a monitor at a terminal.

I believe that Congress should act quickly on this legislation. This bill could very well prevent the arrival or detonation of a nuclear ''suitcase bomb'' or radiological ''dirty bomb'' at a U.S. seaport-an attack that could bring U.S. seaborne commerce to a grinding halt, leaving our economy and national security in shambles.

In closing, I want to thank staff at the Customs Service, Transportation Security Administration, Coast Guard, and various ports for their helpful comments on this legislation. I also want to thank a ''working group'' of experts I assembled for their suggestions regarding the bill. These experts included former government officials, industry executives, and security consultants.

I also want to thank Senator Hollings and the other members of the Commerce Committee for the work they have done on the port security issue. I have spoken to Senator Hollings about the bill I am introducing today, and my staff is working with his staff and with the staff of other conferees to come up with comprehensive seaport security legislation.

I hope that the legislation ultimately adopted by the conference includes the Comprehensive Seaport and Container Security Act of 2002. I would urge the conferees to work quickly to draft a final bill that we can send to the President's desk before September 11.

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

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

S. 2895

*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 ''Comprehensive Seaport and Container Security Act of 2002''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) CAPTAIN-OF-THE-PORT.—The term ''Captain-of-the-Port'' means the United States Coast Guard's Captain-of-the-Port.

(2) COMMON CARRIER.—The term ''common carrier'' means any person that holds itself out to the general public to provide transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

(3) CONTAINER.—The term ''container'' means a container which is used or designed for use for the international transportation of merchandise by vessel, vehicle, or aircraft.

(4) MANUFACTURER.—The term ''manufacturer'' means a person who fabricates or assembles merchandise for sale in commerce.

(5) MERCHANDISE.—The term ''merchandise'' has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

(6) OCEAN TRANSPORTATION INTERMEDIARY.—The term ''ocean transportation intermediary'' has the meaning given that term in section 515.2 of title 46, Code of Federal Regulations, on the date of enactment of this Act.

(7) SHIPMENT.—The term ''shipment'' means cargo traveling in international commerce under a bill of lading.

(8) SHIPPER.—The term ''shipper'' means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation is provided;

(C) the person to whom delivery of the merchandise is to be made; or

(D) a common carrier that accepts responsibility for payment of all charges applicable under a tariff or service contract.

(9) UNITED STATES SEAPORT.—The term ''United States seaport'' means a place in the United States on a waterway with shoreside facilities for the intermodal transfer of cargo containers that are used in international trade.

(10) VESSEL.—The term ''vessel'' has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

**TITLE I—LAW ENFORCEMENT AT SEAPORTS**

**SEC. 101. DESIGNATED SECURITY AUTHORITY.**

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, after consultation with the Director of the Office of Homeland Security, shall designate a Director of the Port who will be the primary authority responsible for security at each United States seaport to—

(1) coordinate security at such seaport; and

(2) be the point of contact on seaport security issues for civilian and commercial port entities at such seaport.

(b) DELEGATION.—A Director of the Port may delegate the responsibilities described in subsection (a) to the Captain-of-the-Port.

**SEC. 102. FBI CRIME DATA COLLECTION.**

Not later than 180 days after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall implement a data collection system to compile data related to crimes at or affecting United States seaports. Such data collection system shall be designed to—

(1) identify patterns of criminal activity at particular seaports; and

(2) allow law enforcement authorities, including the designated law enforcement authority for each seaport described in section 101, to retrieve reliable data regarding such crimes.

**SEC. 103. CUSTOMS SERVICE FACILITIES.**

(a) OPERATIONAL SPACE IN SEAPORTS.—Each entity that owns or operates a United States seaport that receives cargo from a foreign country, whether governmental, quasi-governmental, or private, shall allow the use of permanent suitable office and inspection space within the seaport by United States Customs Service officers at no cost to the Customs Service.

(b) INSPECTION TECHNOLOGY.—The Commissioner of Customs shall maintain permanent inspection facilities that utilize available inspection technology in the space provided at each United States seaport pursuant to subsection (a).

**SEC. 104. REGULATION OF OCEAN TRANSPORT INTERMEDIARIES.**

(a) TRANSFER OF AUTHORITY.—The responsibility to license, and revoke or suspend a license, as an ocean transportation intermediary of a person who carries on or wishes to carry on the business of providing intermediary services is transferred from the Federal Maritime Commission to the Commissioner of Customs.

(b) RULEMAKING AUTHORITY.—Not later than 1 year after the date of enactment of this Act, the Commissioner of Customs shall issue final regulations to carry out the requirements of subsection (a). Such regulations shall require that ocean transportation intermediaries assist the Commissioner of Customs in collecting data that can be used to prevent terrorist attacks in the United States.

(c) INTERIM RULES.—The Commissioner of Customs shall enforce the regulations in part 515 of title 46, Code of Federal Regulations, as in effect on the date of enactment of this Act, until the final regulations required by subsection (b) are issued, except that any reference to the Federal Maritime Commission in such regulations shall be deemed to be a reference to the Commissioner of Customs.

(d) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions relating to ocean transportation intermediary—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under subsection (a), and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the head of the Federal agency to which such functions are transferred under this Act or other authorized official, a court of competent jurisdiction, or by operation of law.

(e) PROCEEDINGS NOT AFFECTED.—

(1) IN GENERAL.—The provisions of this Act shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the Federal Maritime Commission with respect to functions transferred by this Act, but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the head of the Federal agency to which such functions are transferred by this Act, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) REGULATIONS.—The Commissioner of Customs is authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

## TITLE II—PUSHING OUT THE BORDER

**SEC. 201. INSPECTION OF MERCHANDISE AT FOREIGN FACILITIES.**

Not later than 180 days after the date of enactment of this Act, the Commissioner of Customs, in consultation with the Under Secretary of Transportation for Security, shall submit to Congress a plan to—

(1) station inspectors from the Customs Service, other Federal agencies, or the private sector at the foreign facilities of manufacturers or common carriers to profile and inspect merchandise and the containers or other means by which such merchandise is transported as they are prepared for shipment on a vessel that will arrive at any port or place in the United States;

(2) develop procedures to ensure the security of merchandise inspected as described in paragraph (1) until it reaches the United States; and

(3) permit merchandise inspected as described in paragraph (1) to receive expedited inspection upon arrival in the United States.

**SEC. 202. MANIFEST REQUIREMENTS.**

Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(1) by striking ''Any manifest'' and inserting the following:

''(1) IN GENERAL.—Any manifest''; and

(2) by adding at the end the following new paragraphs:

''(2) REQUIRED INFORMATION.—

''(A) REQUIREMENT.—In addition to any other requirement under this section, the pilot, master, operator, or owner (or the authorized agent of such owner or operator) of every vessel required to make entry or obtain clearance under the customs laws of the United States shall, not later than 24 hours prior to departing from any foreign port or place for a port or place in the United States, transmit electronically the cargo manifest information described in subparagraph (B) in such manner and form as the Secretary shall prescribe. The Secretary shall ensure the electronic information is maintained securely, and is available only to individuals with Federal Government security responsibilities.

''(B) CONTENT.—The cargo manifest required by subparagraph (A) shall consist of the following information—

''(i) The port of arrival and departure.

''(ii) The carrier code assigned to the shipper.

''(iii) The flight, voyage, or trip number.

''(iv) The date of scheduled arrival and departure.

''(v) A request for a permit to proceed to the destination, if such permit is required.

''(vi) The numbers and quantities from the carrier's master air waybill, bills of lading, or ocean bills of lading.

''(vii) The first port of lading of the cargo and the city in which the carrier took receipt of the cargo.

''(viii) A description and weight of the cargo (including the Harmonized Tariff Schedule of the United States number under which the cargo is classified) or, for a sealed container, the shipper's declared description and weight of the cargo.

''(ix) The shipper's name and address, or an identification number, from all air waybills and bills of lading.

''(x) The consignee's name and address, or an identification number, from all air waybills and bills of lading.

''(xi) Notice of any discrepancy between actual boarded quantities and air waybill or bills of lading quantities, except that a carrier is not required by this clause to verify boarded quantities of cargo in sealed containers.

''(xii) Transfer or transit information for the cargo while it has been under the control of the carrier.

''(xiii) The location of the warehouse or other facility where the cargo was stored while under the control of the carrier.

''(xiv) The name and address, or identification number of the carrier's customer including the forwarder, nonvessel operating common carrier, and consolidator.

''(xv) The conveyance name, national flag, and tail number, vessel number, or train number.

''(xvi) Country of origin and ultimate destination.

''(xvii) Carrier's reference number including the booking or bill number.

''(xviii) Shipper's commercial invoice number and purchase order number.

''(xix) Information regarding any hazardous material contained in the cargo.

''(xx) License information including the license code, license number, or exemption code.

''(xxi) Container number for containerized shipments.

''(xxii) Certification of any empty containers.

''(xxiii) Any additional information that the Secretary by regulation determines is reasonably necessary to ensure aviation, maritime, and surface transportation safety pursuant to those laws enforced and administered by the Customs Service.''.

**SEC. 203. PENALTIES FOR INACCURATE MANIFEST.**

(a) FALSITY OR LACK OF MANIFEST.—Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) in subsection (a)(1)—

(A) by striking ''$1,000'' each place it appears and inserting ''$50,000''; and

(B) by striking ''$10,000'' and inserting ''$50,000''; and

(2) by adding at the end the following new subsection:

''(c) CRIMINAL PENALTIES.—Any person who ships or prepares for shipment any merchandise bound for the United States who intentionally provides inaccurate or false information, whether inside or outside the United States, with respect to such merchandise for the purpose of introducing such merchandise into the United States in violation of the customs laws of the United States, is liable, upon conviction of a violation of this subsection, for a fine of not more than $50,000 or imprisonment for 1 year, or both; except that if the importation of such merchandise into the United States is prohibited, such person

is liable for an additional fine of not more than $50,000 or imprisonment for not more than 5 years, or both.''.

(b) PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS.—Subsections (b) and (c) of section 436 of Tariff Act of 1930 (19 U.S.C. 1436 (b) and (c)) are amended to read as follows:

''(b) CIVIL PENALTY.—Any master, person in charge of a vessel, vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $25,000 for the first violation, and $50,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

''(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vessel, vehicle, or aircraft pilot who intentionally commits or causes another to commit any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $50,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $50,000 or imprisonment for not more than 5 years, or both.''.

**SEC. 204. SHIPMENT PROFILING PLAN.**

(a) IN GENERAL.—The Commissioner of Customs, after consultation with the Director of the Office of Homeland Security and the Under Secretary of Transportation for Security, shall develop a shipment profiling plan to track containers and shipments of merchandise that will be imported into the United States for the purpose of identifying any shipment that is a threat to the security of the United States before such shipment is transported to a United States seaport.

(b) INFORMATION REQUIREMENTS.—The shipment profiling plan described in subsection (a) shall at a minimum—

(1) require common carriers, shippers, and ocean transportation intermediaries to provide appropriate information regarding each shipment of merchandise, including the information required under section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) as amended by this Act, to the Commissioner of Customs; and

(2) require shippers to use a standard international bill of lading for each shipment that includes—

(A) the weight of the cargo;

(B) the value of the cargo;

(C) the vessel name;

(D) the voyage number;

(E) a description of each container;

(F) a description of the nature, type, and contents of the shipment;

(G) the code number from Harmonized Tariff Schedule;

(H) the port of destination;

(I) the final destination of the cargo;

(J) the means of conveyance of the cargo;

(K) the origin of the cargo;

(L) the name of the precarriage deliverer or agent;

(M) the port at which the cargo was loaded;

(N) the name of formatting agent;

(O) the bill of lading number;

(P) the name of the shipper;

(Q) the name of the consignee;

(R) the universal transaction number or carrier code assigned to the shipper by the Commissioner of Customs; and

(S) any additional information that the Commissioner of Customs by regulation determines is reasonably necessary to ensure seaport safety.

(c) CREATION OF PROFILE.—The Commissioner of Customs shall combine the information described in subsection (b) with other law enforcement and national security information that the Commissioner believes will assist in locating containers and shipments that could pose a threat to the security of the United States to create a profile of every container and every shipment within the container that will enter the United States.

(d) CARGO SCREENING.—

(1) IN GENERAL.—Customs Service officers shall review the profile of a shipment that a shipper desires to transport into the United States to determine if the shipment or the container in which it is carried should be subjected to additional inspection by the Customs Service. In making that determination, the Customs Service officers shall consider in addition to any other relevant factors—

(A) whether the shipper has regularly shipped cargo to the United States in the past; and

(B) the specificity of the description of the shipment's contents.

(2) NOTIFICATION.—The Commissioner of Customs shall notify the shipper and the person in charge of the vessel on which a shipment is located if the shipment will be subject to additional inspection as described in paragraph (1).

(e) CONSISTENCY WITH THE AUTOMATED COMMERCIAL ENVIRONMENT PROJECT.—The Commissioner of Customs shall ensure that the automated commercial environment project developed pursuant to section 411 of the Tariff Act of 1930 (19 U.S.C. 1411) is compatible with the shipment profile plan described under this section.

## TITLE III—SECURITY OF CARGO CONTAINERS AND SEAPORTS

**SEC. 301. SEAPORT SECURITY CARDS.**

(a) REQUIREMENT FOR CARDS.—Not later than 1 year after the date of enactment of this Act, a covered individual described in subsection (b) shall not be permitted to enter a United States seaport unless the covered individual holds a seaport security card as described in this section.

(b) COVERED INDIVIDUAL.—A ''covered individual'' means an individual who is regularly employed at a United States seaport or who is employed by a common carrier that transports merchandise to or from a United States seaport.

(c) ISSUANCE.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall issue a seaport security card under this section to a covered individual unless the Under Secretary determines that the individual—

(A) poses a terrorism security risk;

(B) poses a security risk under section 5103a of title 49, United States Code;

(C) has been convicted of a violation of chapter 27 of title 18, United States Code; or

(D) has not provided sufficient information to allow the Under Secretary to make the determinations described in subparagraph (A), (B), or (C).

(2) DETERMINATION OF TERRORISM SECURITY RISK.—The Under Secretary shall determine that a person poses a terrorism security risk under paragraph (1)(A) if the individual—

(A) has been convicted of a felony that the Under Secretary believes could be a terrorism security risk to the United States;

(B) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(C) otherwise poses a terrorism security risk to the United States.

(3) CONSIDERATIONS.—In making a determination under paragraph (2), the Under Secretary shall give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism security risk sufficient to warrant denial of the card.

(d) APPEALS.—The Under Secretary of Transportation for Security shall establish an appeals process under this section for individuals found to be ineligible for a seaport security card that includes notice and an opportunity for a hearing.

(e) DATA ON CARD.—The seaport identification cards required by subsection (a) shall—

(1) be tamper resistant; and

(2) contain—

(A) the number of the individual's commercial driver's license issued under chapter 313 of title 49, United States Code, if any;

(B) the State-issued vehicle registration number of any vehicle that the individual desires to bring into the seaport, if any;

(C) the work permit number issued to the individual, if any;

(D) a unique biometric identifier to identify the license holder; and

(E) a safety rating assigned to the individual by the Under Secretary of Transportation for Security.

**SEC. 302. SEAPORT SECURITY REQUIREMENTS.**

(a) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, after consultation with the Commissioner of Customs, shall issue final regulations setting forth minimum security requirements including security performance standards at United States seaports. The regulations shall—

(1) limit private vehicle access to United States seaports to vehicles that are registered at the seaport and display a seaport registration pass;

(2) prohibit individuals, other than law enforcement officers, from carrying firearms or explosives inside a United States seaport without written authorization from the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port;

(3) prohibit individuals from physically accessing a United States seaport without a seaport specific access pass;

(4) require that Customs Service officers, and other appropriate law enforcement officers, at United States seaports be provided and utilize personal radiation detection pagers to increase the ability of the Customs Service to accurately detect radioactive materials that could be used to commit terrorist acts in the United States;

(5) require that each United States seaport maintain—

(A) a secure perimeter;

(B) secure parking facilities;

(C) monitored or locked access points;

(D) sufficient lighting; and

(E) secure buildings within the seaport; and

(6) include any additional security requirement that the Under Secretary determines is reasonably necessary to ensure seaport security.

(b) LIMITATION.—Except as provided in subsection (c), any United States seaport that does not meet the minimum security requirements described in subsection (a) is prohibited from—

(1) handling, storing, stowing, loading, discharging, or transporting dangerous cargo; and

(2) transferring passengers to or from a passenger vessel that—

(A) weighs more than 100 gross tons;

(B) carries more than 12 passengers for hire; and

(C) has a planned voyage of more than 24 hours, part of which is on the high seas.

(c) EXCEPTION.—The Under Secretary of Transportation for Security may waive 1 or more of the minimum requirements described in subsection (a) for a United States seaport if the Secretary determines that it is not appropriate for such seaport to implement the requirement.

**SEC. 303. SECURING SENSITIVE INFORMATION.**

(a) REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port of each United States seaport shall secure and protect all sensitive information, including information that is currently available to the public, related to the seaport.

(b) SENSITIVE INFORMATION.—In this section, the term ''sensitive information'' means—

(1) maps of the seaport;

(2) blueprints of structures located within the seaport; and

(3) any other information related to the security of the seaport that the Director of the Port described in section 101(a) or, if authority is delegated under section 101(b), the Captain-of-the-Port determines is appropriate to secure and protect.

**SEC. 304. CONTAINER SECURITY.**

(a) CONTAINER SEALS.—

(1) APPROVAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Security and the Commissioner of Customs shall jointly approve minimum standards for high security container seals that—

(A) meet or exceed the American Society for Testing Materials Level D seals;

(B) permit each seal to have a unique identification number; and

(C) contain an electronic tag that can be read electronically at a seaport.

(2) REQUIREMENT FOR USE.—Within 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security shall deny entry by a vessel into the United States if the containers carried by the vessel are not sealed with a high security container seal approved under paragraph (1).

(b) IDENTIFICATION NUMBER.—

(1) REQUIREMENT.—A shipment that is shipped to or from the United States either directly or via a foreign port shall have a designated universal transaction number.

(2) TRACKING.—The person responsible for the security of a container shall record the universal transaction number assigned to the shipment under subparagraph (1), as well as any seal identification number on the container, at every port of entry and point at which the container is transferred from one conveyance to another conveyance.

(c) PILOT PROGRAM.—

(1) GRANTS.—The Under Secretary of Transportation for Security is authorized to award grants to eligible entities to develop improved seals for cargo containers that are able to—

(A) immediately detect tampering with the seal;

(B) immediately detect tampering with the walls, ceiling, or floor of the container that indicates a person is attempting to improperly access the container; and

(C) transmit information regarding tampering with the seal, walls, ceiling, or floor of the container in real time to the appropriate authorities at a remote location.

(2) APPLICATION.—Each eligible entity desiring a grant under this subsection shall submit an application to the Under Secretary at such time, in such manner, and accompanied by such information as the Under Secretary may reasonably require.

(3) ELIGIBLE ENTITY.—In this subsection, the term ''eligible entity'' means any national laboratory, nonprofit private organization, institution of higher education, or other entity that the Under Secretary determines is eligible to receive a grant authorized by paragraph (1).

(d) EMPTY CONTAINERS.—

(1) CERTIFICATION.—The Commissioner of Customs shall issue regulations that set out requirements for certification of empty containers that will be shipped to or from the United States either directly or via a foreign port. Such regulations shall require that an empty container—

(A) be inspected and certified as empty prior to being loaded onto a vessel for transportation to a United States seaport; and

(B) be sealed with a high security container seal approved under subsection (a)(1) to enhance the security of United States seaports.

## STATEMENTS ON SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 315—CONGRATULATING LANCE ARMSTRONG FOR WINNING THE 2002 TOUR DE FRANCE

Mrs. HUTCHISON (for herself, Mr. GRAMM, Ms. SNOWE, Mr. BROWNBACK, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 315

Whereas Lance Armstrong completed the 2,036-mile, 20-day course in 82 hours, 5 minutes, and 12 seconds to win the 2002 Tour de France, 7 minutes and 17 seconds ahead of his nearest competitor;

Whereas Lance Armstrong's win on July 28, 2002, in Paris, marks his fourth successive victory of the Tour de France, a feat surpassing all cycling records previously attained by an American cyclist;

Whereas Lance Armstrong displayed incredible perseverance, determination, and leadership to prevail over the mountainous terrain of the Alps and Pyrenees, vast stretches of countryside, and numerous city streets during the course of the premier cycling event in the world;

Whereas Lance Armstrong is the first cancer survivor to win the Tour de France;

Whereas in 1997, Lance Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer that had spread throughout his abdomen, lungs, and brain, and after treatment has remained cancer-free for the past 5 years;

Whereas Lance Armstrong's bravery and resolution to overcome cancer has made him a role model to cancer patients and their loved ones, and his efforts through the Lance Armstrong Foundation have helped to advance cancer research, diagnosis, and treatment, and after-treatment services;

Whereas Lance Armstrong has been vital to the promotion of cycling as a sport, a healthy fitness activity, and a pollution-free transportation alternative; and

Whereas Lance Armstrong's accomplishments as an athlete, teammate, father, husband, cancer survivor, and advocate have made him an American hero: Now, therefore, be it

*Resolved,* That the Senate—

(1) congratulates Lance Armstrong and his team on his historic victory of the 2002 Tour de France;

(2) commends the unwavering commitment to cancer awareness and survivorship demonstrated by Lance Armstrong; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to Lance Armstrong.

### SENATE RESOLUTION 316—A BILL DESIGNATING THE YEAR BEGINNING FEBRUARY 1, 2003, AS THE ''YEAR OF THE BLUES''

Mrs. LINCOLN (for herself, Mr. COCHRAN, Mr. THOMPSON, and Mr. FRIST) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 316

Whereas blues music is the most influential form of American roots music, with its impact heard around the world in rock and roll, jazz, rhythm and blues, country, and even classical music;

Whereas the blues is a national historic treasure, which needs to be preserved, studied, and documented for future generations;

Whereas the blues is an important documentation of African-American culture in the twentieth century;

Whereas the various forms of the blues document twentieth-century American history during the Great Depression and in the areas of race relations, pop culture, and the migration of the United States from a rural, agricultural society to an urban, industrialized Nation;

Whereas the blues is the most celebrated form of American roots music, with hundreds of festivals held and millions of new or reissued blues albums released each year in the United States;

Whereas the blues and blues musicians from the United States, whether old or new, male or female, are recognized and revered worldwide as unique and important ambassadors of the United States and its music;

Whereas it is important to educate the young people of the United States to understand that the music that they listen to today has its roots and traditions in the blues;

Whereas there are many living legends of the blues in the United States who need to be recognized and to have their story captured and preserved for future generations; and

Whereas the year 2003 is the centennial anniversary of when W.C. Handy, a classically-trained musician, heard the blues for the first time, in a train station in Mississippi, thus enabling him to compose the first blues music to distribute throughout the United States, which led to him being named ''Father of the Blues'': Now, therefore, be it

*Resolved,* That the Senate—

(1) designates the year beginning February 1, 2003, as the ''Year of the Blues''; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe the ''Year of the Blues'' with appropriate ceremonies, activities, and educational programs.

### SENATE RESOLUTION 317—TO AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the collapse of Enron Corporation and associated misconduct to determine what took place and what, if any, legislative, regulatory or other reforms might be appropriate to prevent similar corporate failures and misconduct in the future;

Whereas, the Subcommittee has received a number of requests from law enforcement and regulatory officials and agencies and court-appointed officials for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved,* That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duty authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the collapse of Enron Corporation and associated misconduct.

## SENATE RESOLUTION 318—DESIGNATING AUGUST 2002, AS ''NATIONAL MISSING ADULT AWARENESS MONTH''

Mrs. LINCOLN submitted the following resolution; which was considered and agreed to:

S. RES. 318

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing;

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

*Resolved,* That the Senate—

(1) designates August 2002, as ''National Missing Adult Awareness Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

## SENATE RESOLUTION 319—RECOGNIZING THE ACCOMPLISHMENTS OF PROFESSOR MILTON FRIEDMAN

Mr. GRAMM submitted the following resolution; which was considered and agreed to:

S. RES. 319

Whereas California resident and Nobel Laureate economist Professor Milton Friedman:

Whereas he was born on this day, July 31, in the year 1912, the fourth and youngest child to Austro-Hungarian immigrants in Brooklyn, New York;

Whereas he served as a research staffer to the National Bureau of Economic Research from 1937 to 1981;

Whereas he helped implement wartime tax policy at the United States Treasury from 1941 to 1943, and further contributed to the war effort from 1943 to 1945 at Columbia University by studying weapons design and military tactics;

Whereas he served as a professor of economics at the University of Chicago from 1946 to 1976;

Whereas he was a founding member and president of the Mont Pelerin Society;

Whereas he was awarded the Bank of Sweden Prize in Economic Sciences in memory of Alfred Nobel in 1976;

Whereas since 1977 has served as a Senior Research Fellow at the Hoover Institution on War, Revolution, and Peace at Stanford University;

Whereas in 1988 was awarded the Presidential Medal of Freedom; and

Whereas he has been a champion of an all-volunteer armed forces, an advisor to presidents, and has taught the American people the value of capitalism and freedom through his public broadcasting series,

Be it therefore *Resolved,* That the United States Senate commend and express its deep gratitude to Professor Milton Friedman for his invaluable contribution to public discourse, American democracy, and the cause of human freedom.

## SENATE CONCURRENT RESOLUTION 134—EXPRESSING THE SENSE OF CONGRESS TO DESIGNATE THE FOURTH SUNDAY OF EACH SEPTEMBER AS ''NATIONAL GOOD NEIGHBOR DAY''

Mr. BAUCUS (for himself, Mr. BURNS, Mr. MILLER, Mr. LEVIN, Mr. COCHRAN, Mrs. CLINTON, Ms. LANDRIEU, Mr. JOHNSON, Mr. CRAPO, Mr. HELMS, and Mr. STEVENS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 134

Whereas while our society has developed highly effective means of speedy communication around the world, it has failed to ensure communication around the world and among individuals who live side by side;

Whereas the endurance of human values and consideration for others is of prime importance if civilization is to survive; and

Whereas being good neighbors to those around us is the first step toward human understanding: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of Congress that the President should—

(1) issue a proclamation designating the fourth Sunday of each September as ''National Good Neighbor Day''; and

(2) call upon the people of the United States and interested groups and organizations to observe such day with appropriate ceremonies and activities.

Mr. BAUCUS. Mr. President, I introduce a resolution to designate the fourth Sunday of each September as National Good Neighbor Day.

Back in the 1970's, a wonderful lady from Montana named Becky Mattson came up with the idea of National Good Neighbor Day. She observed that technology was allowing the world to grow closer together. Television allowed individuals to learn about new cultures and ways of life. Wide use of the telephone was allowing people to communicate from across the globe. However, people were becoming less likely to get to know their next-door neighbor.

She concluded that, as a nation, we should place greater emphasis on the importance of community and being a good neighbor. Becky believed that kids who were taught to be good neighbors would become adults who were good neighbors and that a day dedicated to this cause would be a catalyst to encourage families to be good neighbors.

Becky was successful in her efforts and with the help of the late Senator Mansfield, three presidents—President Carter, President Ford, and President Nixon proclaimed the fourth Sunday of September National Good Neighbor Day.

Now, in the aftermath of the events of September 11, Americans have united in an unprecedented way. Strangers, friends, colleagues, classmates, and family have exhibited the best of the human spirit in the face of enormous tragedy. From the firefighters and rescue workers in New York City and at the Pentagon to the second graders who have held bake sales to raise money for the families of victims, Americans have defined the meaning of a good neighbor.

Now, when illustrating the definition of a good neighbor means more than ever before, both Becky and I believe that National Good Neighbor Day should be made permanent. Having a day designated to being a good neighbor will reinforce the strength of our communities and show our resolve to be united as a nation. I thank the cosponsors to this resolution—Senators BURNS, MILLER, LEVIN, COCHRAN, CLINTON, LANDRIEU, and JOHNSON and I encourage all of my colleagues to support it. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

## SENATE CONCURRENT RESOLUTION 135—EXPRESSING THE SENSE OF CONGRESS REGARDING HOUSING AFFORDABILITY AND URGING FAIR AND EXPEDITIOUS REVIEW BY INTERNATIONAL TRADE TRIBUNALS TO ENSURE A COMPETITIVE NORTH AMERICAN MARKET FOR SOFTWOOD LUMBER

Mr. NICKLES (for himself, Mr. KYL, Mr. ROBERTS, Mr. INHOFE, Mr. BUNNING, Mr. GRAHAM, Mr. BAYH, Mr. HAGEL, and Mrs. CARNAHAN) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 135

Whereas the United States and Canada have, since 1989, worked to eliminate tariff and nontariff barriers to trade;

Whereas free trade has greatly benefitted the United States and Canadian economies;

Whereas the U.S. International Trade Commission only found the potential for a Threat of Injury (as opposed to actual injury) to domestic lumber producers but the Department of Commerce imposed a 27 percent duty on U.S. lumber consumers;

Whereas trade restrictions on Canadian lumber exported to the U.S. market have been an exception to the general rule of bilateral free trade;

Whereas the legitimate interests of consumers are often overlooked in trade disputes;

Whereas the availability of the affordable housing is important to American home buyers and the need for the availability of such housing, particularly in metropolitan cities across America, is growing faster than it can be met;

Whereas imposition of special duties on U.S. consumers of softwood lumber, essential for construction of on-site and manufactured homes, jeopardizes housing affordability, and

Whereas the United States has agreed to abide by dispute settlement procedures in the World Trade Organization and the North American Free Trade Agreement, providing for international review of national remedy actions; and,

Whereas the World Trade Organization and North American Free Trade Agreement dispute panels are reviewing findings by the ITC: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* that it is the sense of the Congress that—

(1) The Department of Commerce and U.S. Trade Representative should work to assure that no delays occur in resolving the current disputes before the NAFTA and WTO panels, supporting a fair and expeditious review;

(2) U.S. anti-dumping and countervail law is a rules-based system that should proceed to conclusion in WTO and NAFTA trade panels;

(3) The President should continue discussions with the Government of Canada to promote open trade between the United States and Canada on softwood lumber free of trade restraints that harm consumers;

(4) The President should consult with all stakeholders, including consumers of lumber products in future discussions regarding any terms of trade in softwood lumber between the United States and Canada.

## SENATE CONCURRENT RESOLUTION 136—REQUESTING THE PRESIDENT TO ISSUE A PROCLAMATION IN OBSERVANCE OF THE 100TH ANNIVERSARY OF THE FOUNDING OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. BAUCUS (for himself and Mr. BURNS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary.

S. CON. RES. 136

Whereas on September 17, 1902, when Theodore Roosevelt was President, 8 wildlife managers and game wardens from 6 States met in West Yellowstone, Montana, on behalf of the country's beleaguered fish and wildlife populations, and established the National Association of Game and Fish Wardens and Commissioners, which later became the International Association of Fish and Wildlife Agencies (IAFWA);

Whereas 100 years later, IAFWA represents the fish and wildlife agencies of all 50 States and enjoys the membership of several Federal natural resource agencies, the Federal and provincial fish and wildlife agencies of Canada, and the Federal natural resource agency of Mexico;

Whereas IAFWA has been a significant force in the enactment of fish and wildlife conservation treaties and Federal statutes too numerous to enumerate, including the Migratory Bird Treaty Act; the Pittman-Robertson Wildlife Restoration Act; the Dingell-Johnson Sportfish Restoration Act; all farm bills enacted since 1985; the North American Wetlands Conservation Act; the National Wildlife Refuge System Improvement Act of 1997, and the Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000, to mention but a few;

Whereas IAFWA continues to promote the sustainable use of natural resources, to encourage cooperation and coordination of fish and wildlife conservation and management at all levels of government; to encourage professional management of fish and wildlife; to develop coalitions among conservation organizations to promote fish and wildlife interests; and to foster public understanding of the need for conservation; and

Whereas the State fish and wildlife agencies have successfully restored healthy fish and wildlife populations enjoyed by all Americans largely using Federal excise taxes paid by hunters and anglers into the Federal trust funds known as the Pittman-Robertson, Dingell-Johnson, and Wallop-Breaux trust funds, and using State hunting and fishing license fees: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That the Congress—

(1) recognizes the significance of the centennial of the establishment of the entity that became the International Association of Fish and Wildlife Agencies;

(2) acknowledges the outstanding contributions of its members agencies to fish and wildlife conservation; and

(3) requests the President to issue a proclamation observing the 100th anniversary of the founding of the International Association of Fish and Wildlife Agencies.

## SENATE CONCURRENT RESOLUTION 137—EXPRESSING THE SENSE OF CONGRESS THAT THE FEDERAL MEDIATION AND CONCILIATION SERVICE SHOULD EXERT ITS BEST EFFORTS TO CAUSE THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AND THE OWNERS OF THE TEAMS OF MAJOR LEAGUE BASEBALL TO ENTER INTO A CONTRACT TO CONTINUE TO PLAY PROFESSIONAL BASEBALL GAMES WITHOUT ENGAGING IN A STRIKE, TO LOCKOUT, OR ANY CONDUCT THAT INTERFERES WITH THE PLAYING OF SCHEDULED PROFESSIONAL BASEBALL GAMES

Mr. MILLER submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 137

Whereas major league baseball is a national institution and is commonly referred to as ''the national pastime'';

Whereas major league baseball and its players played a critical role in restoring America's spirit following the tragic events of September 11, 2001;

Whereas major league baseball players are role models to millions of young Americans; and

Whereas while the financial issues involved in this current labor negotiation are significant, they pale in comparison to the damage that will be caused by a strike or work stoppage: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in accordance with section 203(b) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—

(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to resolve labor contract disputes relating to entering into a collective bargaining agreement; and

(2) use its best efforts to bring the parties to agree to such contract without engaging in a strike, a lockout, or any other conduct that interferes with the playing of scheduled professional baseball games.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4467. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4468. Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 2487, to provide for global pathogen surveillance and response.

SA 4469. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253, To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes.

SA 4470. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253, supra.

TEXT OF AMENDMENTS

**SA 4467.** Mr. LIBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

**SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.**

(a) DIVISIONS.—This Act is organized into 3 divisions as follows:

(1) Division A—National Homeland Security and Combating Terrorism.

(2) Division B—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) Division C—Federal Workforce Improvement.

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


Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

Sec. 100. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security.
Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.
Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Office of International Affairs.
Sec. 114. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 134. Directorate of Emergency Preparedness and Response.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Sec. 154. Designation of National Emergency Preparedness Week.

Subtitle D—Miscellaneous Provisions

Sec. 161. National Bio-Weapons Defense Analysis Center.
Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.
Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
Sec. 165. Whistleblower protection for certain airport employees.
Sec. 166. Bioterrorism preparedness and response division.
Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 168. Rail security enhancements.
Sec. 169. Grants for firefighting personnel.
Sec. 170. Review of transportation security enhancements.
Sec. 171. Interoperability of information systems.

Subtitle E—Transition Provisions

Sec. 181. Definitions.
Sec. 182. Transfer of agencies.
Sec. 183. Transitional authorities.
Sec. 184. Incidental transfers and transfer of related functions.
Sec. 185. Implementation progress reports and legislative recommendations.
Sec. 186. Transfer and allocation.
Sec. 187. Savings provisions.
Sec. 188. Transition plan.
Sec. 189. Use of appropriated funds.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Procurement of temporary and intermittent services.
Sec. 196. Preserving non-homeland security mission performance.
Sec. 197. Future Years Homeland Security Program.
Sec. 198. Protection of voluntarily furnished confidential information.
Sec. 199. Authorization of appropriations.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

Sec. 201. National Office for Combating Terrorism.
Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

Sec. 301. Strategy.
Sec. 302. Management guidance for Strategy implementation.
Sec. 303. National Combating Terrorism Strategy Panel.

TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 401. Law enforcement powers of Inspector General agents.

TITLE V—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 501. Definition.
Sec. 502. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 503. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 504. Increased micro-purchase threshold for certain procurements.
Sec. 505. Application of certain commercial items authorities to certain procurements.
Sec. 506. Use of streamlined procedures.
Sec. 507. Review and report by Comptroller General.

Subtitle B—Other Matters

Sec. 511. Identification of new entrants into the Federal marketplace.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title.
Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement and Border Affairs.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Executive Office for Immigration Review authorities not affected.
Sec. 1119. Other authorities not affected.
Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

Sec. 1201. Short title.
Sec. 1202. Definitions.

Subtitle A—Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 1212. Establishment of interagency task force on unaccompanied alien children.
Sec. 1213. Transition provisions.
Sec. 1214. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when encountering unaccompanied alien children.
Sec. 1222. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 1223. Appropriate conditions for detention of unaccompanied alien children.
Sec. 1224. Repatriated unaccompanied alien children.
Sec. 1225. Establishing the age of an unaccompanied alien child.
Sec. 1226. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel
Sec. 1231. Right of unaccompanied alien children to guardians ad litem.
Sec. 1232. Right of unaccompanied alien children to counsel.
Sec. 1233. Effective date; applicability.
Subtitle D—Strengthening Policies for Permanent Protection of Alien Children
Sec. 1241. Special immigrant juvenile visa.
Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 1243. Effective date.
Subtitle E—Children Refugee and Asylum Seekers
Sec. 1251. Guidelines for children's asylum claims.
Sec. 1252. Unaccompanied refugee children.
Subtitle F—Authorization of Appropriations
Sec. 1261. Authorization of appropriations.
TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS
Subtitle A—Structure and Function
Sec. 1301. Establishment.
Sec. 1302. Director of the Agency.
Sec. 1303. Board of Immigration Appeals.
Sec. 1304. Chief Immigration Judge.
Sec. 1305. Chief Administrative Hearing Officer.
Sec. 1306. Removal of Judges.
Sec. 1307. Authorization of appropriations.
Subtitle B—Transfer of Functions and Savings Provisions
Sec. 1311. Transition provisions.
Subtitle C—Effective Date
Sec. 1321. Effective date.
DIVISION C—FEDERAL WORKFORCE IMPROVEMENT
TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS
Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic Human Capital Management.
Sec. 2105. Effective date.
TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT
Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and program performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.
TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE
Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.
TITLE XXIV—ACADEMIC TRAINING
Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensatory time off for travel.

## DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

**SEC. 100. DEFINITIONS.**

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term ''agency''—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DIRECTOR.—The term ''Director'' means the Director of the National Office for Combating Terrorism.

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security established under title I.

(5) ENTERPRISE ARCHITECTURE.—The term ''enterprise architecture''—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(6) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term ''Federal terrorism prevention and response agency'' means any Federal department or agency charged under the Strategy with responsibilities for carrying out the Strategy.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) HOMELAND.—The term ''homeland'' means the United States, in a geographic sense.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) OFFICE.—The term ''Office'' means the National Office for Combating Terrorism established under title II.

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) STRATEGY.—The term ''Strategy'' means the National Strategy for Combating Terrorism and the Homeland Security Response developed under this division.

(14) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

### Subtitle A—Establishment of the Department of Homeland Security

**SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.**

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

''The Department of Homeland Security.''.

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

**SEC. 102. SECRETARY OF HOMELAND SECURITY.**

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop, with the Director, a comprehensive strategy for combating terrorism and the homeland security response in accordance with title III.

(4) To advise the Director on the development of a comprehensive annual budget for programs and activities under the Strategy, and have the responsibility for budget recommendations relating to border and transportation security, critical infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and coordinate an integrated program to evaluate, identify, anticipate, and mitigate threats, vulnerabilities, and risks through threat and vulnerability assessments (including red teaming) and risk analysis, and to disseminate information and intelligence derived from such activities to appropriate entities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities;

(D) consulting State and local governments, and other entities as appropriate, in developing the Strategy under title III; and

(E) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and the governors of the several States regarding integration of the United States military, including the National Guard, into all aspects of the Strategy and its implementation, including detection, prevention, protection, response, and recovery.

(B) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to executing the Strategy.

(C) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 185; and

(B) each biennial report required under section 192(b).

(c) VISA ISSUANCE BY THE SECRETARY.—

(1) DEFINITION.—In this subsection, the term ''consular officer'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(2) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided under paragraph (3), the Secretary—

(A) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(B)(i) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(ii) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in subparagraph (A).

(3) AUTHORITY OF THE SECRETARY OF STATE.—

(A) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(B) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(i) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(15)(A)).

(ii) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(iii) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(iv) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)(B)(vi)(II)).

(v) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(vi) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(vii) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(viii) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(ix) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(x) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034).

(xi) Section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

(xii) Section 103(f) of the Chemical Weapons Convention Implementation Act of 1998 (112 Stat. 2681–865).

(xiii) Section 801 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2002 and 2001 (113 Stat. 1501A–468).

(xiv) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(xv) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(xvi) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(4) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—Nothing is this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(5) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(A) IN GENERAL.—The Secretary is authorized to assign employees of the Department to diplomatic and consular posts abroad to perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(B) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in subparagraph (A) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(C) TRAINING AND HIRING.—

(i) IN GENERAL.—The Secretary shall ensure that any employees of the Department assigned to perform functions described under subparagraph (A) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(ii) FOREIGN LANGUAGE PROFICIENCY.—Before assigning employees of the Department to perform the functions described under subparagraph (A), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described under subparagraph (A) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(iii) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in clause (i).

(6) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(7) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(d) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

''(5) the Secretary of Homeland Security; and

''(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.''.

**SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.**

(a) IN GENERAL.—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

**SEC. 104. UNDER SECRETARY FOR MANAGEMENT.**

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

**SEC. 105. ASSISTANT SECRETARIES.**

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

**SEC. 106. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.''

**SEC. 107. CHIEF FINANCIAL OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

''(G) The Department of Homeland Security.''.

**SEC. 108. CHIEF INFORMATION OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

**SEC. 109. GENERAL COUNSEL.**

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

**SEC. 110. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. 111. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. 112. CHIEF HUMAN CAPITAL OFFICER.**

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

**SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

**SEC. 114. EXECUTIVE SCHEDULE POSITIONS.**

(a) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Secretary of Homeland Security.''.

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Secretary of Homeland Security.''.

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Management, Department of Homeland Security.''.

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretaries of Homeland Security (5).

''Inspector General, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''General Counsel, Department of Homeland Security.''.

## Subtitle B—Establishment of Directorates and Offices

**SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.**

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Border and Transportation Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Border and Transportation Protection shall be responsible for the following:

(1) Securing the borders, territorial waters, ports, terminals, waterways and air, land (including rail), and sea transportation systems of the United States, including coordinating governmental activities at ports of entry.

(2) Receiving and providing relevant intelligence on threats of terrorism and other homeland threats.

(3) Administering, carrying out, and promoting other established missions of the entities transferred to the Directorate.

(4) Using intelligence from the Directorate of Intelligence and other Federal intelligence organizations under section 132(a)(1)(B) to establish inspection priorities to identify products, including agriculture and livestock, and other goods imported from suspect locations recognized by the intelligence community as having terrorist activities, unusual human health or agriculture disease outbreaks, or harboring terrorists.

(5) Providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities that have established partnerships with the Federal Law Enforcement Training Center.

(6) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—Except as provided under subsection (d), the authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(2) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(3) The Animal and Plant Health Inspection Service of the Department of Agriculture, that portion of which administers laws relating to agricultural quarantine inspections at points of entry.

(4) The Transportation Security Administration of the Department of Transportation.

(5) The Federal Law Enforcement Training Center of the Department of the Treasury.

(d) EXERCISE OF CUSTOMS REVENUE AUTHORITY.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (c), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITION OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(e) PRESERVING COAST GUARD MISSION PERFORMANCE.—

(1) DEFINITIONS.—In this subsection:

(A) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) CERTAIN TRANSFERS PROHIBITED.—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(A) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act.

(B) WAIVER.—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) ANNUAL REVIEW.—

(A) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) REPORT.—The report under this paragraph shall be submitted not later than March 1 of each year to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

**SEC. 132. DIRECTORATE OF INTELLIGENCE.**

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—

(A) IN GENERAL.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(B) SUPPORT TO DIRECTORATE.—The Directorate of Intelligence shall communicate, coordinate, and cooperate with—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community, as defined under section 3 of the National Security Act of 1947 (50 U.S.C. 401a), including the Office of the Director of Central Intelligence, the National Intelligence Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(C) INFORMATION ON INTERNATIONAL TERRORISM.—

(i) DEFINITIONS.—In this subparagraph, the terms ''foreign intelligence'' and ''counterintelligence'' shall have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(ii) PROVISION OF INFORMATION TO COUNTERTERRORIST CENTER.—In order to ensure that the Secretary is provided with appropriate analytical products, assessments, and warnings relating to threats of terrorism against the United States and other threats to homeland security, the Director of Central Intelligence (as head of the intelligence community with respect to foreign intelligence and counterintelligence), the Attorney General, and the heads of other agencies of the Federal Government shall ensure that all intelligence and other information relating to international terrorism is provided to the Director of Central Intelligence's Counterterrorist Center.

(iii) ANALYSIS OF INFORMATION.—The Director of Central Intelligence shall ensure the analysis by the Counterterrorist Center of all intelligence and other information provided the Counterterrorist Center under clause (ii).

(iv) ANALYSIS OF FOREIGN INTELLIGENCE.—The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1)(A) Receiving and analyzing law enforcement and other information from agencies of the United States Government, State and local government agencies (including law enforcement agencies), and private sector entities, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the Director of Central Intelligence's Counterterrorist Center in order to—

(i) identify and assess the nature and scope of threats to the homeland; and

(ii) detect and identify threats of terrorism against the United States and other threats to homeland security.

(B) Nothing in this paragraph shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—

(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Representing the Department in procedures to establish requirements and priorities in the collection of national intelligence for purposes of the provision to the executive branch under section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) of national intelligence relating to foreign terrorist threats to the homeland.

(4) Consulting with the Attorney General or the designees of the Attorney General, and other officials of the United States Government to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats, such as terrorism, to the homeland.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department and the appropriate officers of the agencies described under subsection (a)(1)(B), a secure communications and information technology infrastructure, and advanced analytical tools, to carry out the mission of the Directorate.

(7) Developing, in conjunction with the Chief Information Officer of the Department and appropriate officers of the agencies described under subsection (a)(1)(B), appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—

(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purpose of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interests of United States persons as defined under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(9) Providing, through the Secretary, to the appropriate law enforcement or intelligence agency, information and analysis relating to threats.

(10) Coordinating, or where appropriate providing, training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department, including training and support under section 908 of the USA PATRIOT Act of 2001 (Public Law 107–56).

(11) Reviewing, analyzing, and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the United States Government and between the United States Government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary in conducting threat and vulnerability assessments and risk analyses in coordination with other appropriate entities, including the Office of Risk Analysis and Assessment in the Directorate of Science and Technology.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Unless otherwise directed by the President, the Secretary shall have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organizations, and to other areas of responsibility as described in this division, that may be collected, possessed, or prepared, by any other United States Government agency.

(2) ADDITIONAL INFORMATION.—As the President may further provide, the Secretary shall receive additional information requested by the Secretary from the agencies described under subsection (a)(1)(B).

(3) OBTAINING INFORMATION.—All information shall be provided to the Secretary consistent with the requirements of subsection (b)(8), unless otherwise determined by the President.

(4) COOPERATIVE ARRANGEMENTS.—The Secretary may enter into cooperative arrangements with agencies described under subsection (a)(1)(B) to share material on a regular or routine basis, including arrangements involving broad categories of material, and regardless of whether the Secretary has entered into any such cooperative arrangement, all agencies described under subsection (a)(1)(B) shall promptly provide information under this subsection.

(d) AUTHORIZATION TO SHARE LAW ENFORCEMENT INFORMATION.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, or national security official for purposes of information sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(e) ADDITIONAL RESPONSIBILITIES.—The Under Secretary for Intelligence shall also be responsible for—

(1) developing analysis concerning the means terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) developing and conducting experiments, tests, and inspections to test weaknesses in homeland defenses;

(3) developing and practicing countersurveillance techniques to prevent attacks;

(4) conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks, the probability of successful attacks, and the feasibility of specific countermeasures; and

(5) working with the Directorate of Critical Infrastructure Protection, other offices and agencies in the Department, other United States Government agencies, State and local governments, local law enforcement and intelligence agencies, and private sector entities, to address vulnerabilities.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intelligence shall be staffed, in part, by analysts as requested by the Secretary and assigned by the agencies described under subsection (a)(1)(B). The analysts shall be assigned by reimbursable detail for periods as determined necessary by the Secretary in conjunction with the head of the assigning agency. No such detail may be undertaken without the consent of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN DEPARTMENT.—The Secretary may assign employees of the Department by reimbursable detail to the Directorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The President, or the designee of the President, shall prescribe regulations to provide that service described under paragraph (1) or (2),

or service by employees within the Directorate, shall be considered a positive factor for selection to positions of greater authority within all agencies described under subsection (a)(1)(B).

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

**SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.**

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments are provided by the Department or others) to identify priorities and support protective measures by the Department, by other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) As part of the Strategy, developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Establishing specialized research and analysis units for the purpose of processing intelligence to identify vulnerabilities and protective measures in—

(A) public health;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;

(F) information and communication systems;

(G) continuity of government services; and

(H) other systems or facilities the destruction or disruption of which could cause substantial harm to health, safety, property, or the environment.

(5) Enhancing the sharing of information regarding cyber security and physical security of the United States, developing appropriate security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various Government agencies in preventing, defending, and recovering from attacks.

(6) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department and assuming the responsibilities carried out by the Critical Infrastructure Assurance Office and the National Infrastructure Protection Center before the effective date of this division.

(7) Coordinating the activities of the Information Sharing and Analysis Centers to share information, between the public and private sectors, on threats, vulnerabilities, individual incidents, and privacy issues regarding homeland security.

(8) Working closely with the Department of State on cyber security issues with respect to international bodies and coordinating with appropriate agencies in helping to establish cyber security policy, standards, and enforcement mechanisms.

(9) Establishing the necessary organizational structure within the Directorate to provide leadership and focus on both cyber security and physical security, and ensuring the maintenance of a nucleus of cyber security and physical security experts within the United States Government.

(10) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Critical Infrastructure Assurance Office of the Department of Commerce.

(2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(3) The National Communications System of the Department of Defense.

(4) The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(6) The Federal Computer Incident Response Center of the General Services Administration.

(7) The Energy Security and Assurance Program of the Department of Energy.

(8) The Federal Protective Service of the General Services Administration.

**SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.**

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this division.

(3) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(4) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with intelligence estimates and providing a single staff for Federal assistance for any emergency, including emergencies caused by natural disasters, manmade accidents, human or agricultural health emergencies, or terrorist attacks.

(5) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(6) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(7) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(8) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(9) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(10) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(5).

(11) Consulting with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the Select Agent Registration Program transferred under subsection (c)(6).

(12) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(13) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(14) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) The Office of Emergency Preparedness within the Office of the Assistant Secretary

for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(5) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(6) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(d) APPOINTMENT AS UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—An individual may serve as both the Under Secretary for Emergency Preparedness and Response and the Director of the Federal Emergency Management Agency if appointed by the President, by and with the advice and consent of the Senate, to each office.

(2) PAY.—Nothing in paragraph (1) shall be construed to authorize an individual appointed to both positions to receive pay at a rate of pay in excess of the rate of pay payable for the position to which the higher rate of pay applies.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

**SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.**

(a) PURPOSE.—The purpose of this section is to establish a Directorate of Science and Technology that will support the mission of the Department and the directorates of the Department by—

(1) establishing, funding, managing, and supporting research, development, demonstration, testing, and evaluation activities to meet national homeland security needs and objectives;

(2) setting national research and development goals and priorities pursuant to the mission of the Department, and developing strategies and policies in furtherance of such goals and priorities;

(3) coordinating and collaborating with other Federal departments and agencies, and State, local, academic, and private sector entities, to advance the research and development agenda of the Department;

(4) advising the Secretary on all scientific and technical matters relevant to homeland security; and

(5) facilitating the transfer and deployment of technologies that will serve to enhance homeland security goals.

(b) DEFINITIONS.—In this section:

(1) COUNCIL.—The term ''Council'' means the Homeland Security Science and Technology Council established under this section.

(2) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(3) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development applicable to the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(4) OSTP.—The term ''OSTP'' means the Office of Science and Technology Policy.

(5) SARPA.—The term ''SARPA'' means the Security Advanced Research Projects Agency established under this section.

(6) TECHNOLOGY ROADMAP.—The term ''technology roadmap'' means a plan or framework in which goals, priorities, and milestones for desired future technological capabilities and functions are established, and research and development alternatives or means for achieving those goals, priorities, and milestones are identified and analyzed in order to guide decisions on resource allocation and investments.

(7) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

(1) ESTABLISHMENT.—There is established a Directorate of Science and Technology within the Department.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology under subsection (a). In addition, the Under Secretary shall undertake the following activities in furtherance of such purposes:

(A) Coordinating with the OSTP, the Office, and other appropriate entities in developing and executing the research and development agenda of the Department.

(B) Developing a technology roadmap that shall be updated biannually for achieving technological goals relevant to homeland security needs.

(C) Instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities.

(D) Assisting the Secretary and the Director of OSTP to ensure that science and technology priorities are clearly reflected and considered in the Strategy developed under title III.

(E) Establishing mechanisms for the sharing and dissemination of key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities.

(F) Establishing, in coordination with the Under Secretary for Critical Infrastructure Protection and the Under Secretary for Emergency Preparedness and Response and relevant programs under their direction, a National Emergency Technology Guard, comprised of teams of volunteers with expertise in relevant areas of science and technology, to assist local communities in responding to and recovering from emergency contingencies requiring specialized scientific and technical capabilities. In carrying out this responsibility, the Under Secretary shall establish and manage a database of National Emergency Technology Guard volunteers, and prescribe procedures for organizing, certifying, mobilizing, and deploying National Emergency Technology Guard teams.

(G) Chairing the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(H) Assisting the Secretary in developing the Strategy for Countermeasure Research described under subsection (k).

(I) Assisting the Secretary and acting on behalf of the Secretary in contracting with, commissioning, or establishing federally funded research and development centers determined useful and appropriate by the Secretary for the purpose of providing the Department with independent analysis and support.

(J) Assisting the Secretary and acting on behalf of the Secretary in entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites.

(K) Carrying out other appropriate activities as directed by the Secretary.

(3) RESEARCH AND DEVELOPMENT-RELATED AUTHORITIES.—The Secretary shall exercise the following authorities relating to the research, development, testing, and evaluation activities of the Directorate of Science and Technology:

(A) With respect to research and development expenditures under this section, the authority (subject to the same limitations and conditions) as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), for a period of 5 years beginning on the date of enactment of this Act. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph. The annual report required under subsection (h) of such section, as applied to the Secretary by this subparagraph, shall—

(i) be submitted to the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives; and

(ii) report on other transactions entered into under subparagraph (B).

(B) Authority to carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), for a period of 5 years beginning on the date of enactment of this Act. In applying the authorities of such section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) of that section. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph.

(C) In hiring personnel to assist in research, development, testing, and evaluation activities within the Directorate of Science and Technology, the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261), with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under

such authority, and that the term of appointment for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extensions under subsection (c)(2) of that section.

(D) With respect to such research, development, testing, and evaluation responsibilities under this section (except as provided in subparagraph (E)) as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under subsection (d)(4) for the Fund, not less than 10 percent of such funds for each fiscal year through 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways, and coastal security mission.

(E) The Secretary may carry out human health biodefense-related biological, biomedical, and infectious disease research and development (including vaccine research and development) in collaboration with the Secretary of Health and Human Services. Research supported by funding appropriated to the National Institutes of Health for bioterrorism research and related facilities development shall be conducted through the National Institutes of Health under joint strategic prioritization agreements between the Secretary and the Secretary of Health and Human Services. The Secretary shall have the authority to establish general research priorities, which shall be embodied in the joint strategic prioritization agreements with the Secretary of Health and Human Services. The specific scientific research agenda to implement agreements under this subparagraph shall be developed by the Secretary of Health and Human Services, who shall consult the Secretary to ensure that the agreements conform with homeland security priorities. All research programs established under those agreements shall be managed and awarded by the Director of the National Institutes of Health consistent with those agreements. The Secretary may transfer funds to the Department of Health and Human Services in connection with those agreements.

(d) ACCELERATION FUND.—

(1) ESTABLISHMENT.—There is established an Acceleration Fund to support research and development of technologies relevant to homeland security.

(2) FUNCTION.—The Fund shall be used to stimulate and support research and development projects selected by SARPA under subsection (f), and to facilitate the rapid transfer of research and technology derived from such projects.

(3) RECIPIENTS.—Fund monies may be made available through grants, contracts, cooperative agreements, and other transactions under subsection (c)(3) (A) and (B) to—

(A) public sector entities, including Federal, State, or local entities;

(B) private sector entities, including corporations, partnerships, or individuals; and

(C) other nongovernmental entities, including universities, federally funded research and development centers, and other academic or research institutions.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for the Fund for fiscal year 2003, and such sums as are necessary in subsequent fiscal years.

(e) SCIENCE AND TECHNOLOGY COUNCIL.—

(1) ESTABLISHMENT.—There is established the Homeland Security Science and Technology Council within the Directorate of Science and Technology. The Under Secretary shall chair the Council and have the authority to convene meetings. At the discretion of the Under Secretary and the Director of OSTP, the Council may be constituted as a subcommittee of the National Science and Technology Council.

(2) COMPOSITION.—The Council shall be composed of the following:

(A) Senior research and development officials representing agencies engaged in research and development relevant to homeland security and combating terrorism needs. Each representative shall be appointed by the head of the representative's respective agency with the advice and consent of the Under Secretary.

(B) The Director of SARPA and other appropriate officials within the Department.

(C) The Director of the OSTP and other senior officials of the Executive Office of the President as designated by the President.

(3) RESPONSIBILITIES.—The Council shall—

(A) provide the Under Secretary with recommendations on priorities and strategies, including those related to funding and portfolio management, for homeland security research and development;

(B) facilitate effective coordination and communication among agencies, other entities of the Federal Government, and entities in the private sector and academia, with respect to the conduct of research and development related to homeland security;

(C) recommend specific technology areas for which the Fund and other research and development resources shall be used, among other things, to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities;

(D) assist and advise the Under Secretary in developing the technology roadmap referred to under subsection (c)(2)(B); and

(E) perform other appropriate activities as directed by the Under Secretary.

(4) ADVISORY PANEL.—The Under Secretary may establish an advisory panel consisting of representatives from industry, academia, and other non-Federal entities to advise and support the Council.

(5) WORKING GROUPS.—At the discretion of the Under Secretary, the Council may establish working groups in specific homeland security areas consisting of individuals with relevant expertise in each articulated area. Working groups established for bioterrorism and public health-related research shall be fully coordinated with the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(f) SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—

(1) ESTABLISHMENT.—There is established the Security Advanced Research Projects Agency within the Directorate of Science and Technology.

(2) RESPONSIBILITIES.—SARPA shall—

(A) undertake and stimulate basic and applied research and development, leverage existing research and development, and accelerate the transition and deployment of technologies that will serve to enhance homeland defense;

(B) identify, fund, develop, and transition high-risk, high-payoff homeland security research and development opportunities that—

(i) may lie outside the purview or capabilities of the existing Federal agencies; and

(ii) emphasize revolutionary rather than evolutionary or incremental advances;

(C) provide selected projects with single or multiyear funding, and require such projects to provide interim progress reports, no less often than annually;

(D) administer the Acceleration Fund to carry out the purposes of this paragraph;

(E) advise the Secretary and Under Secretary on funding priorities under subsection (c)(3)(E); and

(F) perform other appropriate activities as directed by the Under Secretary.

(g) OFFICE OF RISK ANALYSIS AND ASSESSMENT .—

(1) ESTABLISHMENT.—There is established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology.

(2) FUNCTIONS.—The Office of Risk Analysis and Assessment shall—

(A) assist the Under Secretary in conducting or commissioning studies related to threat assessment and risk analysis, including—

(i) analysis of responses to terrorist incidents;

(ii) scenario-based threat assessment exercises and simulations;

(iii) red teaming to predict and discern the potential methods, means, and targets of terrorists; and

(iv) economic and policy analyses of alternative counterterrorism policies;

(B) coordinate with other entities engaged in threat assessment and risk analysis, including those within the Department, such as the Directorate of Intelligence;

(C) monitor and evaluate novel scientific findings in order to assist the Under Secretary in developing and reassessing the research and development priorities of the Department;

(D) design metrics to evaluate the effectiveness of homeland security programs;

(E) support the Directorate of Emergency Preparedness and Response in designing field tests and exercises; and

(F) perform other appropriate activities as directed by the Under Secretary.

(h) OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION.—

(1) ESTABLISHMENT.—There is established an Office for Technology Evaluation and Transition within the Directorate of Science and Technology.

(2) FUNCTION.—The Office for Technology Evaluation and Transition shall, with respect to technologies relevant to homeland security needs—

(A) serve as the principal, national point-of-contact and clearinghouse for receiving and processing proposals or inquiries regarding such technologies;

(B) identify and evaluate promising new technologies;

(C) undertake testing and evaluation of, and assist in transitioning, such technologies into deployable, fielded systems;

(D) consult with and advise agencies regarding the development, acquisition, and deployment of such technologies;

(E) coordinate with SARPA to accelerate the transition of technologies developed by SARPA and ensure transition paths for such technologies; and

(F) perform other appropriate activities as directed by the Under Secretary.

(3) TECHNICAL SUPPORT WORKING GROUP.—The functions described under this subsection may be carried out through, or in coordination with, or through an entity established by the Secretary and modeled after, the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) that provides an interagency forum to coordinate research and development of technologies for combating terrorism.

(i) OFFICE OF LABORATORY RESEARCH.—

(1) ESTABLISHMENT.—There is established an Office of Laboratory Research within the Directorate of Science and Technology.

(2) RESEARCH AND DEVELOPMENT FUNCTIONS TRANSFERRED.—There shall be transferred to the Department, to be administered by the Under Secretary, the functions, personnel, assets, and liabilities of the following programs and activities:

(A) Within the Department of Energy (but not including programs and activities relating to the strategic nuclear defense posture of the United States) the following:

(i) The chemical and biological national security and supporting programs and activities supporting domestic response of the nonproliferation and verification research and development program.

(ii) The nuclear smuggling programs and activities, and other programs and activities directly related to homeland security, within the proliferation detection program of the nonproliferation and verification research and development program, except that the programs and activities described in this clause may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(iii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(iv) The Environmental Measurements Laboratory.

(B) Within the Department of Defense, the National Bio-Weapons Defense Analysis Center established under section 161.

(3) RESPONSIBILITIES.—The Office of Laboratory Research shall—

(A) supervise the activities of the entities transferred under this subsection;

(B) administer the disbursement and undertake oversight of research and development funds transferred from the Department to other agencies outside of the Department, including funds transferred to the Department of Health and Human Services consistent with subsection (c)(3)(E);

(C) establish and direct new research and development facilities as the Secretary determines appropriate;

(D) include a science advisor to the Under Secretary on research priorities related to biological and chemical weapons, with supporting scientific staff, who shall advise on and support research priorities with respect to—

(i) research on countermeasures for biological weapons, including research on the development of drugs, devices, and biologics; and

(ii) research on biological and chemical threat agents; and

(E) other appropriate activities as directed by the Under Secretary.

(j) OFFICE FOR NATIONAL LABORATORIES.—

(1) ESTABLISHMENT.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(2) JOINT SPONSORSHIP ARRANGEMENTS.—

(A) NATIONAL LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work on behalf of the Department.

(B) DEPARTMENT OF ENERGY SITE.—The Department may be a joint sponsor of Department of Energy sites in the performance of work as if such sites were federally funded research and development centers and the work were performed under a multiple agency sponsorship arrangement with the Department.

(C) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subparagraph (A) or (B).

(D) CONDITIONS.—A joint sponsorship arrangement under this subsection shall—

(i) provide for the direct funding and management by the Department of the work being carried out on behalf of the Department; and

(ii) include procedures for addressing the coordination of resources and tasks to minimize conflicts between work undertaken on behalf of either Department.

(E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—

(i) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(ii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017 of the Federal Acquisition Regulation.

(F) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subparagraph (B).

(3) OTHER ARRANGEMENTS.—The Office for National Laboratories may enter into other arrangements with Department of Energy national laboratories or sites to carry out work to support the missions of the Department under applicable law, except that the Department of Energy may not charge or apply administrative fees for work on behalf of the Department.

(4) TECHNOLOGY TRANSFER.—The Office for National Laboratories may exercise the authorities in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to permit the Director of a Department of Energy national laboratory to enter into cooperative research and development agreements, or to negotiate licensing agreements, pertaining to work supported by the Department at the Department of Energy national laboratory.

(5) ASSISTANCE IN ESTABLISHING DEPARTMENT.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall develop a comprehensive, long-term strategy and plan for engaging non-Federal entities, particularly including private, for-profit entities, in the research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

(2) TIMEFRAME.—The strategy and plan under this subsection, together with recommendations for the enactment of supporting or enabling legislation, shall be submitted to the Congress within 270 days after the date of enactment of this Act.

(3) COORDINATION.—In developing the strategy and plan under this subsection, the Secretary shall consult with—

(A) other agencies with expertise in research, development, and production of countermeasures;

(B) private, for-profit entities and entrepreneurs with appropriate expertise and technology regarding countermeasures;

(C) investors that fund such entities;

(D) nonprofit research universities and institutions;

(E) public health and other interested private sector and government entities; and

(F) governments allied with the United States in the war on terrorism.

(4) PURPOSE.—The strategy and plan under this subsection shall evaluate proposals to assure that—

(A) research on countermeasures by non-Federal entities leads to the expeditious development and production of countermeasures that may be procured and deployed in the homeland security interests of the United States;

(B) capital is available to fund the expenses associated with such research, development, and production, including Government grants and contracts and appropriate capital formation tax incentives that apply to non-Federal entities with and without tax liability;

(C) the terms for procurement of such countermeasures are defined in advance so that such entities may accurately and reliably assess the potential countermeasures market and the potential rate of return;

(D) appropriate intellectual property, risk protection, and Government approval standards are applicable to such countermeasures;

(E) Government-funded research is conducted and prioritized so that such research complements, and does not unnecessarily duplicate, research by non-Federal entities and that such Government-funded research is made available, transferred, and licensed on commercially reasonable terms to such entities for development; and

(F) universities and research institutions play a vital role as partners in research and development and technology transfer, with appropriate progress benchmarks for such activities, with for-profit entities.

(5) REPORTING.—The Secretary shall report periodically to the Congress on the status of non-Federal entity countermeasure research, development, and production, and submit additional recommendations for legislation as needed.

(l) CLASSIFICATION OF RESEARCH.—

(1) IN GENERAL.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) CLASSIFICATION AND REVIEW.—The Under Secretary shall—

(A)(i) decide whether classification is appropriate before the award of a research grant, contract, cooperative agreement, or other transaction by the Department; and

(ii) if the decision under clause (i) is one of classification, control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, cooperative agreements, and other transactions issued by the Department to determine whether classification is still necessary.

(3) RESTRICTIONS.—No restrictions shall be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided under applicable provisions of law.

(m) OFFICE OF SCIENCE AND TECHNOLOGY POLICY.—The National Science and Technology Policy, Organization, and Priorities Act is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the National Office for Combating Terrorism,'' after ''National Security Council,''.

**SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.**

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

**SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) CHIEF HOMELAND SECURITY LIAISON OFFICER.—

(A) APPOINTMENT.—The Secretary shall appoint a Chief Homeland Security Liaison Officer to coordinate the activities of the Homeland Security Liaison Officers, designated under paragraph (2).

(B) ANNUAL REPORT.—The Chief Homeland Security Liaison Officer shall prepare an annual report, that contains—

(i) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(ii) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(iii) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(iv) proposals to increase the coordination of Department priorities within each State and between the States.

(2) HOMELAND SECURITY LIAISON OFFICERS.—

(A) DESIGNATION.—The Secretary shall designate in each State not less than 1 employee of the Department to—

(i) serve as the Homeland Security Liaison Officer in that State; and

(ii) provide coordination between the Department and State and local first responders, including—

(I) law enforcement agencies;

(II) fire and rescue agencies;

(III) medical providers;

(IV) emergency service providers; and

(V) relief agencies.

(B) DUTIES.—Each Homeland Security Liaison Officer designated under subparagraph (A) shall—

(i) ensure coordination between the Department and—

(I) State, local, and community-based law enforcement;

(II) fire and rescue agencies; and

(III) medical and emergency relief organizations;

(ii) identify State and local areas requiring additional information, training, resources, and security;

(iii) provide training, information, and education regarding homeland security for State and local entities;

(iv) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(v) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(vi) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner; and

(vii) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security.

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders, that shall—

(A) ensure coordination among the Federal agencies involved with—

(i) State, local, and community-based law enforcement;

(ii) fire and rescue operations; and

(iii) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee on First Responders shall be composed of—

(A) the Chief Homeland Security Liaison Officer of the Department;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee on First Responders.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee on First Responders and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee on First Responders shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee on First Responders shall meet—

(A) at the call of the Chief Homeland Security Liaison Officer of the Department; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Federal Interagency Committee on First Responders (in this section referred to as the ''Advisory Council'').

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee on First Responders.

(B) REPRESENTATION.—The Interagency Committee on First Responders shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee on First Responders not less frequently than once every 3 months.

**SEC. 138. UNITED STATES SECRET SERVICE.**

There are transferred to the Department the authorities, functions, personnel, and assets of the United States Secret Service, which shall be maintained as a distinct entity within the Department.

**SEC. 139. BORDER COORDINATION WORKING GROUP.**

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term ''border security functions'' means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term ''relevant agencies'' means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in

this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

**SEC. 140. EXECUTIVE SCHEDULE POSITIONS.**

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Border and Transportation, Department of Homeland Security.

''Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

''Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

''Under Secretary for Immigration, Department of Homeland Security.

''Under Secretary for Intelligence, Department of Homeland Security.

''Under Secretary for Science and Technology, Department of Homeland Security.''.

## Subtitle C—National Emergency Preparedness Enhancement

**SEC. 151. SHORT TITLE.**

This subtitle may be cited as the ''National Emergency Preparedness Enhancement Act of 2002''.

**SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.**

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the ''Clearinghouse''). The Clearinghouse shall be headed by a Director.

(b) CONSULTATION.—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to the Strategy.

(c) DUTIES.—

(1) DISSEMINATION OF INFORMATION.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) CENTER.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) PUBLIC AWARENESS CAMPAIGN.—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

**SEC. 153. PILOT PROGRAM.**

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

**SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.**

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is ''National Emergency Preparedness Week''.

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) FEDERAL AGENCY ACTIVITIES.—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

## Subtitle D—Miscellaneous Provisions

**SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

(a) ESTABLISHMENT.—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the ''Center'').

(b) MISSION.—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

**SEC. 162. REVIEW OF FOOD SAFETY.**

(a) REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

**SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.**

(a) FINDINGS.—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal,

State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) EXCHANGE OF EMPLOYEES.—

(1) IN GENERAL.—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) CONDITIONS.—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

**SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.**

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking ''(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law,'' and inserting the following:

''(d) SCREENER PERSONNEL.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (except as provided under paragraph (2)),''; and

(2) by adding at the end the following:

''(2) WHISTLEBLOWER PROTECTION.—

''(A) DEFINITION.—In this paragraph, the term ''security screener'' means—

''(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

''(ii) an applicant for the position of a security screener under that subsection.

''(B) IN GENERAL.—Notwithstanding paragraph (1)—

''(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

''(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

''(C) COVERED POSITION.—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.''.

**SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.**

(a) IN GENERAL.—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking ''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier'' and inserting the following:

''(a) DISCRIMINATION AGAINST EMPLOYEES.—

''(1) IN GENERAL.—No air carrier, contractor, subcontractor, or employer described under paragraph (2)'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

''(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

''(A) an air carrier or contractor or subcontractor of an air carrier;

''(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

''(C) an employer of private screening personnel described in section 44919 or 44920 of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''; and

(2) in clause (iii), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''.

**SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

**SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.**

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

**SEC. 168. RAIL SECURITY ENHANCEMENTS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) $375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) $778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) $55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

**SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.**

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

''(c) PERSONNEL GRANTS.—

''(1) EXCLUSION.—Grants awarded under subsection (b) to hire 'employees engaged in fire protection', as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

''(2) DURATION.—Grants awarded under paragraph (1) shall be for a 3-year period.

''(3) MAXIMUM AMOUNT.—The total amount of grants awarded under paragraph (1) shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(5) APPLICATION.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

''(A) an explanation for the need for Federal assistance; and

''(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(6) MAINTENANCE OF EFFORT.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).''.

**SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.**

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities;

(2) review all available information on vulnerabilities at aviation, seaport, rail and transit facilities; and

(3) review the steps taken by agencies since September 11, 2001, to improve aviation, seaport, rail, and transit security to determine their effectiveness at protecting passengers and transportation infrastructure from terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress and the Secretary a comprehensive report containing—

(1) the findings and conclusions from the reviews conducted under subsection (a); and

(2) proposed steps to improve any deficiencies found in aviation, seaport, rail, and transit security including, to the extent possible, the cost of implementing the steps.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(1) the response of the Department to the recommendations of the report; and

(2) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

**SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.**

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) CONTENT.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

## Subtitle E—Transition Provisions

**SEC. 181. DEFINITIONS.**

In this subtitle:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) TRANSITION PERIOD.—The term ''transition period'' means the 1-year period beginning on the effective date of this division.

**SEC. 182. TRANSFER OF AGENCIES.**

The transfer of an agency to the Department, as authorized by this title, shall occur when the President so directs, but in no event later than the end of the transition period.

**SEC. 183. TRANSITIONAL AUTHORITIES.**

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until an agency is transferred to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this division shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may reasonably request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any agency (as defined under section 2) may, on a reimbursable basis, provide services and detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) DESIGNATION.—During the transition period, pending the nomination and advice and consent of the Senate to the appointment of an officer required by this division to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent, and who continues as such an officer, to act in such office until the office is filled as provided in this division.

(2) COMPENSATION.—While serving as an acting officer under paragraph (1), the officer shall receive compensation at the higher of the rate provided—

(A) under this division for the office in which that officer acts; or

(B) for the office held at the time of designation.

(3) PERIOD OF SERVICE.—The person serving as an acting officer under paragraph (1) may serve in the office for the periods described under section 3346 of title 5, United States Code, as if the office became vacant on the effective date of this division.

(d) EXCEPTION TO ADVICE AND CONSENT REQUIREMENT.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer—

(1) whose agency is transferred to the Department under this Act;

(2) whose appointment was by and with the advice and consent of the Senate;

(3) who is proposed to serve in a directorate or office of the Department that is similar to the transferred agency in which the officer served; and

(4) whose authority and responsibilities following such transfer would be equivalent to those performed prior to such transfer.

**SEC. 184. INCIDENTAL TRANSFERS AND TRANSFER OF RELATED FUNCTIONS.**

(a) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director determines necessary to accomplish the purposes of this title.

(b) ADJUDICATORY OR REVIEW FUNCTIONS.—

(1) IN GENERAL.—At the time an agency is transferred to the Department, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency.

(2) EXCEPTION.—The President may not transfer the Executive Office of Immigration Review of the Department of Justice under this subsection.

(c) TRANSFER OF RELATED FUNCTIONS.—The transfer, under this title, of an agency that is a subdivision of a department before such transfer shall include the transfer to the Secretary of any function relating to such agency that, on the date before the transfer, was exercised by the head of the department from which such agency is transferred.

(d) REFERENCES.—A reference in any other Federal law, Executive order, rule, regulation, delegation of authority, or other document pertaining to an agency transferred under this title that refers to the head of the department from which such agency is transferred is deemed to refer to the Secretary.

**SEC. 185. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.**

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I, II, III, and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I, II, III, and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

**SEC. 186. TRANSFER AND ALLOCATION.**

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the agencies transferred under this title, shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and to section 1531 of title 31, United States Code. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

**SEC. 187. SAVINGS PROVISIONS.**

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this division takes effect, or were final before the effective date of this division and are to become effective on or after the effective date of this division,

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this division, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) EMPLOYEE RIGHTS.—

(A) TRANSFERRED AGENCIES.—The Department, or a subdivision of the Department, that includes an entity or organizational unit, or subdivision thereof, transferred under this Act, or performs functions transferred under this Act shall not be excluded

from coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of title 5, United States Code, after July 19, 2002.

(B) TRANSFERRED EMPLOYEES.—An employee transferred to the Department under this Act, who was in an appropriate unit under section 7112 of title 5, United States Code, prior to the transfer, shall not be excluded from a unit under subsection (b)(6) of that section unless—

(i) the primary job duty of the employee is materially changed after the transfer; and

(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) TRANSFERRED FUNCTIONS.—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this Act or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) OTHER AGENCIES, EMPLOYEES, AND FUNCTIONS.—

(i) EXCLUSION OF SUBDIVISION.—Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) EXCLUSION OF EMPLOYEE.—Subject to subparagraphs (B) and (C), an employee of the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(E) PRIOR EXCLUSION.—Subparagraphs (A) through (D) shall not apply to any entity or organizational unit, or subdivision thereof, transferred to the Department under this Act that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(2) TERMS AND CONDITIONS OF EMPLOYMENT.—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(3) CONDITIONS AND CRITERIA FOR APPOINTMENT.—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(4) WHISTLEBLOWER PROTECTION.—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) NO EFFECT ON INTELLIGENCE AUTHORITIES.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

**SEC. 188. TRANSITION PLAN.**

(a) IN GENERAL.—Not later than September 15, 2002, the President shall submit to Congress a transition plan as set forth in subsection (b).

(b) CONTENTS.—

(1) IN GENERAL.—The transition plan under subsection (a) shall include a detailed—

(A) plan for the transition to the Department and implementation of titles I, II, and III and division B; and

(B) proposal for the financing of those operations and needs of the Department that do not represent solely the continuation of functions for which appropriations already are available.

(2) FINANCING PROPOSAL.—The financing proposal under paragraph (1)(B) may consist of any combination of specific appropriations transfers, specific reprogrammings, and new specific appropriations as the President considers advisable.

**SEC. 189. USE OF APPROPRIATED FUNDS.**

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act, the Office, and the National Combating Terrorism Strategy Panel.

(b) USE OF TRANSFERRED FUNDS.—Except as may be provided in an appropriations Act in accordance with subsection (d), balances of appropriations and any other funds or assets transferred under this Act—

(1) shall be available only for the purposes for which they were originally available;

(2) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(3) shall not be used to fund any new position established under this Act.

(c) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(d) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsection (c), amounts transferred to, or otherwise made available to, the Department may be used during the transition period for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(e) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(f) GIFTS.—Gifts or donations of services or property of or for the Department, the Office, or the National Combating Terrorism Strategy Panel may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(g) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004.

**Subtitle F—Administrative Provisions**

**SEC. 191. REORGANIZATIONS AND DELEGATIONS.**

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

**SEC. 192. REPORTING REQUIREMENTS.**

(a) ANNUAL EVALUATIONS.—The Comptroller General of the United States shall monitor and evaluate the implementation of titles I, II, III, and XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General

shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 185;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) POINT OF ENTRY MANAGEMENT REPORT.—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) COMBATING TERRORISM AND HOMELAND SECURITY.—Not later than 270 days after the date of enactment of this Act, the Secretary and the Director shall—

(1) in consultation with the head of each department or agency affected by titles I, II, III, and XI, develop definitions of the terms ''combating terrorism'' and ''homeland security'' for purposes of those titles and shall consider such definitions in determining the mission of the Department and Office; and

(2) submit a report to Congress on such definitions.

(e) RESULTS-BASED MANAGEMENT.—

(1) STRATEGIC PLAN.—

(A) IN GENERAL.—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) PERIOD; REVISIONS.—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) CONTENTS.—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) PERFORMANCE PLAN.—

(A) IN GENERAL.—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) CONTENTS.—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) SCOPE.—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) PERFORMANCE REPORT.—

(A) IN GENERAL.—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) CONTENTS.—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

**SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.**

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

**SEC. 194. LABOR STANDARDS.**

(a) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

**SEC. 195. PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 196. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.**

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

**SEC. 197. FUTURE YEARS HOMELAND SECURITY PROGRAM.**

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

**SEC. 198. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.**

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record

shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

**SEC. 199. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

## TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

**SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.**

(a) ESTABLISHMENT.—There is established within the Executive Office of the President the National Office for Combating Terrorism.

(b) OFFICERS.—

(1) DIRECTOR.—The head of the Office shall be the Director of the National Office for Combating Terrorism, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following: ''Director of the National Office for Combating Terrorism.''.

(3) OTHER OFFICERS.—The President shall assign to the Office such other officers as the President, in consultation with the Director, considers appropriate to discharge the responsibilities of the Office.

(c) RESPONSIBILITIES.—Subject to the direction and control of the President, the responsibilities of the Office shall include the following:

(1) To develop national objectives and policies for combating terrorism.

(2) To direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, which shall be—

(A) conducted by the heads of relevant agencies, the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities; and

(B) used in preparation of the Strategy.

(3) To develop, with the Secretary of Homeland Security, the Strategy under title III.

(4) To coordinate, oversee, and evaluate the implementation and execution of the Strategy by agencies with responsibilities for combating terrorism under the Strategy, particularly those involving military, intelligence, law enforcement, diplomatic, and scientific and technological assets.

(5) To work with agencies, including the Environmental Protection Agency, to ensure that appropriate actions are taken to address vulnerabilities identified by the Directorate of Critical Infrastructure Protection within the Department.

(6)(A) To coordinate, with the advice of the Secretary, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection.

(B) To have the lead responsibility for budget recommendations relating to military, intelligence, law enforcement, and diplomatic assets in support of the Strategy.

(7) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(8) To serve as an advisor to the National Security Council.

(9) To work with the Director of the Federal Bureau of Investigation to ensure that—

(A) the Director of the National Office for Combating Terrorism receives the relevant information from the Federal Bureau of Investigation related to terrorism; and

(B) such information is made available to the appropriate agencies and to State and local law enforcement officials.

(d) RESOURCES.—In consultation with the Director, the President shall assign or allocate to the Office such resources, including funds, personnel, and other resources, as the President considers appropriate and that are available to the President under appropriations Acts for fiscal year 2002 and fiscal year 2003 in the ''Office of Administration'' appropriations account or the ''Office of Homeland Security'' appropriations account. Any transfer or reprogramming of funds made under this section shall be subject to the reprogramming procedures in the Treasury and General Government Appropriations Act, 2002 (Public Law 107–67).

(e) OVERSIGHT BY CONGRESS.—The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or

(2) any personnel of the Office.

**SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND ACTIVITIES.**

(a) BUDGET REVIEW.—In consultation with the Director of the Office of Management and Budget, the Secretary, and the heads of other agencies, the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities, the Director shall—

(1) identify programs that contribute to the Strategy; and

(2) in the development of the budget submitted by the President to Congress under section 1105 of title 31, United States Code, review and provide advice to the heads of agencies on the amount and use of funding for programs identified under paragraph (1).

(b) SUBMITTAL OF PROPOSED BUDGETS TO THE DIRECTOR.—

(1) IN GENERAL.—The head of each Federal terrorism prevention and response agency shall submit to the Director each year the proposed budget of that agency for the fiscal year beginning in that year for programs and activities of that agency under the Strategy during that fiscal year.

(2) DATE FOR SUBMISSION.—The proposed budget of an agency for a fiscal year under paragraph (1) shall be submitted to the Director—

(A) not later than the date on which the agency completes the collection of information for purposes of the submission by the President of a budget to Congress for that fiscal year under section 1105 of title 31, United States Code; and

(B) before that information is submitted to the Director of the Office of Management and Budget for such purposes.

(3) FORMAT.—In consultation with the Director of the Office of Management and Budget, the Director shall specify the format for the submittal of proposed budgets under paragraph (1).

(c) REVIEW OF PROPOSED BUDGETS.—

(1) IN GENERAL.—The Director shall review each proposed budget submitted to the Director under subsection (b).

(2) INADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is inadequate, in whole or in part, to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency—

(A) a notice in writing of the determination; and

(B) a statement of the proposed funding, and any specific initiatives, that would (as determined by the Director) permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year.

(3) ADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is adequate to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the

fiscal year, the Director shall submit to the head of the agency a notice in writing of that determination.

(4) MAINTENANCE OF RECORDS.—The Director shall maintain a record of—

(A) each notice submitted under paragraph (2), including any statement accompanying such notice; and

(B) each notice submitted under paragraph (3).

(d) AGENCY RESPONSE TO REVIEW OF PROPOSED BUDGETS.—

(1) INCORPORATION OF PROPOSED FUNDING.—The head of a Federal terrorism prevention and response agency that receives a notice under subsection (c)(2) with respect to the proposed budget of the agency for a fiscal year shall incorporate the proposed funding, and any initiatives, set forth in the statement accompanying the notice into the information submitted to the Office of Management and Budget in support of the proposed budget for the agency for the fiscal year under section 1105 of title 31, United States Code.

(2) ADDITIONAL INFORMATION.—The head of each agency described under paragraph (1) for a fiscal year shall include as an appendix to the information submitted to the Office of Management and Budget under that paragraph for the fiscal year the following:

(A) A summary of any modifications in the proposed budget of such agency for the fiscal year under paragraph (1).

(B) An assessment of the effect of such modifications on the capacity of such agency to perform its responsibilities during the fiscal year other than its responsibilities under the Strategy.

(3) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—Subject to subparagraph (B), the head of each agency described under paragraph (1) for a fiscal year shall submit to Congress a copy of the appendix submitted to the Office of Management and Budget for the fiscal year under paragraph (2) at the same time the budget of the President for the fiscal year is submitted to Congress under section 1105 of title 31, United States Code.

(B) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the copy of the appendix to Congress under subparagraph (A), those elements of the appendix which are within the National Foreign Intelligence Program shall be submitted to—

(i) the Select Committee on Intelligence of the Senate;

(ii) the Permanent Select Committee on Intelligence of the House of Representatives;

(iii) the Committee on Appropriations of the Senate; and

(iv) the Committee on Appropriations of the House of Representatives.

(e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

(1) IN GENERAL.—At the same time the head of a Federal terrorism prevention and response agency submits its proposed budget for a fiscal year to the Office of Management and Budget for purposes of the submission by the President of a budget to Congress for the fiscal year under section 1105 of title 31, United States Code, the head of the agency shall submit a copy of the proposed budget to the Director.

(2) REVIEW AND DECERTIFICATION AUTHORITY.—The Director of the National Office for Combating Terrorism—

(A) shall review each proposed budget submitted under paragraph (1); and

(B) in the case of a proposed budget for a fiscal year to which subsection (c)(2) applies in the fiscal year, if the Director determines as a result of the review that the proposed budget does not include the proposed funding, and any initiatives, set forth in the notice under that subsection with respect to the proposed budget—

(i) may decertify the proposed budget; and

(ii) with respect to any proposed budget so decertified, shall submit to Congress—

(I) a notice of the decertification;

(II) a copy of the notice submitted to the agency concerned for the fiscal year under subsection (c)(2)(B); and

(III) the budget recommendations made under this section.

(f) NATIONAL TERRORISM PREVENTION AND RESPONSE PROGRAM BUDGET.—

(1) IN GENERAL.—For each fiscal year, following the submittal of proposed budgets to the Director under subsection (b), the Director shall, in consultation with the Secretary and the head of each Federal terrorism prevention and response agency concerned—

(A) develop a consolidated proposed budget for such fiscal year for all programs and activities under the Strategy for such fiscal year; and

(B) subject to paragraph (2), submit the consolidated proposed budget to the President and to Congress.

(2) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the consolidated proposed budget to Congress under paragraph (1)(B), those elements of the budget which are within the National Foreign Intelligence Program shall be submitted to—

(A) the Select Committee on Intelligence of the Senate;

(B) the Permanent Select Committee on Intelligence of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(3) DESIGNATION OF CONSOLIDATED PROPOSED BUDGET.—The consolidated proposed budget for a fiscal year under this subsection shall be known as the National Terrorism Prevention and Response Program Budget for the fiscal year.

(g) REPROGRAMMING AND TRANSFER REQUESTS.—

(1) APPROVAL BY THE DIRECTOR.—The head of a Federal terrorism prevention and response agency may not submit to Congress a request for the reprogramming or transfer of any funds specified in the National Terrorism Prevention and Response Program Budget for programs or activities of the agency under the Strategy for a fiscal year in excess of $5,000,000 without the approval of the Director.

(2) APPROVAL BY THE PRESIDENT.—The President may, upon the request of the head of the agency concerned, permit the submittal to Congress of a request previously disapproved by the Director under paragraph (1) if the President determines that the submittal of the request to Congress will further the purposes of the Strategy.

## TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

### SEC. 301. STRATEGY.

(a) DEVELOPMENT.—The Secretary and the Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recovery to counter terrorist threats, including threat, vulnerability, and risk assessment and analysis, and the plans, policies, training, exercises, evaluation, and interagency cooperation that address each such action relating to such threats.

(b) RESPONSIBILITIES.—

(1) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall have responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating State and local efforts with activities of the Federal Government.

(2) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have overall responsibility for development of the Strategy, and particularly for those portions of the Strategy addressing intelligence, military assets, law enforcement, and diplomacy.

(c) CONTENTS.—The contents of the Strategy shall include—

(1) a comprehensive statement of mission, goals, objectives, desired end-state, priorities and responsibilities;

(2) policies and procedures to maximize the collection, translation, analysis, exploitation, and dissemination of information relating to combating terrorism and the homeland security response throughout the Federal Government and with State and local authorities;

(3) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats;

(4) plans for integrating the capabilities and assets of the United States military into all aspects of the Strategy;

(5) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on the homeland;

(6) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks;

(7) a review of measures needed to enhance transportation security with respect to potential terrorist attacks;

(8) plans for identifying, prioritizing, and meeting research and development objectives to support homeland security needs; and

(9) other critical areas.

(d) COOPERATION.—At the request of the Secretary or Director, departments and agencies shall provide necessary information or planning documents relating to the Strategy.

(e) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is established the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy.

(2) MEMBERSHIP.—The members of the Council shall be the heads of the Federal terrorism prevention and response agencies or their designees. The Secretary and Director shall designate such agencies.

(3) CO-CHAIRS AND MEETINGS.—The Secretary and Director shall co-chair the Council, which shall meet at their direction.

(f) SUBMISSION TO CONGRESS.—Not later than December 1, 2003, and each year thereafter in which a President is inaugurated, the Secretary and the Director shall submit the Strategy to Congress.

(g) UPDATING.—Not later than December 1, 2005, and on December 1, of every 2 years thereafter, the Secretary and the Director shall submit to Congress an updated version of the Strategy.

(h) PROGRESS REPORTS.—Not later than December 1, 2004, and on December 1, of each year thereafter, the Secretary and the Director may submit to Congress a report that—

(1) describes the progress on implementation of the Strategy; and

(2) provides recommendations for improvement of the Strategy and the implementation of the Strategy.

### SEC. 302. MANAGEMENT GUIDANCE FOR STRATEGY IMPLEMENTATION.

(a) IN GENERAL.—In consultation with the Director and the Secretary, the Director of the Office of Management and Budget shall provide management guidance for agencies to successfully implement and execute the Strategy.

(b) OFFICE OF MANAGEMENT AND BUDGET REPORT.—Not later than 180 days after the

date of the submission of the Strategy referred to under section 301, the Director of the Office of Management and Budget shall—

(1) submit to Congress a report describing agency progress under subsection (a); and

(2) provide a copy of the report to the Comptroller General of the United States.

(c) GENERAL ACCOUNTING OFFICE REPORT.—Not later than 90 days after the receipt of the report required under subsection (b), the Comptroller General of the United States shall submit a report to the Governmental Affairs Committee of the Senate, the Government Reform Committee of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives, evaluating—

(1) the management guidance identified under subsection (a); and

(2) Federal agency performance in implementing and executing the Strategy.

**SEC. 303. NATIONAL COMBATING TERRORISM STRATEGY PANEL.**

(a) ESTABLISHMENT.—The Secretary and the Director shall establish a nonpartisan, independent panel to be known as the National Combating Terrorism Strategy Panel (in this section referred to as the ''Panel'').

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Panel shall be composed of a chairperson and 8 other individuals appointed by the Secretary and the Director, in consultation with the chairman and ranking member of the Committee on Governmental Affairs of the Senate and the chairman and ranking member of the Committee on Government Reform of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to combatting terrorism and the homeland security of the United States.

(2) TERMS.—

(A) IN GENERAL.—An individual shall be appointed to the Panel for an 18-month term.

(B) TERM PERIODS.—Terms on the Panel shall not be continuous. All terms shall be for the 18-month period which begins 12 months before each date a report is required to be submitted under subsection (1)(2)(A).

(C) MULTIPLE TERMS.—An individual may serve more than 1 term.

(c) DUTIES.—The Panel shall—

(1) conduct and submit to the Secretary the assessment of the Strategy; and

(2) conduct the independent, alternative assessment of homeland security measures required under this section.

(d) ALTERNATIVE ASSESSMENT.—The Panel shall submit to the Secretary an independent assessment of the optimal policies and programs to combat terrorism, including homeland security measures. As part of the assessment, the Panel shall, to the extent practicable, estimate the funding required by fiscal year to achieve these optimal approaches.

(e) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Panel may secure directly from any agency such information as the Panel considers necessary to carry out this section. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Panel.

(2) INTELLIGENCE INFORMATION.—The provision of information under this paragraph related to intelligence shall be provided in accordance with procedures established by the Director of Central Intelligence and in accordance with section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(3)).

(f) COMPENSATION OF MEMBERS.—Each member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel.

(g) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(h) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(4) REDUCTION OF STAFF.—During periods that members are not serving terms on the Panel, the executive director shall reduce the number and hours of employees to the minimum necessary to—

(A) provide effective continuity of the Panel; and

(B) minimize personnel costs of the Panel.

(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) ADMINISTRATIVE PROVISIONS.—

(1) USE OF MAIL AND PRINTING.—The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other agencies.

(2) SUPPORT SERVICES.—The Secretary shall furnish the Panel any administrative and support services requested by the Panel.

(3) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

(k) PAYMENT OF PANEL EXPENSES.—The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

(l) REPORTS.—

(1) PRELIMINARY REPORT.—

(A) REPORT TO SECRETARY.—Not later than July 1, 2004, the Panel shall submit to the Secretary and the Director a preliminary report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORT TO CONGRESS.—Not later than 30 days after the submission of the report under subparagraph (A), the Secretary and the Director shall submit to the committees referred to under subsection (b), and the Committees on Appropriations of the Senate and the House of Representatives, a copy of that report with the comments of the Secretary on the report.

(2) QUADRENNIAL REPORTS.—

(A) REPORTS TO SECRETARY.—Not later than December 1, 2004, and not later than December 1 every 4 years thereafter, the Panel shall submit to the Secretary and the Director a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORTS TO CONGRESS.—Not later than 60 days after each report is submitted under subparagraph (A), the Secretary shall submit to the committees referred to under subsection (b), and the Committees on Appropriations of the Senate and the House of Representatives, a copy of the report with the comments of the Secretary and the Director on the report.

## TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

**SEC. 401. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.**

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of

Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

## TITLE V—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

### Subtitle A—Temporary Flexibility for Certain Procurements

**SEC. 501. DEFINITION.**

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

**SEC. 502. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.**

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

**SEC. 503. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.**

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 502 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

**SEC. 504. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.**

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 502, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

**SEC. 505. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.**

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 502 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

**SEC. 506. USE OF STREAMLINED PROCEDURES.**

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 502, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business

Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 502.

**SEC. 507. REVIEW AND REPORT BY COMPTROLLER GENERAL.**

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

**Subtitle B—Other Matters**

**SEC. 511. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.**

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

**TITLE VI—EFFECTIVE DATE**

**SEC. 601. EFFECTIVE DATE.**

This division shall take effect 30 days after the date of enactment of this Act or, if enacted within 30 days before January 1, 2003, on January 1, 2003.

**DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002**

**SEC. 1001. SHORT TITLE.**

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

**SEC. 1002. DEFINITIONS.**

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

**TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS**

**Subtitle A—Organization**

**SEC. 1101. ABOLITION OF INS.**

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

**SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

**''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS**

**''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

''(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following new paragraphs:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

**SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

**"SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Under Secretary of Homeland Security for Immigration Affairs'' and ''Under Secretary'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''UNDER SECRETARY'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

**SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

**"SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant

Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

**''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**''SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.**

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

**SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**''SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

**SEC. 1108. CLERICAL AMENDMENTS.**

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.

''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.

''Sec. 113. Bureau of Immigration Services.

''Sec. 114. Bureau of Enforcement and Border Affairs.

''Sec. 115. Office of the Ombudsman for Immigration Affairs.

''Sec. 116. Office of Immigration Statistics.''.

**Subtitle B—Transition Provisions**

**SEC. 1111. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

**SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.**

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

**SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.**

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

**SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.**

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

**SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.**

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

**SEC. 1116. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

**SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.**

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

**SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.**

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

**SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.**

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

**SEC. 1120. TRANSITION FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

**Subtitle C—Miscellaneous Provisions**

**SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.**

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

**SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

**SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

**''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

### Subtitle D—Effective Date

**SEC. 1131. EFFECTIVE DATE.**

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

## TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

**SEC. 1201. SHORT TITLE.**

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

**SEC. 1202. DEFINITIONS.**

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

### Subtitle A—Structural Changes

**SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.**

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

**SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.**

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

**SEC. 1213. TRANSITION PROVISIONS.**

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

**SEC. 1214. EFFECTIVE DATE.**

This subtitle shall take effect one year after the effective date of division A of this Act.

**Subtitle B—Custody, Release, Family Reunification, and Detention**

**SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.**

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

**SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.**

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

**SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.**

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

**SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.**

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

**SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.**

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

**SEC. 1226. EFFECTIVE DATE.**

This subtitle shall take effect one year after the effective date of division A of this Act.

## Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

**SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.**

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

**SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.**

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or

any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age, whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

**SEC. 1233. EFFECTIVE DATE; APPLICABILITY.**

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

## Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

**SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.**

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

**SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.**

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

**SEC. 1243. EFFECTIVE DATE.**

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

## Subtitle E—Children Refugee and Asylum Seekers

**SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

**SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.**

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

**Subtitle F—Authorization of Appropriations**

**SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

**TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS**

**Subtitle A—Structure and Function**

**SEC. 1301. ESTABLISHMENT.**

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

**SEC. 1302. DIRECTOR OF THE AGENCY.**

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

**SEC. 1303. BOARD OF IMMIGRATION APPEALS.**

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

**SEC. 1304. CHIEF IMMIGRATION JUDGE.**

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

**SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.**

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

**SEC. 1306. REMOVAL OF JUDGES.**

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

**SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

**Subtitle B—Transfer of Functions and Savings Provisions**

**SEC. 1311. TRANSITION PROVISIONS.**

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by

or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

**Subtitle C—Effective Date**

**SEC. 1321. EFFECTIVE DATE.**

This title shall take effect one year after the effective date of division A of this Act.

**DIVISION C—FEDERAL WORKFORCE IMPROVEMENT**

**TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS**

**SEC. 2101. SHORT TITLE.**

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

**SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

**''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS**

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

**''§ 1401. Establishment of agency Chief Human Capital Officers**

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

**''§ 1402. Authority and functions of agency Chief Human Capital Officers**

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies; and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

**''14. Chief Human Capital Officers ..... 1401''.**

**SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

**SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

**SEC. 2105. EFFECTIVE DATE.**

This title shall take effect 180 days after the date of enactment of this division.

**TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT**

**SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.**

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

**SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

**''§ 3319. Alternative ranking and selection procedures**

''(a)(1) the Office, in exercising its authority under section 3304; or

''(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the

competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

**SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.**

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

**''§ 3521. Definitions**

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

**''§ 3522. Agency plans; approval**

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

**''§ 3523. Authority to provide voluntary separation incentive payments**

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

**''§ 3524. Effect of subsequent employment with the Government**

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in the case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

**''§ 3525. Regulations**

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

**"CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT"**;

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

"3521. Definitions.
"3522. Agency plans; approval.
"3523. Authority to provide voluntary separation incentive payments.
"3524. Effect of subsequent employment with the Government.
"3525. Regulations.".

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

"(B) is serving under an appointment that is not time limited;

"(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(i) 1 or more organizational units;

"(ii) 1 or more occupational series or levels;

"(iii) 1 or more geographical locations;

"(iv) specific periods;

"(v) skills, knowledge, or other factors related to a position; or

"(vi) any appropriate combination of such factors;".

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

"(ii) is serving under an appointment that is not time limited;

"(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(I) 1 or more organizational units;

"(II) 1 or more occupational series or levels;

"(III) 1 or more geographical locations;

"(IV) specific periods;

"(V) skills, knowledge, or other factors related to a position; or

"(VI) any appropriate combination of such factors;".

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

**SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking "and a member of a uniformed service" and inserting ", a member of a uniformed service, and a student who provides voluntary services under section 3111".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking "chapter 81 of this title" and inserting "section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81".

## TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

**SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking "3393a,";

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43."; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking "or removal from the Senior Executive Service for failure to be recertified under section 3393a";

(4) in chapter 83—

(A) in section 8336(h)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8339(h), in the first sentence, by striking ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive"; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8421(a)(2), by striking ", except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age".

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

**SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.**

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

"(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.".

## TITLE XXIV—ACADEMIC TRAINING

**SEC. 2401. ACADEMIC TRAINING.**

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

**"§ 4107. Academic degree training**

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the Senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

**SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.**

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

**SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.**

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

**"§ 5550b. Compensatory time off for travel**

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

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**SA 4468.** Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 2487, to provide for global pathogen surveillance and response; as follows:

On page 3, line 1, insert '', including data sharing with appropriate United States departments and agencies,'' after ''countries''.

On page 5, strike lines 9 through 14, and insert the following:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

On page 5, line 17, insert '', and other electronic'' after ''Internet-based''.

On page 6, line 5, strike ''including'' and all that follows through ''mechanisms,'' on line 7, and insert the following: ''including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications,''.

On page 9, line 15, insert before the period the following: '', provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies''.

On page 17, line 12, insert ''(and information technology)'' after ''Equipment''.

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**SA 4469.** Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253. To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Department of Veterans Affairs Emergency Preparedness Act of 2002''.

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

*Sec. 1. Short title; table of contents.*
*Sec. 2. References to title 38, United States Code.*

*TITLE I—MEDICAL EMERGENCY PREPAREDNESS*

*Sec. 101. Medical emergency preparedness centers in Veterans Health Administration.*

*TITLE II—DEPARTMENT OF VETERANS AFFAIRS ADMINISTRATION*

*Sec. 201. Additional Assistant Secretary of Veterans Affairs and functions for Assistant Secretaries of Veterans Affairs.*
*Sec. 202. Additional Deputy Assistant Secretaries of Veterans Affairs.*

*TITLE III—HEALTH CARE MATTERS*

*Sec. 301. Authority to furnish health care during major disasters and medical emergencies.*

*TITLE IV—RESEARCH CORPORATIONS*

*Sec. 401. Modification of certain authorities on research corporations.*
*Sec. 402. Coverage of research corporation personnel under Federal Tort Claims Act and other tort claims laws.*
*Sec. 403. Permanent authority for research corporations.*

***SEC. 2. REFERENCES TO TITLE 38, UNITED STATES 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 title 38, United States Code.*

***TITLE I—MEDICAL EMERGENCY PREPAREDNESS***

***SEC. 101. MEDICAL EMERGENCY PREPAREDNESS CENTERS IN VETERANS HEALTH ADMINISTRATION.***

*(a) IN GENERAL.—(1) Subchapter II of chapter 73 is amended by inserting after section 7320 the following new section:*

***"§ 7320A. Medical emergency preparedness centers***

*''(a) The Secretary shall establish and maintain within the Veterans Health Administration four centers for research and activities on medical emergency preparedness.*

*''(b) The purposes of each center established under subsection (a) shall be as follows:*

*''(1) To carry out research on the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices, including the development of methods for the detection, diagnosis, prevention, and treatment of such injuries, diseases, and illnesses.*

''(2) To provide to health-care professionals in the Veterans Health Administration education, training, and advice on the treatment of the medical consequences of the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

''(3) Upon the direction of the Secretary, to provide education, training, and advice described in paragraph (2) to health-care professionals outside the Department through the National Disaster Medical System or through interagency agreements entered into by the Secretary for that purpose.

''(4) In the event of a national emergency, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the national emergency.

''(c)(1) Each center established under subsection (a) shall be established at an existing Department medical center, whether at the Department medical center alone or at a Department medical center acting as part of a consortium of Department medical centers for purposes of this section.

''(2) The Secretary shall select the sites for the centers from among competitive proposals that are submitted by Department medical centers seeking to be sites for such centers.

''(3) The Secretary may not select a Department medical center as the site of a center unless the proposal of the Department medical center under paragraph (2) provides for—

''(A) an arrangement with an accredited affiliated medical school and an accredited affiliated school of public health (or a consortium of such schools) under which physicians and other health care personnel of such schools receive education and training through the Department medical center;

''(B) an arrangement with an accredited graduate program of epidemiology under which students of the program receive education and training in epidemiology through the Department medical center; and

''(C) the capability to attract scientists who have made significant contributions to innovative approaches to the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

''(4) In selecting sites for the centers, the Secretary shall—

''(A) utilize a peer review panel (consisting of members with appropriate scientific and clinical expertise) to evaluate proposals submitted under paragraph (2) for scientific and clinical merit; and

''(B) to the maximum extent practicable, ensure the geographic dispersal of the sites throughout the United States.

''(d)(1) Each center established under subsection (a) shall be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

''(2) The Secretary and the heads of the agencies concerned shall take appropriate actions to ensure that the work of each center is carried out—

''(A) in close coordination with the Department of Defense, Department of Health and Human Services, Office of Homeland Security, and other departments, agencies, and elements of the Federal Government charged with coordination of plans for United States homeland security; and

''(B) in accordance with any applicable recommendations of the Working Group on Bioterrorism and Other Public Health Emergencies, or any other joint interagency advisory groups or committees designated to coordinate Federal research on weapons of mass destruction.

''(e)(1) Each center established under subsection (a) shall be staffed by officers and employees of the Department.

''(2) Subject to the approval of the head of the department or agency concerned and the Director of the Office of Personnel Management, an officer or employee of another department or agency of the Federal Government may be detailed to a center if the detail will assist the center in carrying out activities under this section. Any detail under this paragraph shall be on a non-reimbursable basis.

''(f) In addition to any other activities under this section, a center established under subsection (a) may, upon the request of the agency concerned and with the approval of the Secretary, provide assistance to Federal, State, and local agencies (including criminal and civil investigative agencies) engaged in investigations or inquiries intended to protect the public safety or health or otherwise obviate threats of the use of a chemical, biological, radiological, or incendiary or other explosive weapon or device.

''(g) Notwithstanding any other provision of law, each center established under subsection (a) may, with the approval of the Secretary, solicit and accept contributions of funds and other resources, including grants, for purposes of the activities of such center under this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7320 the following new item:

''7320A. Medical emergency preparedness centers.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There is hereby authorized to be appropriated for the Department of Veterans Affairs amounts for the centers established under section 7320A of title 38, United States Code (as added by subsection (a)), $20,000,000 for each of fiscal years 2003 through 2007.

(2) The amount authorized to be appropriated by paragraph (1) is not authorized to be appropriated for the Veterans Health Administration for Medical Care, but is authorized to be appropriated for the Administration separately and solely for purposes of the centers referred to in that paragraph.

(3) Of the amount authorized to be appropriated by paragraph (1) for a fiscal year, $5,000,000 shall be available for such fiscal year for each center referred to in that paragraph.

## TITLE II—DEPARTMENT OF VETERANS AFFAIRS ADMINISTRATION

### SEC. 201. ADDITIONAL ASSISTANT SECRETARY OF VETERANS AFFAIRS AND FUNCTIONS FOR ASSISTANT SECRETARIES OF VETERANS AFFAIRS.

(a) INCREASE IN MAXIMUM AUTHORIZED NUMBER OF ASSISTANT SECRETARIES OF VETERANS AFFAIRS.—Section 308(a) is amended by striking ''six'' and inserting ''seven''.

(b) ADDITIONAL AUTHORIZED FUNCTIONS.—Section 308(b) is amended by adding at the end the following new paragraph:

''(11) Operations, preparedness, security, and law enforcement functions.''.

(c) CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking the item relating to Assistant Secretaries, Department of Veterans Affairs and inserting the following new item:

''Assistant Secretaries, Department of Veterans Affairs (7)''.

### SEC. 202. ADDITIONAL DEPUTY ASSISTANT SECRETARIES OF VETERANS AFFAIRS.

Section 308(d)(1) is amended by striking ''18'' and inserting ''20''.

## TITLE III—HEALTH CARE MATTERS

### SEC. 301. AUTHORITY TO FURNISH HEALTH CARE DURING MAJOR DISASTERS AND MEDICAL EMERGENCIES.

(a) IN GENERAL.—(1) Subchapter VII of chapter 17 is amended by inserting after section 1784 the following new section:

### ''§ 1785. Care and services during major disasters and medical emergencies

''(a) During and immediately following a disaster or emergency referred to in subsection (b), the Secretary may furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by such disaster or emergency, as the case may be.

''(b) A disaster or emergency referred to in this subsection is any disaster or emergency as follows:

''(1) A major disaster or emergency declared by the President under the Robert B. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(2) A disaster or emergency in which the National Disaster Medical System is activated.

''(c) The Secretary may furnish care and services under this section to veterans without regard to their enrollment in the system of annual patient enrollment under section 1705 of this title.

''(d) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of—

''(1) veterans with service-connected disabilities; and

''(2) members of the Armed Forces on active duty who are furnished health-care services under section 8111A of this title.

''(e)(1) The cost of any care or services furnished under this section to an officer or employee of a department or agency of the Federal Government other than the Department shall be reimbursed at such rates as may be agreed upon by the Secretary and the head of such department or agency based on the cost of the care or service furnished.

''(2) Amounts received by the Department under this subsection shall be credited to the funds allotted to the Department facility that furnished the care or services concerned.

''(f) Within 60 days of the commencement of a disaster or emergency referred to in subsection (b) in which the Secretary furnishes care and services under this section (or as soon thereafter as is practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the Secretary's allocation of facilities and personnel in order to furnish such care and services.

''(g) The Secretary shall prescribe regulations governing the exercise of the authority of the Secretary under this section.''.

(2) The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 1784 the following new item:

''1785. Care and services during major disasters and medical emergencies.''.

(b) EXCEPTION FROM REQUIREMENT FOR CHARGES FOR EMERGENCY CARE.—Section 1784 is amended by inserting '', except as provided in section 1785 of this title with respect to a disaster or emergency covered by that section,'' after ''but''.

(c) MEMBERS OF THE ARMED FORCES.—Subsection (a) of section 8111A is amended to read as follows:

''(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty.

''(2)(A) During and immediately following a disaster or emergency referred to in subparagraph (B), the Secretary may furnish hospital care and medical services to members of the Armed Forces on active duty responding to or involved in such disaster or emergency, as the case may be.

*''(B) A disaster or emergency referred to in this subparagraph is any disaster or emergency follows:*

*''(i) A major disaster or emergency declared by the President under the Robert B. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).*

*''(ii) A disaster or emergency in which the National Disaster Medical System is activated.*

*''(3) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.*

*''(4) In this section, the terms 'hospital care', 'nursing home care', and 'medical services' have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively.''.*

***TITLE IV—RESEARCH CORPORATIONS***

***SEC. 401. MODIFICATION OF CERTAIN AUTHORITIES ON RESEARCH CORPORATIONS.***

*(a) RESTATEMENT AND ENHANCEMENT OF AUTHORITY ON AVAILABILITY OF FUNDS.—Section 7362 is amended—*

*(1) by redesignating subsection (b) as subsection (c);*

*(2) by striking the second sentence of subsection (a); and*

*(3) by inserting after subsection (a) the following new subsection (b):*

*''(b)(1) Any funds, other than funds appropriated for the Department, that are received by the Secretary for the conduct of research or education and training may be transferred to and administered by a corporation established under this subchapter for the purposes set forth in subsection (a).*

*''(2) Funds appropriated for the Department are available for the conduct of research or education and training by a corporation, but only pursuant to the terms of a contract or other agreement between the Department and such corporation that is entered into in accordance with applicable law and regulations.*

*''(3) A contract or agreement executed pursuant to paragraph (2) or section 8153 of this title may facilitate only research or education and training described in subsection (a). Such contract or agreement may not be executed for the provision of a health-care resource unless such health-care resource is related to such research or education and training.''.*

*(b) TREATMENT OF CORPORATIONS AS AFFILIATED INSTITUTIONS FOR SHARING OF HEALTH-CARE RESOURCES.—Section 8153(a)(3) is amended—*

*(1) by redesignating subparagraphs (C), (D), and (E) as subsections (D), (E), and (F), respectively;*

*(2) by inserting after subparagraph (B) the following new subparagraph (C):*

*''(C) If the resource required is research or education and training (as that term is defined in section 7362(c) of this title) and is to be acquired from a corporation established under subchapter IV of chapter 73 of this title, the Secretary may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.'';*

*(3) in subparagraph (D), as so redesignated, by striking ''(A) or (B)'' and inserting ''(A), (B), or (C)''; and*

*(4) in subparagraph (E), as so redesignated, by striking ''(A)'' and inserting ''(A) or (B)''.*

***SEC. 402. COVERAGE OF RESEARCH CORPORATION PERSONNEL UNDER FEDERAL TORT CLAIMS ACT AND OTHER TORT CLAIMS LAWS.***

*(a) IN GENERAL.—Subchapter IV of chapter 73 is amended by inserting after section 7364 the following new section:*

***''§ 7364A. Coverage of employees under certain Federal tort claims laws***

*''(a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:*

*''(1) Section 1346(b) of title 28.*

*''(2) Chapter 171 of title 28.*

*''(3) Section 7316 of this title.*

*''(b) An employee described in this subsection is an employee who—*

*''(1) has an appointment with the Department, whether with or without compensation;*

*''(2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for research or education and training; and*

*''(3) performs such duties under the supervision of Department personnel.''.*

*(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7364 the following new item:*

*''7364A. Coverage of employees under certain Federal tort claims laws.''.*

***SEC. 403. PERMANENT AUTHORITY FOR RESEARCH CORPORATIONS.***

*(a) REPEAL OF SUNSET.—Section 7368 is repealed.*

*(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by striking the item relating to section 7368.*

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**SA 4470.** Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 3253. To amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes; as follows:

Amend the title to read: ''A bill to amend title 38, United States Code, to enhance the emergency preparedness of the Department of Veterans Affairs, and for other purposes.''.

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## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, August 1, 2002. The purpose of this business meeting will be to consider the nomination of Mr. Tom Dorr to be the Under Secretary of Agriculture for Rural Development at the U.S. Department of Agriculture and to consider disaster assistance legislation at 9:30 am.

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

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 9:00 a.m., in both open and closed sessions to continue to receive testimony on the national security implications of the strategic offensive reductionstreaty.

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

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 1:30 p.m., in closed session to consider a pending reprogramming.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, August 1, 2002, immediately following a vote on the Senate Floor, at a time to be announced, to consider favorably reporting the following nominations: Ms. Charlotte A. Lane, to be a Member of the United States International Trade Commission, and Pamela F. Olson, to be Assistant Secretary of the Treasury, U.S. Department of Treasury.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, August 1, 2002, at 10:00 a.m., to hear testimony on the Nomination of Pamela F. Olson to be Assistant Secretary of the Treasury.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 2002 at 9:30 a.m. to hold a business meeting.

Agenda

The Committee will consider and vote on the following agenda items:

TREATIES

1. Treaty Doc. 106–10; Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the ''Montreal Protocol''), adopted at Montreal on September 15–17, 1997, by the Ninth Meeting of the Parties to the Montreal Protocol.

2. Treaty Doc. 106–32, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the ''Montreal Protocol''), adopted at Beijing on December 3, 1999, by the Eleventh Meeting of the Parties to the Montreal Protocol (the ''Beijing Amendment'').

*Legislation*

S. 2712, A bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries, with amendments.

2. S. Res. 309, A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States, with an amendment.

3. S. Con. Res. 122, A concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes, with amendments.

4. H.R. 2121; An act to make available funds under the Foreign Assistance Act of 1961 to expand democracy, good governance, and anti-corruption programs in the Russian Federation in order to promote and strengthen democratic government and civil society in that country and to support independent media, with amendments.

5. H.R. 4558, An act to extend the Irish Peace Process Cultural and Training Program.

*Nominations*

1. Ms. Nancy J. Powell, of Iowa, to be Ambassador to the Islamic Republic of Pakistan.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 2002 at 10 a.m. to hold a hearing on Iraq.

Agenda

*Witnesses:*

Panel IV: The Day After: Dr. Phebe Marr, Former Senior Fellow, Institute for National Strategic Studies, National Defense University, Washington, DC; Mrs. Rahim Francke, Executive Director, Iraq Foundation, Washington, DC.

Additional witnesses to be announced.

Panel V: Summing Up: National Security Perspectives: Mr. Samuel R. Berger, Chairman, Stonebridge International LLC, Washington, DC.

Additional witnesses to be announced.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSION

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be authorized to meet at 2:50 p.m. today, August 1, 2002 to consider the following attached agenda.

S. 2394. A bill to amend the Federal Food, Drug and Cosmetic Act to require labeling containing information applicable to pediatric patients

S. 2445. The Book Stamp Act

*Presidential Nominations*

Edward Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board and Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting to mark up S. 1344, a bill to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers; S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program; and S. 2711, a bill to reauthorize and improve programs relating to Native Americans, to be followed immediately by an oversight hearing on the Interior Secretary's report on the Hoopa Yurok Settlement Act.

The committee will meet again on Thursday, August 1, 2002 at 2 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on problems facing native youth.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Interior Secretary's report on the Hoopa Yurok Settlement Act.

I also ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, August 1, 2002, at 2 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Problems Facing Native Youth.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Judicial Nominations'' on Thursday, August 1, 2002 in Dirksen room 226 at 2 p.m.

PANEL I

The Honorable Arlen Specter, U.S. Senator (R–PA); The Honorable Phil Gramm, U.S. Senator (R–TX); The Honorable Kay Bailey Hutchison, U.S. Senator (R–TX); The Honorable Rick Santorum, U.S. Senator (R–PA); The Honorable Charles Schumer, U.S. Senator (D–NY); and The Honorable Hilary Rodham Clinton, U.S. Senator (D–NY).

PANEL II

Reena Raggi to be a U.S. Circuit Court Judge for the 2nd Circuit.

PANEL III

Lawrence J. Block to be Judge for the U.S. Court of Federal Claims; James Knoll Gardner to be U.S. District Court Judge for the Eastern District of PA; and Ronald H. Clark to be U.S. District Court Judge for the Eastern District of Texas.

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a roundtable entitled ''Promoting Small Business Regulatory Compliance and Entrepreneurial Education—The Role of the SBDC Network'' on Thursday, August 1, 2002, beginning at 2:00 p.m. in room 428 A of the Russell Senate Office Building.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Crime and Drugs be authorized to meet to conduct a hearing on ''Criminal and Civil Enforcement of Environmental Laws: Do We Have All The Tools We Need?'' on Thursday, August 1, 2002, at 2:15 p.m. in SD–226.

WITNESS LIST

PANEL I

The Hon. Thomas L. Sansonetti, Assistant Attorney General for the Environment and Natural Resources Division, Washington, DC.

The Hon. Timothy M. Burgess, United States Attorney for the District of Alaska, Anchorage, AK.

PANEL II

Eric V. Schaeffer, Former Director of the Office of Regulatory Enforcement, U.S. Environmental Protection Agency, Director, Environmental Integrity Project, Rockefeller Family Fund, Washington, DC.

Judson W. Starr, Former Chief, Environmental Crimes Section, U.S. Department of Justice, Partner, Venable LLP, Washington, DC.

Ronald A. Sarachan, Former Chief, Environmental Crimes Section, U.S. Department of Justice, Partner, Ballard Spahr Andrews & Ingersoll, LLP, Philadelphia, PA.

Michael J. Penders, Former Director of Legal Counsel, Office of Criminal Enforcement, Forensics and Training, U.S. Environmental Protection Agency, President and CEO, Environmental Protection International, Washington, DC.

Nicholas A. DiPasquale, Secretary Delaware Department of Natural Resources and Environmental Control, Dover, DC.

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

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. REID. Mr. President, I ask unanimous consent that the subcommittee on international trade and finance of the committee on banking, housing, and urban affairs be authorized to meet during the session of the senate on Thursday, August 1, 2002, at 2:30 p.m. to conduct an oversight hearing on ''the role of charities and N.G.O.s in the financing of terrorist activities.''

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

## PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Madam President, I ask unanimous consent that Heather Marshall Byers and Norman A. MacLean be allowed on the Senate floor for today, the first day of August.

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

Mr. REED. I ask unanimous consent that Joyce Iutcovich, a fellow in my office, be granted floor privileges for the remainder of today.

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

Mr. CORZINE. Madam President, I ask unanimous consent that Angie Drumm, a fellow in my office, be granted floor privileges for the remainder of today's session.

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

## GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2002

(On Wednesday, July 31, 2002, the Senate passed S. 812, as follows:)

S. 812

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

### TITLE I—GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS

**SEC. 101. SHORT TITLE.**

This title may be cited as the ''Greater Access to Affordable Pharmaceuticals Act of 2002''.

**SEC. 102. FINDINGS; PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) prescription drug costs are increasing at an alarming rate and are a major worry of American families and senior citizens;

(2) enhancing competition between generic drug manufacturers and brand-name manufacturers can significantly reduce prescription drug costs for American families;

(3) the pharmaceutical market has become increasingly competitive during the last decade because of the increasing availability and accessibility of generic pharmaceuticals, but competition must be further stimulated and strengthened;

(4) the Federal Trade Commission has discovered that there are increasing opportunities for drug companies owning patents on brand-name drugs and generic drug companies to enter into private financial deals in a manner that could restrain trade and greatly reduce competition and increase prescription drug costs for consumers;

(5) generic pharmaceuticals are approved by the Food and Drug Administration on the basis of scientific testing and other information establishing that pharmaceuticals are therapeutically equivalent to brand-name pharmaceuticals, ensuring consumers a safe, efficacious, and cost-effective alternative to brand-name innovator pharmaceuticals;

(6) the Congressional Budget Office estimates that—

(A) the use of generic pharmaceuticals for brand-name pharmaceuticals could save purchasers of pharmaceuticals between $8,000,000,000 and $10,000,000,000 each year; and

(B) generic pharmaceuticals cost between 25 percent and 60 percent less than brand-name pharmaceuticals, resulting in an estimated average savings of $15 to $30 on each prescription;

(7) generic pharmaceuticals are widely accepted by consumers and the medical profession, as the market share held by generic pharmaceuticals compared to brand-name pharmaceuticals has more than doubled during the last decade, from approximately 19 percent to 43 percent, according to the Congressional Budget Office;

(8) expanding access to generic pharmaceuticals can help consumers, especially senior citizens and the uninsured, have access to more affordable prescription drugs;

(9) Congress should ensure that measures are taken to effectuate the amendments made by the Drug Price Competition and Patent Term Restoration Act of 1984 (98 Stat. 1585) (referred to in this section as the ''Hatch-Waxman Act'') to make generic drugs more accessible, and thus reduce health care costs; and

(10) it would be in the public interest if patents on drugs for which applications are approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) were extended only through the patent extension procedure provided under the Hatch-Waxman Act rather than through the attachment of riders to bills in Congress.

(b) PURPOSES.—The purposes of this title are—

(1) to increase competition, thereby helping all Americans, especially seniors and the uninsured, to have access to more affordable medication; and

(2) to ensure fair marketplace practices and deter pharmaceutical companies (including generic companies) from engaging in anticompetitive action or actions that tend to unfairly restrain trade.

**SEC. 103. FILING OF PATENT INFORMATION WITH THE FOOD AND DRUG ADMINISTRATION.**

(a) FILING AFTER APPROVAL OF AN APPLICATION.—

(1) IN GENERAL.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (as amended by section 9(a)(2)(B)(ii)) is amended in subsection (c) by striking paragraph (2) and inserting the following:

''(2) PATENT INFORMATION.—

''(A) IN GENERAL.—Not later than the date that is 30 days after the date of an order approving an application under subsection (b) (unless the Secretary extends the date because of extraordinary or unusual circumstances), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) with respect to any patent—

''(i)(I) that claims the drug for which the application was approved; or

''(II) that claims an approved method of using the drug; and

''(ii) with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.

''(B) SUBSEQUENTLY ISSUED PATENTS.—In a case in which a patent described in subparagraph (A) is issued after the date of an order approving an application under subsection (b), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) not later than the date that is 30 days after the date on which the patent is issued (unless the Secretary extends the date because of extraordinary or unusual circumstances).

''(C) PATENT INFORMATION.—The patent information required to be filed under subparagraph (A) or (B) includes—

''(i) the patent number;

''(ii) the expiration date of the patent;

''(iii) with respect to each claim of the patent—

''(I) whether the patent claims the drug or claims a method of using the drug; and

''(II) whether the claim covers—

''(aa) a drug substance;

''(bb) a drug formulation;

''(cc) a drug composition; or

''(dd) a method of use;

''(iv) if the patent claims a method of use, the approved use covered by the claim;

''(v) the identity of the owner of the patent (including the identity of any agent of the patent owner); and

''(vi) a declaration that the applicant, as of the date of the filing, has provided complete and accurate patent information for all patents described in subparagraph (A).

''(D) PUBLICATION.—On filing of patent information required under subparagraph (A) or (B), the Secretary shall—

''(i) immediately publish the information described in clauses (i) through (iv) of subparagraph (C); and

''(ii) make the information described in clauses (v) and (vi) of subparagraph (C) available to the public on request.

''(E) CIVIL ACTION FOR CORRECTION OR DELETION OF PATENT INFORMATION.—

''(i) IN GENERAL.—A person that has filed an application under subsection (b)(2) or (j) for a drug may bring a civil action against the holder of the approved application for the drug seeking an order requiring that the holder of the application amend the application—

''(I) to correct patent information filed under subparagraph (A); or

''(II) to delete the patent information in its entirety for the reason that—

''(aa) the patent does not claim the drug for which the application was approved; or

''(bb) the patent does not claim an approved method of using the drug.

''(ii) LIMITATIONS.—Clause (i) does not authorize—

''(I) a civil action to correct patent information filed under subparagraph (B); or

''(II) an award of damages in a civil action under clause (i).

''(F) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application fails to file information on or before the date required under subparagraph (A) or (B) shall be barred from bringing a civil action for infringement of the patent against a person that—

''(i) has filed an application under subsection (b)(2) or (j); or

''(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j).''.

(2) TRANSITION PROVISION.—

(A) FILING OF PATENT INFORMATION.—Each holder of an application for approval of a new drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) that has been approved before the date of enactment of this Act shall amend the application to include the patent information required under the amendment made by paragraph (1) not later than the date that is 30 days after the date of enactment of this Act (unless the Secretary of Health and Human Services extends the date because of extraordinary or unusual circumstances).

(B) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application under subsection (b) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) fails to file information on or before the date required under subparagraph (A) shall be barred from bringing a civil action for infringement of the patent against a person that—

(i) has filed an application under subsection (b)(2) or (j) of that section; or

(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j) of that section.

(b) FILING WITH AN APPLICATION.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) with respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed—

''(i) a certification under subparagraph (A)(iv) on a claim-by-claim basis; and

''(ii) a statement under subparagraph (B) regarding the method of use claim.''; and

(2) in subsection (j)(2)(A), by inserting after clause (viii) the following:

''With respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed, the application shall contain a certification under clause (vii)(IV) on a claim-by-claim basis and a statement under clause (viii) regarding the method of use claim.''.

**SEC. 104. LIMITATION OF 30-MONTH STAY TO CERTAIN PATENTS.**

(a) ABBREVIATED NEW DRUG APPLICATIONS.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) by striking ''(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii),'' and inserting the following:

''(iii) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under subsection (c)(2)(A),''; and

(ii) by adding at the end the following: ''The 30-month period provided under the second sentence of this clause shall not apply to a certification under paragraph (2)(A)(vii)(IV) made with respect to a patent for which patent information was filed with the Secretary under subsection (c)(2)(B).'';

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

''(iv) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

''(I) IN GENERAL.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent not described in clause (iii) for which patent information was published by the Secretary under subsection (c)(2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under paragraph (2)(B) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

''(aa) on the date of a court action declining to grant a preliminary injunction; or

''(bb) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

''(AA) on issuance by a court of a determination that the patent is invalid or is not infringed;

''(BB) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

''(CC) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

''(II) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under subclause (I).

''(III) EXPEDITED NOTIFICATION.—If the notice under paragraph (2)(B) contains an address for the receipt of expedited notification of a civil action under subclause (I), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day.''; and

(2) by inserting after subparagraph (B) the following:

''(C) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under this subsection, the applicant provides an owner of a patent notice under paragraph (2)(B) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under this subsection.''.

(b) OTHER APPLICATIONS.—Section 505(c)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) (as amended by section 9(a)(3)(A)(iii)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (C)—

(i) by striking ''(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A),'' and inserting the following:

''(C) CLAUSE (iv) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under paragraph (2)(A),''; and

(ii) by adding at the end the following: ''The 30-month period provided under the second sentence of this subparagraph shall not apply to a certification under subsection (b)(2)(A)(iv) made with respect to a patent for which patent information was filed with the Secretary under paragraph (2)(B).''; and

(B) by inserting after subparagraph (C) the following:

''(D) CLAUSE (iv) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

''(i) IN GENERAL.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent not described in subparagraph (C) for which patent information was published by the Secretary under paragraph (2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under subsection (b)(3) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

''(I) on the date of a court action declining to grant a preliminary injunction; or

''(II) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

''(aa) on issuance by a court of a determination that the patent is invalid or is not infringed;

''(bb) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

''(cc) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

''(ii) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under clause (i).

''(iii) EXPEDITED NOTIFICATION.—If the notice under subsection (b)(3) contains an address for the receipt of expedited notification of a civil action under clause (i), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day.''; and

(2) by inserting after paragraph (3) the following:

''(4) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under subsection (b)(2), the applicant provides an owner of a patent notice under subsection (b)(3) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under subsection (b)(2).''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall be effective with respect to any certification under subsection (b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) made after the date of enactment of this Act in an application filed under subsection (b)(2) or (j) of that section.

(2) TRANSITION PROVISION.—In the case of applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) filed before the date of enactment of this Act—

(A) a patent (other than a patent that claims a process for manufacturing a listed drug) for which information was submitted to the Secretary of Health and Human Services under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (as in effect on the day before the date of enactment of this Act) shall be subject to subsections (c)(3)(C) and (j)(5)(B)(iii) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section); and

(B) any other patent (including a patent for which information was submitted to the Secretary under section 505(c)(2) of that Act (as in effect on the day before the date of enactment of this Act)) shall be subject to subsections (c)(3)(D) and (j)(5)(B)(iv) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section).

**SEC. 105. EXCLUSIVITY FOR ACCELERATED GENERIC DRUG APPLICANTS.**

(a) IN GENERAL.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) (as amended by section 4(a)) is amended—

(1) in subparagraph (B)(v), by striking subclause (II) and inserting the following:

''(II) the earlier of—

''(aa) the date of a final decision of a court (from which no appeal has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) holding that the patent that is the subject of the certification is invalid or not infringed; or

''(bb) the date of a settlement order or consent decree signed by a Federal judge that enters a final judgment and includes a finding that the patent that is the subject of the certification is invalid or not infringed;''; and

(2) by inserting after subparagraph (C) the following:

''(D) FORFEITURE OF 180-DAY PERIOD.—

''(i) DEFINITIONS.—In this subparagraph:

''(I) APPLICATION.—The term 'application' means an application for approval of a drug under this subsection containing a certification under paragraph (2)(A)(vii)(IV) with respect to a patent.

''(II) FIRST APPLICATION.—The term 'first application' means the first application to be filed for approval of the drug.

''(III) FORFEITURE EVENT.—The term 'forfeiture event', with respect to an application under this subsection, means the occurrence of any of the following:

''(aa) FAILURE TO MARKET.—The applicant fails to market the drug by the later of—

''(AA) the date that is 60 days after the date on which the approval of the application for the drug is made effective under clause (iii) or (iv) of subparagraph (B) (unless the Secretary extends the date because of extraordinary or unusual circumstances); or

''(BB) if 1 or more civil actions have been brought against the applicant for infringement of a patent subject to a certification under paragraph (2)(A)(vii)(IV) or 1 or more civil actions have been brought by the applicant for a declaratory judgment that such a patent is invalid or not infringed, the date that is 60 days after the date of a final decision (from which no appeal has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) in the last of those civil actions to be decided (unless the Secretary extends the date because of extraordinary or unusual circumstances).

''(bb) WITHDRAWAL OF APPLICATION.—The applicant withdraws the application.

''(cc) AMENDMENT OF CERTIFICATION.—The applicant, voluntarily or as a result of a settlement or defeat in patent litigation, amends the certification from a certification under paragraph (2)(A)(vii)(IV) to a certification under paragraph (2)(A)(vii)(III).

''(dd) FAILURE TO OBTAIN APPROVAL.—The applicant fails to obtain tentative approval of an application within 30 months after the date on which the application is filed, unless the failure is caused by—

''(AA) a change in the requirements for approval of the application imposed after the date on which the application is filed; or

''(BB) other extraordinary circumstances warranting an exception, as determined by the Secretary.

''(ee) FAILURE TO CHALLENGE PATENT.—In a case in which, after the date on which the applicant submitted the application, new patent information is submitted under subsection (c)(2) for the listed drug for a patent for which certification is required under paragraph (2)(A), the applicant fails to submit, not later than the date that is 60 days after the date on which the Secretary publishes the new patent information under paragraph (7)(A)(iii) (unless the Secretary extends the date because of extraordinary or unusual circumstances)—

''(AA) a certification described in paragraph (2)(A)(vii)(IV) with respect to the patent to which the new patent information relates; or

''(BB) a statement that any method of use claim of that patent does not claim a use for which the applicant is seeking approval under this subsection in accordance with paragraph (2)(A)(viii).

''(ff) UNLAWFUL CONDUCT.—The Federal Trade Commission determines that the applicant engaged in unlawful conduct with respect to the application in violation of section 1 of the Sherman Act (15 U.S.C. 1).

''(IV) SUBSEQUENT APPLICATION.—The term 'subsequent application' means an application for approval of a drug that is filed subsequent to the filing of a first application for approval of that drug.

''(ii) FORFEITURE OF 180-DAY PERIOD.—

''(I) IN GENERAL.—Except as provided in subclause (II), if a forfeiture event occurs with respect to a first application—

''(aa) the 180-day period under subparagraph (B)(v) shall be forfeited by the first applicant; and

''(bb) any subsequent application shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), and clause (v) of subparagraph (B) shall not apply to the subsequent application.

''(II) FORFEITURE TO FIRST SUBSEQUENT APPLICANT.—If the subsequent application that is the first to be made effective under subclause (I) was the first among a number of subsequent applications to be filed—

''(aa) that first subsequent application shall be treated as the first application under this subparagraph (including subclause (I)) and as the previous application under subparagraph (B)(v); and

''(bb) any other subsequent applications shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), but clause (v) of subparagraph (B) shall apply to any such subsequent application.

''(iii) AVAILABILITY.—The 180-day period under subparagraph (B)(v) shall be available to a first applicant submitting an application for a drug with respect to any patent without regard to whether an application has been submitted for the drug under this subsection containing such a certification with respect to a different patent.

''(iv) APPLICABILITY.—The 180-day period described in subparagraph (B)(v) shall apply to an application only if a civil action is brought against the applicant for infringement of a patent that is the subject of the certification.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective only with respect to an application filed under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) after the date of enactment of this Act for a listed drug for which no certification under section 505(j)(2)(A)(vii)(IV) of that Act was made before the date of enactment of this Act, except that if a forfeiture event described in section 505(j)(5)(D)(i)(III)(ff) of that Act occurs in the case of an applicant, the applicant shall forfeit the 180-day period under section 505(j)(5)(B)(v) of that Act without regard to when the applicant made a certification under section 505(j)(2)(A)(vii)(IV) of that Act.

**SEC. 106. FAIR TREATMENT FOR INNOVATORS.**

(a) BASIS FOR APPLICATION.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(3)(B), by striking the second sentence and inserting ''The notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation.''; and

(2) in subsection (j)(2)(B)(ii), by striking the second sentence and inserting ''The notice shall include a detailed statement of the factual and legal basis of the opinion of the applicant that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation.''.

(b) INJUNCTIVE RELIEF.—Section 505(j)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)) (as amended by section 4(a)(1)) is amended—

(1) in clause (iii), by adding at the end the following: ''A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause.''; and

(2) in clause (iv), by adding at the end the following:

''(IV) INJUNCTIVE RELIEF.—A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause.''.

**SEC. 107. BIOEQUIVALENCE.**

(a) IN GENERAL.—The amendments to part 320 of title 21, Code of Federal Regulations, promulgated by the Commissioner of Food and Drugs on July 17, 1991 (57 Fed. Reg. 17997 (April 28, 1992)), shall continue in effect as an exercise of authorities under sections 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 355, 371).

(b) EFFECT.—Subsection (a) does not affect the authority of the Commissioner of Food and Drugs to amend part 320 of title 21, Code of Federal Regulations.

(c) EFFECT OF SECTION.—This section shall not be construed to alter the authority of the Secretary of Health and Human Services to regulate biological products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Any such authority shall be exercised under that Act as in effect on the day before the date of enactment of this Act.

**SEC. 108. REPORT.**

(a) IN GENERAL.—Not later than the date that is 5 years after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report describing the extent to which implementation of the amendments made by this title—

(1) has enabled products to come to market in a fair and expeditious manner, consistent with the rights of patent owners under intellectual property law; and

(2) has promoted lower prices of drugs and greater access to drugs through price competition.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000.

**SEC. 109. CONFORMING AND TECHNICAL AMENDMENTS.**

(a) SECTION 505.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (a), by striking ''(a) No person'' and inserting ''(a) IN GENERAL.—No person'';

(2) in subsection (b)—

(A) by striking ''(b)(1) Any person'' and inserting the following:

''(b) APPLICATIONS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—Any person'';

(B) in paragraph (1)—

(i) in the second sentence—

(I) by redesignating subparagraphs (A) through (F) as clauses (i) through (vi), respectively, and adjusting the margins appropriately;

(II) by striking ''Such persons'' and inserting the following:

''(B) INFORMATION TO BE SUBMITTED WITH APPLICATION.—A person that submits an application under subparagraph (A)''; and

(III) by striking ''application'' and inserting ''application—'';

(ii) by striking the third through fifth sentences; and

(iii) in the sixth sentence—

(I) by striking ''The Secretary'' and inserting the following:

''(C) GUIDANCE.—The Secretary''; and

(II) by striking ''clause (A)'' and inserting ''subparagraph (B)(i)''; and

(C) in paragraph (2)—

(i) by striking ''clause (A) of such paragraph'' and inserting ''paragraph (1)(B)(i)'';

(ii) in subparagraphs (A) and (B), by striking ''paragraph (1) or''; and

(iii) in subparagraph (B)—

(I) by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)(B)(i)''; and

(II) by striking ''patent'' each place it appears and inserting ''claim''; and

(3) in subsection (c)—

(A) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking ''(A) If the applicant'' and inserting the following:

''(A) CLAUSE (i) OR (ii) CERTIFICATION.—If the applicant''; and

(II) by striking ''may'' and inserting ''shall'';

(ii) in subparagraph (B)—

(I) by striking ''(B) If the applicant'' and inserting the following:

''(B) CLAUSE (iii) CERTIFICATION.—If the applicant''; and

(II) by striking ''may'' and inserting ''shall'';

(iii) by redesignating subparagraph (D) as subparagraph (E); and

(iv) in subparagraph (E) (as redesignated by clause (iii)), by striking ''clause (A) of subsection (b)(1)'' each place it appears and inserting ''subsection (b)(1)(B)(i)''; and

(B) by redesignating paragraph (4) as paragraph (5); and

(4) in subsection (j)—

(A) in paragraph (2)(A)—

(i) in clause (vi), by striking ''clauses (B) through ((F)'' and inserting ''subclauses (ii) through (vi) of subsection (b)(1)'';

(ii) in clause (vii), by striking ''(b) or''; and

(iii) in clause (viii)—

(I) by striking ''(b) or''; and

(II) by striking ''patent'' each place it appears and inserting ''claim''; and

(B) in paragraph (5)—

(i) in subparagraph (B)—

(I) in clause (i)—

(aa) by striking ''(i) If the applicant'' and inserting the following:

''(i) SUBCLAUSE (I) OR (II) CERTIFICATION.—If the applicant''; and

(bb) by striking ''may'' and inserting ''shall'';

(II) in clause (ii)—

(aa) by striking ''(ii) If the applicant'' and inserting the following:

''(i) SUBCLAUSE (III) CERTIFICATION.—If the applicant''; and

(bb) by striking ''may'' and inserting ''shall'';

(III) in clause (iii), by striking ''(2)(B)(i)'' each place it appears and inserting ''(2)(B)''; and

(IV) in clause (v) (as redesignated by section 4(a)(1)(B)), by striking ''continuing'' and inserting ''containing''; and

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively.

(b) SECTION 505A.—Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended—

(1) in subsections (b)(1)(A)(i) and (c)(1)(A)(i)—

(A) by striking ''(c)(3)(D)(ii)'' each place it appears and inserting ''(c)(3)(E)(ii)''; and

(B) by striking ''(j)(5)(D)(ii)'' each place it appears and inserting ''(j)(5)(F)(ii)'';

(2) in subsections (b)(1)(A)(ii) and (c)(1)(A)(ii)—

(A) by striking ''(c)(3)(D)'' each place it appears and inserting ''(c)(3)(E)''; and

(B) by striking ''(j)(5)(D)'' each place it appears and inserting ''(j)(5)(F)'';

(3) in subsections (e) and (l)—

(A) by striking ''505(c)(3)(D)'' each place it appears and inserting ''505(c)(3)(E)''; and

(B) by striking ''505(j)(5)(D)'' each place it appears and inserting ''505(j)(5)(F)''; and

(4) in subsection (k), by striking ''505(j)(5)(B)(iv)'' and inserting ''505(j)(5)(B)(v)''.

(c) SECTION 527.—Section 527(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc(a)) is amended in the second sentence by striking ''505(c)(2)'' and inserting ''505(c)(1)(B)''.

## TITLE II—IMPORTATION OF PRESCRIPTION DRUGS

### SEC. 201. IMPORTATION OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

### ''SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacist or wholesaler.

''(2) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug; or

''(E) a drug that is inhaled during surgery.

''(4) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(5) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).

''(b) REGULATIONS.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

''(c) LIMITATION.—The regulations under subsection (b) shall—

''(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

''(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

''(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

''(d) INFORMATION AND RECORDS.—

''(1) IN GENERAL.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

''(A) The name and quantity of the active ingredient of the prescription drug.

''(B) A description of the dosage form of the prescription drug.

''(C) The date on which the prescription drug is shipped.

''(D) The quantity of the prescription drug that is shipped.

''(E) The point of origin and destination of the prescription drug.

''(F) The price paid by the importer for the prescription drug.

''(G) Documentation from the foreign seller specifying—

''(i) the original source of the prescription drug; and

''(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

''(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

''(I) The name, address, telephone number, and professional license number (if any) of the importer.

''(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

''(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

''(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

''(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

''(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

''(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

''(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

''(i) is approved for marketing in the United States; and

''(ii) meets all labeling requirements under this Act.

''(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

''(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

''(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

''(2) MAINTENANCE BY THE SECRETARY.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

''(e) TESTING.—The regulations under subsection (b) shall require—

''(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

''(2) if the tests are conducted by the importer—

''(A) that information needed to—

''(i) authenticate the prescription drug being tested; and

''(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

''(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

''(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

''(f) REGISTRATION OF FOREIGN SELLERS.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

''(g) SUSPENSION OF IMPORTATION.—The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section or poses an additional risk to the public health, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

''(h) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

''(i) PROHIBITION OF DISCRIMINATION.—

''(1) IN GENERAL.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

''(2) DISCRIMINATION.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

''(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

''(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

''(j) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

''(k) WAIVER AUTHORITY FOR IMPORTATION BY INDIVIDUALS.—

''(1) DECLARATIONS.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

''(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

''(B) exercise discretion to permit individuals to make such importations in circumstances in which—

''(i) the importation is clearly for personal use; and

''(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

''(2) WAIVER AUTHORITY.—

''(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

''(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

''(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

''(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

''(B) is accompanied by a copy of a valid prescription;

''(C) is imported from Canada, from a seller registered with the Secretary;

''(D) is a prescription drug approved by the Secretary under chapter V;

''(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

''(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

''(l) STUDIES; REPORTS.—

''(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

''(A) STUDY.—

''(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

''(I) importations of prescription drugs made under the regulations under subsection (b); and

''(II) information and documentation submitted under subsection (d).

''(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

''(I) evaluate the compliance of importers with the regulations under subsection (b);

''(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

''(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

''(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(2) BY THE COMPTROLLER GENERAL.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

''(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(m) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

''(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

''(o) CONDITIONS.—This section shall become effective only if the Secretary of Health and Human Services certifies to the Congress that the implementation of this section will—

''(A) pose no additional risk to the public's health and safety, and

''(B) result in a significant reduction in the cost of covered products to the American consumer.''.

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking ''covered product in violation of section 804'' and inserting ''prescription drug in violation of section 804''; and

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6), by striking ''covered product pursuant to section 804(a)'' and inserting ''prescription drug under section 804(b)''.

**SEC. 202. CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.**

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

''(l) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from—

''(1) directly entering into rebate agreements (on the State's own initiative or under a section 1115 waiver approved by the Secretary before, on, or after the date of enactment of this subsection) that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by residents of a State who are not otherwise eligible for medical assistance under this title; or

''(2) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.''.

**SEC. 203. TEMPORARY STATE FISCAL RELIEF.**

(a) TEMPORARY INCREASE OF MEDICAID FMAP.—

(1) PERMITTING MAINTENANCE OF FISCAL YEAR 2001 FMAP FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for

fiscal year 2002 is less than the FMAP as so determined for fiscal year 2001, the FMAP for the State for fiscal year 2001 shall be substituted for the State's FMAP for the third and fourth calendar quarters of fiscal year 2002, before the application of this subsection.

(2) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for each calendar quarter of fiscal year 2003, before the application of this subsection.

(3) GENERAL 1.35 PERCENTAGE POINTS INCREASE FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002 AND FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraphs (5) and (6), for each State for the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the FMAP (taking into account the application of paragraphs (1) and (2)) shall be increased by 1.35 percentage points.

(4) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Notwithstanding any other provision of law, but subject to paragraph (6), with respect to the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 2.7 percent of such amounts.

(5) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this subsection shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(A) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4); or

(B) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.).

(6) STATE ELIGIBILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), a State is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after January 1, 2002, but prior to the date of enactment of this Act is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) or (B) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(7) DEFINITIONS.—In this subsection:

(A) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(B) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(8) REPEAL.—Effective as of October 1, 2003, this subsection is repealed.

(b) ADDITIONAL TEMPORARY STATE FISCAL RELIEF.—

(1) IN GENERAL.—Title XX of the Social Security Act (42 U.S.C. 1397–1397f) is amended by adding at the end the following:

**''SEC. 2008. ADDITIONAL TEMPORARY GRANTS FOR STATE FISCAL RELIEF.**

''(a) IN GENERAL.—For the purpose of providing State fiscal relief allotments to States under this section, there are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, $3,000,000,000. Such funds shall be available for obligation by the State through June 30, 2004, and for expenditure by the State through September 30, 2004. This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under this section.

''(b) ALLOTMENT.—Funds appropriated under subsection (a) shall be allotted by the Secretary among the States in accordance with the following table:

| ''State | Allotment (in dollars) |
|---|---|
| Alabama | $33,918,100 |
| Alaska | $8,488,200 |
| Amer. Samoa | $88,600 |
| Arizona | $47,601,600 |
| Arkansas | $27,941,800 |
| California | $314,653,900 |
| Colorado | $27,906,200 |
| Connecticut | $41,551,200 |
| Delaware | $8,306,000 |
| District of Columbia | $12,374,400 |
| Florida | $128,271,100 |
| Georgia | $69,106,600 |
| Guam | $135,900 |
| Hawaii | $9,914,700 |
| Idaho | $10,293,600 |
| Illinois | $102,577,900 |
| Indiana | $50,659,800 |
| Iowa | $27,799,700 |
| Kansas | $21,414,300 |
| Kentucky | $44,508,400 |
| Louisiana | $50,974,000 |
| Maine | $17,841,100 |
| Maryland | $44,228,800 |
| Massachusetts | $100,770,700 |
| Michigan | $91,196,800 |
| Minnesota | $57,515,400 |
| Mississippi | $35,978,500 |
| Missouri | $62,189,600 |
| Montana | $8,242,000 |
| Nebraska | $16,671,600 |
| Nevada | $10,979,700 |
| New Hampshire | $10,549,400 |
| New Jersey | $87,577,300 |
| New Mexico | $21,807,600 |
| New York | $461,401,900 |
| North Carolina | $79,538,300 |
| North Dakota | $5,716,900 |
| N. Mariana Islands | $50,000 |
| Ohio | $116,367,800 |
| Oklahoma | $30,941,800 |
| Oregon | $34,327,200 |
| Pennsylvania | $159,089,700 |
| Puerto Rico | $3,991,900 |
| Rhode Island | $16,594,100 |
| South Carolina | $38,238,000 |
| South Dakota | $6,293,700 |
| Tennessee | $81,120,000 |
| Texas | $159,779,800 |
| Utah | $12,551,700 |
| Vermont | $8,003,800 |
| Virgin Islands | $128,800 |
| Virginia | $44,288,300 |
| Washington | $66,662,200 |
| West Virginia | $19,884,400 |
| Wisconsin | $47,218,900 |
| Wyoming | $3,776,400 |
| **Total** | **$3,000,000,000** |

''(c) USE OF FUNDS.—Funds appropriated under this section may be used by a State for services directed at the goals set forth in section 2001, subject to the requirements of this title.

''(d) PAYMENT TO STATES.—Not later than 30 days after amounts are appropriated under subsection (a), in addition to any payment made under section 2002 or 2007, the Secretary shall make a lump sum payment to a State of the total amount of the allotment for the State as specified in subsection (b).

''(e) DEFINITION.—For purposes of this section, the term 'State' means the 50 States, the District of Columbia, and the territories contained in the list under subsection (b).''.

(2) REPEAL.—Effective as of January 1, 2005, section 2008 of the Social Security Act, as added by paragraph (1), is repealed.

(c) EMERGENCY DESIGNATION.—The entire amount necessary to carry out this section is designated by Congress as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(e)).

## APPRECIATION TO THE PRESIDING OFFICER

Mr. REID. Mr. President, I, first of all, would like to express my appreciation to the Presiding Officer. This is a duty that you weren't expecting, and I am sorry things on the floor took so long. It is my understanding that you had other things to do tonight. I really apologize for not having someone in relief.

## PATIENTS' BILL OF RIGHTS—CONFEREES

Mr. REID. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may turn to the consideration of Calendar No. 150, H.R. 2563, and the bill be considered under these limitations: Immediately after the bill is reported S. 1052 be passed by the Senate in lieu thereof; that no other amendments be in order, the bill, as amended, be read three times, and there then be 60 minutes of debate with the time equally divided and controlled between Senator KENNEDY and Senator GREGG or their designees, and that upon the use or yielding back of the time, the Senate vote on passage of the bill; that upon passage the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate without any intervening action or debate, with the ratio of conference being 6 to 5.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object—I shall object at this point—let me make a couple of comments.

I believe this is for the purpose of appointing conferees on the so-called Patients' Bill of Rights. We have just received this notification tonight. We haven't consulted with everyone on our side. We have really no objection to appointing conferees. We just have to work it out.

I will mention that the House passed this bill a year ago tomorrow on August 2. So we have been waiting to have conferees appointed for almost a year—364 days. We will be happy to do that. But since we just got this notification, and the majority wanted to do this, we have to consult with various interests and parties. We haven't had time to do that in the rush of business today.

We will cooperate with the majority to get this done early when we return. But, at this point, I will have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I have only to say that it doesn't matter. We have been busy here for the last 2 days, but they got the stuff yesterday. I understand the Senator's position. We wish we could go forward on this. There could be work done on the break. But we will work it out when we come back.

The PRESIDING OFFICER. Objection is heard.

## UNANIMOUS CONSENT AGREEMENT—H.R. 593

Mr. REID. Mr. President, I ask unanimous consent that on Wednesday, September 4, at 9 a.m. the Senate begin consideration of Calendar No. 903, H.R. 5093, the Interior appropriations bill; that the text of the Senate bill, S. 2708 be considered as a substitute amendment, and at 12 noon on that day the Senate resume consideration of H.R. 5005, the homeland defense bill, with the same schedule thereafter until the appropriations bill is completed.

Mr. NICKLES. Mr. President, reserving the right to object, let me have a chance to read this.

Mr. REID. We would, in the morning, work on the Interior appropriations bill. And then we would turn at lunchtime to work on the homeland defense bill, which has already been ordered. Senator BYRD and Senator STEVENS have cleared this. Senator DASCHLE and Senator LOTT have had some discussion on this.

Mr. NICKLES. Mr. President, I shall not object.

## APPOINTMENT

Mr. REID. Mr. President, I ask unanimous consent that the appointment at the desk appear separately in the RECORD as if made by the Chair.

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

The Chair, pursuant to Executive Order 12131, as amended, signed by the President May 4, 1979, and most recently extended by Executive Order 13225, signed by the President September 28, 2001, appoints the following Members to the President's Export Council:

The Senator from Montana (Mr. BAUCUS);

The Senator from Missouri (Mrs. CARNAHAN);

The Senator from South Dakota (Mr. JOHNSON);

The Senator from Wyoming (Mr. ENZI);

The Senator from Arkansas (Mr. HUTCHINSON).

## CALENDAR ITEMS EN BLOC

Mr. REID. Mr. President, I ask unanimous consent that it be in order to consider the following calendar items, en bloc, and that the Senate proceed to their consideration, en bloc:

Calendar No. 438, H.R. 309; Calendar No. 445, S. 1240; Calendar No. 447, S. 1227; Calendar No. 449, H.R. 601; Calendar No. 450, H.R. 2440; Calendar No. 458, H.R. 2234; Calendar No. 468, S. 691; Calendar No. 469, S. 1010; Calendar No. 470, S. 1649; Calendar No. 471, S. 1843; Calendar No. 472, S. 1852, Calendar No. 473, S. 1894; Calendar No. 474, S. 1907; Calendar No. 475, H.R. 223; Calendar No. 476, H.R. 1456; Calendar No. 477, H.R. 1576; Calendar No. 480, S. 1946; Calendar No. 481, H.R. 640; that the committee amendments, where applicable, be agreed to, en bloc; the motions to reconsider be laid upon the table, en bloc; the bills, as amended, where applicable, be read three times, passed, and the motions to reconsider be laid upon the table, en bloc, without any intervening action or debate; and that any statements relating to these items be printed in the RECORD; that the consideration of these items appear separately in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## GUAM FOREIGN INVESTMENT EQUITY ACT

The bill (H.R. 309) to provide for the determination of withholding tax rates under the Guam income tax, was considered, ordered to a third reading, read the third time, and passed.

## TIMPANOGOS INTERAGENCY LAND EXCHANGE ACT

The Senate proceeded to consider the bill (S. 1240) to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, UT, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part in boldface brackets and insert the part printed in italic.]

S. 1240

*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 ''Timpanogos Interagency Land Exchange Act of 2001''.

**[SEC. 2. FINDINGS.**

[(a) FINDINGS.—Congress finds that—

[(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

[(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

[(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in 1 facility would—

[(A) facilitate interagency coordination;

[(B) serve the public better; and

[(C) improve cost effectiveness.

[(b) PURPOSES.—The purposes of this Act are—

[(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

[(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

[(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

**[SEC. 3. DEFINITIONS.**

[In this Act:

[(1) FACILITY.—The term ''facility'' means the facility constructed under section 7 to house—

[(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

[(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

[(2) FEDERAL LAND.—The term ''Federal land'' means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

[(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW¼, NE¼, E½, NW¼ and E½, SW¼, as depicted on the map entitled ''Long Hollow-Provo Canyon Parcel'', dated March 12, 2001;

[(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW¼, as depicted on the map entitled ''Provo Sign and Radio Shop'', dated March 12, 2001;

[(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE¼, as depicted on the map entitled ''Corner Canyon Parcel'', dated March 12, 2001;

[(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S½, as depicted on the map entitled ''Beaver Administrative Site'', dated March 12, 2001;

[(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE¼, SW¼, NE¼, as depicted on the map entitled ''Springville Parcel'', dated March 12, 2001; and

[(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled ''Pleasant Grove Ranger District Parcel'', dated March 12, 2001.

[(3) NON-FEDERAL LAND.—The term ''non-Federal land'' means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW¼, as depicted on the map entitled ''The Highland Property'', dated March 12, 2001.

[(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

**[SEC. 4. AVAILABILITY OF MAPS.**

[The maps described in paragraphs (2) and (3) of section 3 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the land depicted in the maps is exchanged under this Act.

**[SEC. 5. EXCHANGE OF LAND FOR FACILITY SITE.**

[(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

[(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

[(c) VALUATION OF NON-FEDERAL LAND.—

[(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this Act shall be determined by an appraisal that—

[(A) is approved by the Secretary; and

[(B) conforms with the Federal appraisal standards, as defined in the publication entitled the ''Uniform Appraisal Standards for Federal Land Acquisitions'' published in 1992 by the Interagency Land Acquisition Conference.

[(2) SEPARATE APPRAISALS.—

[(A) IN GENERAL.—Each parcel of Federal land described in section subparagraphs (A) through (F) of section 3(2) shall be appraised separately.

[(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

[(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b))—

[(1) if the value of the non-Federal land is less than the value of the Federal land, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land; or

[(2) if the value of the Federal land is less than the value of the non-Federal land, the Secretary may make a cash equalization payment in excess of 25 percent of the value of the Federal land equal to the difference in value between the Federal land and the value of the non-Federal property.

[(e) ADMINISTRATION OF LAND ACQUIRED BY UNITED STATES.—

[(1) BOUNDARY ADJUSTMENT.—

[(A) IN GENERAL.—On acceptance of title by the Secretary—

[(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

[(ii) the boundaries of the national forest shall be adjusted to include the land.

[(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

[(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

[(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the ''Weeks Act''); and

[(B) other laws (including regulations) that apply to National Forest System land.

**[SEC. 6. DISPOSITION OF FUNDS.**

[(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the ''Sisk Act'').

[(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

**[SEC. 7. CONSTRUCTION AND OPERATION OF FACILITY.**

[(a) CONSTRUCTION.—

[(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this Act, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 5.

[(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

[(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

**[SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Timpanogos Interagency Land Exchange Act''.*

***SEC. 2. FINDINGS AND PURPOSES.***

*(a) FINDINGS.—Congress finds that—*

*(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;*

*(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and*

*(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—*

*(A) facilitate interagency coordination;*

*(B) serve the public better; and*

*(C) improve cost effectiveness.*

*(b) PURPOSES.—The purposes of this Act are—*

*(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;*

*(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and*

*(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.*

***SEC. 3. DEFINITIONS.***

*In this Act:*

*(1) FACILITY.—The term ''facility'' means the facility constructed under section 7 to house—*

*(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and*

*(B) the visitor center and administrative office of the Timpanogos Cave National Monument.*

*(2) FEDERAL LAND.—The term ''Federal land'' means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—*

*(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW¼, NE¼, E½, NW¼ and E½, SW¼, as depicted on the map entitled ''Long Hollow-Provo Canyon Parcel'', dated March 12, 2001;*

*(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW¼, as depicted on the map entitled ''Provo Sign and Radio Shop'', dated March 12, 2001;*

*(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE¼, as depicted on the map entitled ''Corner Canyon Parcel'', dated March 12, 2001;*

*(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S½, as depicted on the map entitled ''Beaver Administrative Site'', dated March 12, 2001;*

*(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE¼, SW¼, NE¼, as depicted on the map entitled ''Springville Parcel'', dated March 12, 2001; and*

*(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled ''Pleasant Grove Ranger District Parcel'', dated March 12, 2001.*

*(3) NON-FEDERAL LAND.—The term ''non-Federal land'' means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW¼, as depicted on the map entitled ''The Highland Property'', dated March 12, 2001.*

*(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.*

***SEC. 4. MAPS AND LEGAL DESCRIPTIONS.***

*(a) AVAILABILITY OF MAPS.—The maps described in paragraphs (2) and (3) of section 3 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this Act.*

*(b) TECHNICAL CORRECTIONS TO LEGAL DESCRIPTIONS.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 3.*

***SEC. 5. EXCHANGE OF LAND FOR FACILITY SITE.***

*(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.*

*(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.*

*(c) VALUATION OF NON-FEDERAL LAND.—*

*(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this Act shall be determined by an appraisal that—*

*(A) is approved by the Secretary; and*

*(B) conforms with the Federal appraisal standards, as defined in the publication entitled ''Uniform Appraisal Standards for Federal Land Acquisitions''.*

*(2) SEPARATE APPRAISALS.—*

*(A) IN GENERAL.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 3(2) shall be appraised separately.*

*(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.*

*(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.*

*(e) ADMINISTRATION OF LAND ACQUISITION BY UNITED STATES.—*

*(1) BOUNDARY ADJUSTMENT.—*

*(A) IN GENERAL.—On acceptance of title by the Secretary—*

*(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and*

*(ii) the boundaries of the national forest shall be adjusted to include the land.*

*(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.*

*(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—*

*(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the ''Weeks Act''); and*

*(B) other laws (including regulations) that apply to National Forest System land.*

***SEC. 6. DISPOSITION OF FUNDS.***

*(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the ''Sisk Act'').*

*(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.*

***SEC. 7. CONSTRUCTION AND OPERATION OF FACILITY.***

*(a) CONSTRUCTION.—*

*(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this Act, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 5.*

*(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.*

*(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.*

***SEC. 8. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as are necessary to carry out this Act.*

The Committee amendment in the nature of a substitute was agreed to.

The bill (S. 1240), as amended, was read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

## NIAGARA FALLS NATIONAL HERITAGE AREA STUDY ACT

The Senate proceeded to consider the bill (S. 1227) to authorize the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Niagara Falls National Heritage Area in the State of New York, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1227

*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 ''Niagara Falls National Heritage Area Study Act''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

**[**(2) STUDY AREA.—

**[**(A) IN GENERAL.—The term ''study area'' means the segment of the Niagara River in Niagara County, New York, that extends from Niagara Falls, New York, to the mouth of the Niagara River at Lake Ontario.

**[**(B) INCLUSION.—The term ''study area'' includes land in any municipality that is adjacent to the Niagara River in Niagara County, New York.**]**

*(2) STUDY AREA.—The term ''study area'' means lands in Niagara County, New York, along and in the vicinity of the Niagara River.*

**SEC. 3. NIAGARA [RIVER]** ***FALLS*** **NATIONAL HERITAGE AREA STUDY.**

(a) IN GENERAL.—The Secretary shall conduct a study of the suitability and feasibility of establishing a heritage area in the State of New York to be known as the ''Niagara Falls National Heritage Area''.

(b) ANALYSES AND DOCUMENTATION.—The study shall include analysis and documentation of whether the study area—

(1) contains an assemblage of natural, historical, scenic, and cultural resources that represent distinctive aspects of the heritage of the United States that—

(A) are worthy of recognition, conservation, interpretation, and continued use; and

(B) would best be managed—

(i) through partnerships among public and private entities; and

(ii) by combining diverse and sometimes noncontiguous resources and active communities;

(2) reflects traditions, customs, beliefs, and folklife that are a valuable part of the story of the United States;

(3) provides outstanding opportunities to conserve natural, historical, scenic, or cultural features;

(4) provides outstanding recreational and educational opportunities;

(5) contains resources important to the identified theme of the study area that retain a degree of integrity capable of supporting interpretation;

(6) includes residents, business interests, nonprofit organizations, and State and local governments that—

(A) are involved in planning a national heritage area;

(B) have developed a conceptual financial plan for a national heritage area that outlines the roles for all participants, including the Federal Government; and

(C) have demonstrated support for the concept of a national heritage area;

(7) has a potential management entity to work in partnership with residents, business interests, nonprofit organizations, and State and local governments to develop a national heritage area consistent with continued State and local economic activity; and

(8) has a conceptual boundary map that is supported by the public.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with—

(1) State and local agencies; and

(2) interested organizations within the study area.

(d) REPORT.—Not later than 3 fiscal years after the date on which funds are made available to carry out this Act, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the findings, conclusions, and recommendations of the study under subsection (a).

**[**(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $300,000.**]**

***SEC. 4. AUTHORIZATION OF APPROPRIATIONS.***

*There is authorized to be appropriated $300,000 to carry out this Act.*

The committee amendments were agreed to.

The bill (S. 1227) as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

## REDESIGNATION OF CERTAIN LANDS WITHIN CRATERS OF THE MOON NATIONAL MONUMENT

The bill (H.R. 601) to redesignate certain lands within the Craters of the Moon National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

## RENAMING WOLF TRAP FARM PARK

The bill (H.R. 2440) to rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts,'' and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

## TUMACACORI NATIONAL HISTORICAL PARK IN THE STATE OF ARIZONA

The bill (H.R. 2234) to revise the boundary of the Tumacacori National Historical Park in the State of Arizona, was considered, ordered to a third reading, read the third time, and passed.

## CONVEYANCE OF CERTAIN LAND IN THE LAKE TAHOE BASIN MANAGEMENT UNIT

The bill (S. 691) to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 691

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

**SECTION 1. WASHOE TRIBE LAND CONVEYANCE.**

(a) FINDINGS.—Congress finds that—

(1) the ancestral homeland of the Washoe Tribe of Nevada and California (referred to in this Act as the ''Tribe'') included an area of approximately 5,000 square miles in and around Lake Tahoe, California and Nevada, and Lake Tahoe was the heart of the territory;

(2) in 1997, Federal, State, and local governments, together with many private landholders, recognized the Washoe people as indigenous people of Lake Tahoe Basin

through a series of meetings convened by those governments at 2 locations in Lake Tahoe;

(3) the meetings were held to address protection of the extraordinary natural, recreational, and ecological resources in the Lake Tahoe region;

(4) the resulting multiagency agreement includes objectives that support the traditional and customary uses of National Forest System land by the Tribe; and

(5) those objectives include the provision of access by members of the Tribe to the shore of Lake Tahoe in order to reestablish traditional and customary cultural practices.

(b) PURPOSES.—The purposes of this Act are—

(1) to implement the joint local, State, tribal, and Federal objective of returning the Tribe to Lake Tahoe; and

(2) to ensure that members of the Tribe have the opportunity to engage in traditional and customary cultural practices on the shore of Lake Tahoe to meet the needs of spiritual renewal, land stewardship, Washoe horticulture and ethnobotany, subsistence gathering, traditional learning, and reunification of tribal and family bonds.

(c) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights, the easement reserved under subsection (d), and the condition stated in subsection (e), the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.

(d) EASEMENT.—

(1) IN GENERAL.—The conveyance under subsection (c) shall be made subject to reservation to the United States of a nonexclusive easement for public and administrative access over Forest Development Road #15N67 to National Forest System land, to be administered by the Secretary of Agriculture.

(2) ACCESS BY INDIVIDUALS WITH DISABILITIES.—The Secretary of Agriculture shall provide a reciprocal easement to the Tribe permitting vehicular access to the parcel over Forest Development Road #15N67 to—

(A) members of the Tribe for administrative and safety purposes; and

(B) members of the Tribe who, due to age, infirmity, or disability, would have difficulty accessing the conveyed parcel on foot.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—In using the parcel conveyed under subsection (c), the Tribe and members of the Tribe—

(A) shall limit the use of the parcel to traditional and customary uses and stewardship conservation for the benefit of the Tribe;

(B) shall not permit any permanent residential or recreational development on, or commercial use of, the parcel (including commercial development, tourist accommodations, gaming, sale of timber, or mineral extraction); and

(C) shall comply with environmental requirements that are no less protective than environmental requirements that apply under the Regional Plan of the Tahoe Regional Planning Agency.

(2) TERMINATION AND REVERSION.—If the Secretary of the Interior, after notice to the Tribe and an opportunity for a hearing, based on monitoring of use of the parcel by the Tribe, makes a finding that the Tribe has used or permitted the use of the parcel in violation of paragraph (1) and the Tribe fails to take corrective or remedial action directed by the Secretary of the Interior—

(A) title to the parcel in the Secretary of the Interior, in trust for the Tribe, shall terminate; and

(B) title to the parcel shall revert to the Secretary of Agriculture.

## EXTENSION OF THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN NORTH CAROLINA

The bill (S. 1010) to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1010

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

**SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.**

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project number 11437, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods.

(b) EFFECTIVE DATE.—Subsection (a) takes effect on the date of the expiration of the extension issued by the Commission before the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).

## VANCOUVER NATIONAL HISTORIC RESERVE PRESERVATION ACT OF 2002

The Senate proceeded to consider the bill (S. 1649) to amend the Omnibus Parks and Public Lands Management Act of 1996 to increase the authorization of appropriations for the Vancouver National Historic Reserve and for the preservation of Vancouver Barracks, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1649

*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 ''Vancouver National Historic Reserve Preservation Act of **[**2001**]** *2002*''.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) the Vancouver National Historic Reserve (referred to in this section as the ''Reserve'') in Vancouver, Washington, contains several sites of historical importance, including—

(A) the former trading post of the Hudson Bay Company, established in 1825;

(B) Vancouver Barracks, a major administrative outpost of the United States Army for 150 years;

(C) Officers Row, which is listed on the National Register of Historic Places; and

(D) Pearson Airpark, the oldest continually operating airport in the United States;

(2) in accordance with section 502(b)(3) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 461 note; Public Law 104–333), a partnership comprised of representatives from the National Park Service, the Historic Preservation Office of the State of Washington, the Department of the Army, and the city of Vancouver, Washington, has developed a comprehensive cooperative management plan for the restoration of Vancouver Barracks;

(3) the 16 buildings at Vancouver Barracks referred to as the ''West Barracks'' were vacated by the Army in October 2000 and, for preservation purposes, require significant repair;

(4) the Army Reserve and the Washington National Guard actively use the portions of Vancouver Barracks referred to as the ''East Barracks'';

(5) the management plan for the Reserve recommends that the historic buildings at Vancouver Barracks be preserved and primarily used for educational purposes and public activities;

(6) the State of Washington, the city of Vancouver, Washington, and the Vancouver National Historic Reserve Trust have pledged to financially support preservation efforts at the Reserve;

(7) extensive planning efforts under the management plan for the Reserve have been completed, and restoration and reuse efforts are proceeding as planned;

(8) the historic Lewis and Clark expedition passed by the Reserve on the final segment of its historic expedition to the Pacific Ocean;

(9) the bicentennial celebration of the Lewis and Clark expedition is scheduled to take place from 2004 through 2006;

(10) to accommodate the expected increase in visitors to the Reserve during the commemoration of the bicentennial celebration, the historic preservation and reuse efforts at the Reserve should be continued; and

(11) to prevent the further deterioration of Vancouver Barracks, the historic preservation of the West Barracks should be expedited.

(b) PURPOSE.—The purpose of this Act is to increase the authorization of appropriations for the Vancouver National Historic Reserve and for the preservation of Vancouver Barracks at the Reserve.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

Section 502(d) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 461 note; Public Law 104–333) is amended by striking **[**''$5,000,000'' and inserting ''$25,000,000''.**]** *''$5,000,000 for development costs.'' and inserting ''$15,000,000 for development costs associated with capital projects consistent with the cooperative management plan, except that the Federal share of such development costs shall not exceed 50 pecent of the total costs.''.*

The committee amendments were agreed to.

The bill (S. 1649) as amended, was read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

## EXTENSION OF CERTAIN HYDROELECTRIC LICENSES IN THE STATE OF ALASKA

The bill (S. 471) to extend hydro-electric licenses in the State of Alaska, was considered, ordered to be engrossed

for a third reading, read the third time, and passed, as follows:

S. 1843

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

**SECTION 1. STAY AND REINSTATEMENT OF FERC LICENSE NO. 11393.**

(a) Upon the request of the licensee for FERC Project No. 11393, the Federal Energy Regulatory Commission shall issue an order staying the license.

(b) Upon the request of the licensee for FERC Project No. 11393, but not later than 6 years after the date that the Federal Energy Regulatory Commission receives written notice that construction of the Swan-Tyee transmission line is completed, the Federal Energy Regulatory Commission shall issue an order lifting the stay and make the effective date of the license the date on which the stay is lifted.

(c) Upon request of the licensee for FERC Project No. 11393 and notwithstanding the time period specified in section 13 of the Federal Power Act for the commencement of construction, the Commission shall, after reasonable notice and in accordance with the good faith, due diligence, and public interest requirements of that section, extend the time period during which licensee is required to commence the construction of the project for not more than 3 consecutive 2-year time periods.

## EXTENSION OF THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN THE STATE OF WYOMING

The bill (S. 1852) to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1852

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

**SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION HYDROELECTRIC PROJECT.**

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission Swift Creek Power Company, Inc. hydroelectric license, project number 1651, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods.

(b) EFFECTIVE DATE.—Subsection (a) takes effect on the date of the expiration of the extension issued by the Commission before the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).

## THE MIAMI CIRCLE SITE IN THE STATE OF FLORIDA

The Senate proceeded to consider the bill (S. 1894) to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1894

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

**SECTION 1. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) PURPOSE.—The purpose of this Act is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

**SEC. 2. DEFINITIONS.**

In this Act:

**[**(1) MIAMI CIRCLE.—The term ''Miami Circle'' means the property in Miami-Dade County of the State of Florida consisting of the three parcels described in Exhibit A in the appendix to the summons to show cause and notice of eminent domain proceedings, filed February 18, 1999, in Miami-Dade County v. Brickell Point, Ltd., in the circuit court of the 11th judicial circuit of Florida in and for Miami-Dade County.**]**

*(1) MIAMI CIRCLE.—The term ''Miami Circle'' means the Miami Circle archaeological site in Miami-Dade County, Florida.*

(2) PARK.—The term ''Park'' means Biscayne National Park in the State of Florida.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

**SEC. 3. SPECIAL RESOURCE STUDY.**

(a) IN GENERAL.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) COMPONENTS.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and

(3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

The Committee amendment was agreed to.

The bill (S. 1894), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

## CONVEYANCE OF CERTAIN LAND TO THE CITY OF HAINES, OREGON

The Senate proceeded to consider the bill (S. 1907) to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1907

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

**SECTION 1. CONVEYANCE TO THE CITY OF HAINES, OREGON.**

(a) CONVEYANCE.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall convey, without consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the city of Haines, Oregon.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of Bureau of Land Management land consisting of approximately 40 acres, **[**referred to as ''BLM Parcel B 186'', according to the map entitled ''Northeast Oregon Assembled Land Exchange/Triangle Land Exchange'', dated November 5, 1999.**]** *as indicated on the map entitled ''S. 1907: Conveyance to the City of Haines, Oregon'' and dated May 9, 2002.*

The committee amendment was agreed to.

The bill (S. 1907), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

## AMENDMENTS TO THE CLEAR CREEK COUNTY, COLORADO, PUBLIC LANDS TRANSFER ACT OF 1993

The bill (H.R. 223) to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act, was considered, ordered to a third reading, read the third time, and passed.

## BOOKER T. WASHINGTON NATIONAL MONUMENT ADJUSTMENT ACT OF 2001

The bill (H.R. 1456) to expand the boundary of the Booker T. Washington National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

## JAMES PEAK WILDERNESS AND PROTECTION AREA ACT

The bill (H.R. 1576) To designate the James Peak Wilderness and Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

## OLD SPANISH TRAIL RECOGNITION ACT OF 2002

The Senate proceeded to consider the bill (S. 1946) to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

S. 1946

*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 ''Old Spanish Trail Recognition Act of 2002''.

**SEC. 2. AUTHORIZATION AND ADMINISTRATION.**

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended—

(1) by redesignating the second paragraph (21) as paragraph (22); and

(2) by adding at the end the following:

''(23) Old spanish national historic trail.—

''(A) In general.—The Old Spanish National Historic Trail, an approximately **[**3,500**]** *2,700* mile long trail extending from Santa Fe, New Mexico, to Los Angeles, California, that served as a major trade route between 1829 and 1848, as generally depicted on the **[**map contained in the report prepared under subsection (b)**]** *maps numbered 1 through 9, as contained in the report* entitled ''Old Spanish Trail National Historic Trail Feasibility Study'', dated July 2001, *including the Armijo Route, Northern Route, North Branch, and Mojave Road''*.

**[**''(B) Map.—A map generally depicting the trail shall be on file and available for public inspection in the office of the Director of the National Park Service.**]**

*''(B) Map.—A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.''*.

''(C) Administration.—The trail shall be administered by the Secretary of the **[**Interior, acting through the Director of the National Park Service**]** *Interior* (referred to in this paragraph as the 'Secretary').

''(D) Land acquisition.—The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

''(E) Consultation.—The Secretary shall consult with other Federal, State, local, and tribal agencies in the administration of the trail.

''(F) Additional routes.—The Secretary may designate additional routes to the trail if—

''(i) the additional routes were included in the Old Spanish Trail National Historic Trail Feasibility Study, but were not recommended for designation as a national historic trail; and

''(ii) the Secretary determines that the additional routes were used for trade and commerce between 1829 and 1848.''.

The committee amendments were agreed to.

The bill (S. 1946), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

## SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT ACT

The Senate proceeded to consider the bill (H.R. 640) to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The part of the bill intended to be stricken is shown in boldface brackets and the part of the bill intended to be inserted is shown in italic)

H.R. 640

*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 ''Santa Monica Mountains National Recreation Area Boundary Adjustment Act''.

**SEC. 2. BOUNDARY ADJUSTMENT.**

Section 507(c) of the National Parks and Recreation Act of 1978 (92 Stat. 3501; 16 U.S.C. 460kk) establishing Santa Monica Mountains National Recreation Area is amended—

(1) in paragraph (1), by striking '''Boundary Map, Santa Monica Mountains National Recreation Area, California, and Santa Monica Mountains Zone', numbered SMM–NRA 80,000, and dated May 1978'' and inserting '''Santa Monica Mountains National Recreation Area and Santa Monica Mountains Zone, California, Boundary Map', **[**numbered 80,047, and dated February 2001''**]** *numbered 80,047–C and dated August 2001''*; and

(2) by adding the following sentence after the third sentence of paragraph (2)(A): ''Lands within the 'Wildlife Corridor Expansion Zone' identified on the boundary map referred to in paragraph (1) may be acquired only by donation or with donated funds.''.

**SEC. 3. TECHNICAL CORRECTIONS.**

Section 507 of the National Parks and Recreation Act of 1978 (92 Stat. 3501; 16 U.S.C. 460kk) establishing Santa Monica Mountains National Recreation Area is amended—

(1) in subsection (c)(1), by striking ''Committee on Natural Resources'' and inserting ''Committee on Resources'';

(2) in subsection (c)(2)(B), by striking ''of certain'' in the first sentence and inserting ''certain''; and

(3) in subsection (n)(5), by striking ''laws'' in the second sentence and inserting ''laws,''.

The Committee amendment was agreed to.

The bill (H.R. 640), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, I read through these bills very quickly but a tremendous amount of work has gone into getting to the point where we are, especially by the floor staff, to make sure that the majority and the minority have signed off on this, and all the committees, and the fact that we have been working through this list for weeks. Anyway, it is good work done by everyone.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, these are items that have support. Most of these are items that have been reported through the Energy Committee. They have bipartisan support. These are Democrat and Republican bills.

I appreciate the cooperation of the assistant majority leader in finally passing these items.

Mr. REID. Mr. President, I am going to suggest the absence of a quorum. We are contacting a Senator to clear another item that the administration wants.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I say to my friend, the call was a success, and Mitch Daniels will be very happy.

## LONG WALK NATIONAL HISTORIC TRAIL STUDY ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 457, H.R. 1384.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1384) to amend the National Trails System Act to designate the route in Arizona and New Mexico which the Navajo and Mescalero Apache Indian tribes were forced to walk in 1863 and 1864, for study for potential addition to the National Trails System.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The bill (H.R. 1384) was read the third time and passed.

## RATIFYING AN AGREEMENT BETWEEN THE ALEUT CORPORATION AND THE UNITED STATES OF AMERICA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 448, S. 1325.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1325) to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic)

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

**SECTION 1. FINDINGS.**

Congress finds that:

(1) Adak Island is an isolated island located 1,200 miles southwest of Anchorage, Alaska, between the Pacific Ocean and the Bering Sea. The Island, with its unique physical and biological features, including a deep water harbor and abundant marine-associated wildlife, was recognized early for both its natural and military values. In 1913, Adak Island was reserved and set aside as a Preserve because of its value to seabirds, marine mammals, and fisheries. Withdrawals of portions of Adak Island for various military purposes date back to 1901 and culminated in the 1959 withdrawal of approximately half of the Island for use by the Department of the Navy for military purposes.

(2) By 1990, military development on Adak Island supported a community of 6,000 residents. Outside of the Adak Naval Complex, there was no independent community on Adak Island.

(3) As a result of the Defense Base Closure and Realignment Act of 1990 (104 Stat. 1808), as amended, the Adak Naval Complex has been closed by the Department of Defense.

(4) The Aleut Corporation is an Alaskan Native Regional Corporation incorporated in the State of Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), as amended (43 U.S.C. 1601, et seq.). The Aleut Corporation represents the indigenous people of the Aleutian Islands who prior to the Russian exploration and settlement of the Aleutian Islands were found throughout the Aleutian Islands which includes Adak Island.

(5) None of Adak Island was available for selection by The Aleut Corporation under section 14(h)(8) of ANCSA (43 U.S.C. 1613(h)(8)) because it was part of a National Wildlife Refuge and because the portion comprising the Adak Naval Complex was withdrawn for use by the United States Navy for military purposes prior to the passage of ANCSA in December 1971.

(6) The Aleut Corporation is attempting to establish a community on Adak and has offered to exchange ANCSA land selections and entitlements for conveyance of certain lands and interests therein on a portion of Adak formerly occupied by the Navy.

(7) Removal of a portion of the Adak Island land from refuge status will be offset by the acquisition of high quality wildlife habitat in other Aleut Corporation selections within the Alaska Maritime National Wildlife Refuge, maintaining a resident human population on Adak to control caribou, and making possible a continued U.S. Fish and Wildlife Service presence in that remote location to protect the natural resources of the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

(8) It is in the public interest to promote reuse of the Adak Island lands by exchanging certain lands for lands selected by The Aleut Corporation elsewhere in the Alaska Maritime National Wildlife Refuge. Experience with environmental problems associated with formerly used defense sites in the State of Alaska suggests that the most effective and efficient way to avoid future environmental problems on Adak is to support and encourage active reuse of Adak.

**SEC. 2. RATIFICATION OF AGREEMENT.**

The document entitled the ''Agreement Concerning the Conveyance of Property at the Adak Naval Complex'' (hereinafter ''the Agreement''), and dated September 20, 2000, executed by The Aleut Corporation, the Department of the Interior and the Department of the Navy, together with any technical amendments or modifications to the boundaries that may be agreed to by the parties is hereby ratified, confirmed, and approved and the terms, conditions, procedures, covenants, reservations, indemnities and other provisions set forth in the Agreement are declared to be obligations and commitments of the United States and The Aleut Corporation: *Provided,* That modifications to the maps and legal descriptions of lands to be removed from the National Wildlife Refuge System within the military withdrawal on Adak Island set forth in Public Land Order 1949 may be made only upon agreement of all Parties to the Agreement and notification given to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate: *Provided further,* That the acreage conveyed to the United States by The Aleut Corporation under the Agreement, as modified, shall be at least 36,000 acres.

**SEC. 3. REMOVAL OF LANDS FROM REFUGE.**

Effective on the date of conveyance to the Aleut Corporation of the Adak Exchange Lands as described in the Agreement, all such lands shall be removed from the National Wildlife Refuge System and shall neither be considered as part of the Alaska Maritime National Wildlife Refuge nor be subject to any laws pertaining to lands within the boundaries of the Alaska Maritime National Wildlife Refuge, including the conveyance restrictions imposed by section 22(g) of the ANCSA, 43 U.S.C. 1621(g), for land in the National Wildlife Refuge System. The Secretary shall adjust the boundaries of the Refuge so as to exclude all interests in lands and land rights, surface and subsurface, received by The Aleut Corporation in accordance with this Act and the Agreement.

**SEC. 4. ALASKA NATIVE CLAIMS SETTLEMENT ACT.**

Lands and interests therein exchanged and conveyed by the United States pursuant to this Act shall be considered and treated as conveyances of lands or interests therein under the Alaska Native Claims Settlement Act, except that receipt of such lands and interests therein shall not constitute a sale or disposition of land or interests received pursuant to such Act. The public easements for access to public lands and waters reserved pursuant to the Agreement are deemed to satisfy the requirements and purposes of Section 17(b) of the Alaska Native Claims Settlement Act.

**SEC. 5. REACQUISITION OF LANDS.**

The Secretary of the Interior is authorized to acquire by purchase or exchange, on a willing seller basis only, any land conveyed to The Aleut Corporation under the Agreement and this Act. In the event any of the lands are subsequently acquired by the United States, they shall be automatically included in the Refuge System. The laws and regulations applicable to Refuge lands shall then apply to these lands and the Secretary shall then adjust the boundaries accordingly.

**SEC. 6. GENERAL.**

(a) **[**Notwithstanding any other provision of law,**]** *Notwithstanding the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483–484) and the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687),* and for the purposes of the transfer of property authorized by this Act, Department of Navy personal property that remains on Adak Island is deemed related to the real property and shall be conveyed by the Department of the Navy to The Aleut Corporation at no additional cost when the related real property is conveyed by the Department of the Interior.

(b) The Secretary of the Interior shall convey to the Aleut Corporation those lands identified in the Agreement as the former landfill sites without charge to the Aleut Corporation's entitlement under the Alaska Native Claims Settlement Act.

(c) Any property, including, but not limited to, appurtenances and improvements, received pursuant to this Act shall, for purposes of section 21(d) of the Alaska Native Claims Settlement Act, as amended, and section 907(d) of the Alaska National Interest Lands Conservation Act, as amended, be treated as not developed until such property is actually occupied, leased (other than leases for nominal consideration to public entities) or sold by The Aleut Corporation, or, in the case of a lease or other transfer by The Aleut Corporation to a wholly owned development subsidiary, actually occupied, leased, or sold by the subsidiary.

(d) Upon conveyance to The Aleut Corporation of the lands described in Appendix A of the Agreement, the lands described in Appendix C of the Agreement will become unavailable for selection under ANCSA.

(e) The maps included as part of Appendix A to the Agreement depict the lands to be conveyed to The Aleut Corporation. The maps shall be left on file at the Region 7 Office of the U.S. Fish and Wildlife Service and the offices of Alaska Maritime National Wildlife Refuge in Homer, Alaska. The written legal descriptions of the lands to be conveyed to The Aleut Corporation are also part of Appendix A. In case of any discrepancies, the maps shall be controlling.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment be agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The committee amendment was agreed to.

The bill (S. 1325), as amended, was read the third time and passed.

## THE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed, en bloc, to the

consideration of the following calendar items: Calendar No. 488, H.R. 3380, and Calendar No. 489, H.R. 2643.

I further ask unanimous consent that the bills be read three times, passed, and the motion to reconsider be laid upon the table en bloc; that the consideration of these items appear separately in the RECORD, and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

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

## RIGHT-OF-WAY PERMITS FOR NATURAL GAS PIPELINES WITHIN THE GREAT SMOKY MOUNTAINS NATIONAL PARK

The bill (H.R. 3380) to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park, was considered, ordered to a third reading, read the third time, and passed.

## FORT CLATSOP NATIONAL MEMORIAL EXPANSION ACT OF 2002

The bill (H.R. 2643) to authorize the acquisition of additional lands for inclusion in the Fort Clatsop National Memorial in the State of Oregon, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

## AMENDING TITLE X OF THE ENERGY POLICY ACT OF 1992

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 304, H.R. 3343.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3343) to amend title X of the Energy Policy Act of 1992, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 3343) was read the third time and passed.

## AUTHORIZING THE PRODUCTION OF RECORDS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 317, submitted earlier today by Senators DASCHLE and LOTT.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 317) to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

There being no objection, the Senate proceeded to consider of the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, and the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

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

The resolution (S. Res. 317) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 317

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the collapse of Enron Corporation and associated misconduct to determine what took place and what, if any, legislative, regulatory or other reforms might be appropriate to prevent similar corporate failures and misconduct in the future;

Whereas, the Subcommittee has received a number of requests from law enforcement and regulatory officials and agencies and court-appointed officials for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved,* That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide to law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or foreign governments, records of the Subcommittee's investigation into the collapse of Enron Corporation and associated misconduct.

## ORDER FOR FINANCE COMMITTEE TO REPORT A BILL

Mr. REID. Mr. President, I ask unanimous consent that on Friday, August 2, notwithstanding an adjournment of the Senate, the Finance Committee may report a bill between the hours of 11 a.m. to 1 p.m.

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

## ORDER FOR NOMINATIONS

Mr. REID. Mr. President, I ask unanimous consent that all nominations remain in status quo notwithstanding adjournment of the Senate during the month of August.

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

## MEASURE READ THE FIRST TIME—S.J. RES. 43

Mr. REID. Mr. President, I am led to believe that the Republican leader introduced S.J. Res. 43, and it is now at the desk. If that is the case, I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 43) proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto.

Mr. REID. Mr. President, I now ask for its second reading, but would object to my own request.

The PRESIDING OFFICER. Objection is heard.

## NATIONAL MISSING ADULT AWARENESS MONTH

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consideration of S. Res. 318 submitted earlier today by Senators Lincoln, Kennedy, and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 318) designating August 2002 as ''National Missing Adult Awareness Month''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, and the motion to reconsider be laid on the table, without any intervening action or debate.

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

The resolution (S. Res. 318) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 318

Whereas our Nation must acknowledge that missing adults are a growing group of victims, who range in age from young adults to senior citizens and reach across all lifestyles;

Whereas every missing adult has the right to be searched for and to be remembered, regardless of the adult's age;

Whereas our world does not suddenly become a safe haven when an individual becomes an adult;

Whereas there are tens of thousands of endangered or involuntarily missing adults over the age of 17 in our Nation, and daily, more victims are reported missing;

Whereas the majority of missing adults are unrecognized and unrepresented;

Whereas our Nation must become aware that there are endangered and involuntarily missing adults, and each one of these individuals is worthy of recognition and deserving of a diligent search and thorough investigation;

Whereas every missing adult is someone's beloved grandparent, parent, child, sibling, or dearest friend;

Whereas families, law enforcement agencies, communities, and States should unite to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates August 2002, as ''National Missing Adult Awareness Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

## RECOGNIZING MILTON FRIEDMAN

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 319, submitted introduced earlier today by Senator GRAMM of Texas.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 319) recognizing the accomplishments of Professor Milton Friedman.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 319) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 319

Whereas California resident and Nobel Laureate economist Professor Milton Friedman:

Whereas he was born on this day, July 31, in the year 1912, the fourth and youngest child to Austro-Hungarian immigrants in Brooklyn, New York;

Wheeas he served as a research staffer to the National Bureau of Economic Research from 1937 to 1981;

Whereas he helped implement wartime tax policy at the United States Treasury from 1941 to 1943, and further contributed to the war effort from 1943 to 1945 at Columbia University by studying weapons design and military tactics;

Whereas he served as a professor of economics at the University of Chicago from 1946 to 1976;

Whereas he was a founding member and president of the Mont Pelerin Society;

Whereas he was awarded the Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel in 1976;

Whereas since 1977 has served as a Senior Research Fellow at the Hoover Institution on War, Revolution, and Peace at Stanford University;

Whereas in 1988 was awarded the Presidential Medal of Freedom; and

Whereas he has been a champion of an all-volunteer armed forces, an advisor to presidents, and has taught the American people the value of capitalism and freedom through his public broadcasting series,

Be it therefore *Resolved*, That the United States Senate commend and express its deep gratitude to Professor Milton Friedman for his invaluable contribution to public discourse, American democracy, and the cause of human freedom.

## TO REVISE, CODIFY, AND ENACT WITHOUT SUBSTANTIVE CHANGE CERTAIN LAWS RELATED TO PUBLIC BUILDINGS, PROPERTY, AND WORKS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 434, H.R. 2068.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2068) to revise, codify, and enact without substantive change certain general and permanent laws related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I would like to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. REID. In the opinion of the Chair, does the enactment into positive law of a title of the United States Code, without substantive change, affect the subsequent referral of legislation under Senate rule XXV?

The PRESIDING OFFICER. It does not.

Mr. REID. I thank the Chair.

I ask unanimous consent the bill be read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD at the appropriate place as if read, with no intervening action or debate.

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

The bill (H.R. 2068) was read the third time and passed.

## EXPRESSING THE SENSE OF CONGRESS THAT MAJOR LEAGUE BASEBALL PLAYERS AND TEAM OWNERS SHOULD ATTEMPT TO ENTER INTO A CONTRACT AND AVOID A STRIKE

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 137, submitted earlier today by Senator MILLER.

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

The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 137) expressing the sense of Congress that the Federal Mediation and Conciliation Service should exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in a strike, a lockout, or any conduct that interferes with the playing of scheduled professional baseball games.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution and preamble be agreed to, en bloc, the motions to reconsider be laid upon the table, en bloc, without intervening action or debate.

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

The concurrent resolution (S. Con. Res. 137) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. Con. Res. 137

Whereas major league baseball is a national institution and is commonly referred to as ''the national pastime'';

Whereas major league baseball and its players played a critical role in restoring America's spirit following the tragic events of September 11, 2001;

Whereas major league baseball players are role models to millions of young Americans; and

Whereas while the financial issues involved in this current labor negotiation are significant, they pale in comparison to the damage that will be caused by a strike or work stoppage: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in accordance with section 203(b) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—

(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to resolve labor contract disputes relating to entering into a collective bargaining agreement; and

(2) use its best efforts to bring the parties to agree to such contract without engaging in a strike, a lockout, or any other conduct that interferes with the playing of scheduled professional baseball games.

## AUTHORITY FOR SENATE LEADERSHIP TO MAKE APPOINTMENTS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the adjournment of the Senate that will shortly be upon us, the President of the Senate, the President pro tempore of the Senate, and the majority and minority leaders be authorized to make appointments to commissions, boards, committees, conferences, or interparliamentary conferences authorized by the concurrent action of the two Houses or by order of the Senate.

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

## AMENDING THE PUBLIC HEALTH SERVICE ACT

Mr. REID. Mr. President, I ask unanimous consent that the HELP Commerce Committee be discharged from further consideration of S. 2549, and the Senate proceed to its consideration.

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

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2549) to ensure that child employees of traveling sales crews are protected under the Fair Labor Standards Act of 1938.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD at the appropriate place as if given, without intervening action or debate.

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

The bill (S. 2549) was read the third time and passed, as follows:

S. 2549

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

**SEC. 101. LIMITATION ON CHILD LABOR.**

(a) IN GENERAL.—Section 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 212) is amended by adding at the end the following:

''(e) No individual under 18 years of age may be employed in a position requiring the individual to engage in door to door sales or in related support work in a manner that requires the individual to remain away from his or her permanent residence for more than 24 hours.''.

(b) RULES AND REGULATIONS.—The Secretary of Labor may issue such rules and regulations as are necessary to carry out the amendment made by this section, consistent with the requirements of chapter 5 of title 5, United States Code.

## AMENDING THE PUBLIC HEALTH SERVICE ACT TO REDESIGNATE A FACILITY AS THE ''NATIONAL HANSEN'S DISEASE PROGRAMS CENTER''

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of H.R. 2441, and the Senate then proceed to its consideration.

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

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2441) to amend the Public Health Service Act to redesignate a facility at the National Hansen's Disease Programs Center, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, without intervening action or debate, and that any statements relating thereto be printed in the RECORD at the appropriate place.

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

The bill (H.R. 2441) was read the third time and passed.

## BENIGN BRAIN TUMOR CANCER REGISTRIES AMENDMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of S. 2558, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2558) to amend the Public Health Service Act to provide for the collection of data on the benign brain-related tumors through the national program of cancer registries.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, all with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2558) was read the third time and passed, as follows:

S. 2558

*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 ''Benign Brain Tumor Cancer Registries Amendment Act''.

**SEC. 2. NATIONAL PROGRAM OF CANCER REGISTRIES; BENIGN BRAIN–RELATED TUMORS AS ADDITIONAL CATEGORY OF DATA COLLECTED.**

(a) IN GENERAL.—Section 399B of the Public Health Service Act (42 U.S.C. 280e), as redesignated by section 502(2)(A) of Public Law 106–310 (114 Stat. 1115), is amended in subsection (a)—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively and indenting appropriately;

(2) by striking ''(a) IN GENERAL.—The Secretary'' and inserting the following:

''(a) IN GENERAL.—

''(1) STATEWIDE CANCER REGISTRIES.—The Secretary'';

(3) in the matter preceding subparagraph (A) (as so redesignated), by striking ''population-based'' and all that follows through ''data'' and inserting the following: ''population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data''; and

(4) by adding at the end the following:

''(2) CANCER; BENIGN BRAIN-RELATED TUMORS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the conditions referred to in this paragraph are the following:

''(i) Each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), including malignant brain-related tumors.

''(ii) Benign brain-related tumors.

''(B) BRAIN-RELATED TUMOR.—For purposes of subparagraph (A):

''(i) The term 'brain-related tumor' means a listed primary tumor (whether malignant or benign) occurring in any of the following sites:

''(I) The brain, meninges, spinal cord, cauda equina, a cranial nerve or nerves, or any other part of the central nervous system.

''(II) The pituitary gland, pineal gland, or craniopharyngeal duct.

''(ii) The term 'listed', with respect to a primary tumor, means a primary tumor that is listed in the International Classification of Diseases for Oncology (commonly referred to as the ICD–O).

''(iii) The term 'International Classification of Diseases for Oncology' means a classification system that includes topography (site) information and histology (cell type information) developed by the World Health Organization, in collaboration with international centers, to promote international comparability in the collection, classification, processing, and presentation of cancer statistics. The ICD–O system is a supplement to the International Statistical Classification of Diseases and Related Health Problems (commonly known as the ICD) and is the standard coding system used by cancer registries worldwide. Such term includes any modification made to such system for purposes of the United States. Such term further includes any published classification system that is internationally recognized as a successor to the classification system referred to in the first sentence of this clause.

''(C) STATEWIDE CANCER REGISTRY.—References in this section to cancer registries shall be considered to be references to registries described in this subsection.''.

(b) APPLICABILITY.—The amendments made by subsection (a) apply to grants under section 399B of the Public Health Service Act for fiscal year 2002 and subsequent fiscal years, except that, in the case of a State that received such a grant for fiscal year 2000, the Secretary of Health and Human Services may delay the applicability of such amendments to the State for not more than 12 months if the Secretary determines that compliance with such amendments requires the enactment of a statute by the State or the issuance of State regulations.

## GLOBAL PATHOGEN SURVEILLANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 388, S. 2487.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2487) to provide for global pathogen surveillance and response.

There being no objection, the Senate proceeded to consider the bill.

Mr. BIDEN. Mr. President, I am extremely pleased that the Senate today is taking up S. 2487, the ''Global Pathogen Surveillance Act of 2002.'' This bill authorizes $150 million over the next two fiscal years to provide assistance to developing nations to improve global disease surveillance to help prevent and contain both biological weapons attacks and naturally occurring infectious disease outbreaks around the world.

This bill is the result of a joint effort by Senator HELMS and I to act on key lessons learned during an important hearing the Foreign Relations Committee held last September on the

threat of bioterrorism and emerging infectious diseases. I am also proud that Senators KENNEDY and FRIST, the Chairman and Ranking Member of the Public Health Subcommittee of the Senate Health, Education, Labor, and Pensions Committee, are original cosponsors of this bill.

Senator HELMS and I recognize all too well that biological weapons are a global threat with no respect for borders. A terrorist group could launch a biological weapons attack in Mexico in the expectation that the epidemic would quickly spread to the United States. A rogue state might experiment with new disease strains in another country, intending later to release them here. A biological weapons threat need not begin in the United States to reach our shores.

For that reason, our response to the biological weapons threat cannot be limited to the United States alone. Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

This country is making enormous advances on the domestic front in bioterrorism defense. Mr. President, $3 billion has been appropriated for this purpose in FY 2002, including $1.1 billion to improve State and local public health infrastructure. Delaware's share will include $6.7 million from the Centers for Disease Control and Prevention to improve the public health infrastructure and $548,000 to improve hospital readiness in my State.

Earlier this year, the President signed into law a comprehensive bioterrorism bill drafted last fall following the anthrax attacks via the U.S. postal system. Those attacks, which killed five individuals and infected more than 20 people, highlighted our domestic vulnerabilities to a biological weapons attack. We need to further strengthen our nation's public health system, improve federal public health laboratories, and fund the necessary research and procurement for vaccines and treatments to respond better to future bioterrorist attacks. As an original cosponsor of the ''Kennedy-Frist'' bill in the Senate, I know the implementation of this new law will help achieve many of those objectives.

Nevertheless, any effective response to the challenge of biological weapons must also have an international component. Limiting our response to U.S. territory would be shortsighted and doomed to failure. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours. This is the dark side of globalization. International trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another. Moreover, an overseas epidemic could give us our first warning of a new disease strain that was developed by a country or by terrorists for use as a biological weapon, or that could be used by others for that purpose.

How does disease surveillance fit into all of this? A biological weapons attack succeeds partly through the element of surprise. A cluster of flu-like symptoms in a city or region may be dismissed by individual physicians as just the flu when in fact it may be anthrax, plague, or another biological weapon. Armed with the knowledge, however, that a biological weapons attack has in fact occurred, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat infected individuals.

Disease surveillance, a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses, can quickly alert doctors across a region that a suspicious disease outbreak has occurred. Epidemiological specialists can then investigate and combat the outbreak. And if it is a new disease or strain, we can begin to develop treatments that much earlier.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and communications equipment to circulate information. Even in the United States today, many states and localities rely on old-fashioned pencil and paper methods of tracking disease patterns. Thankfully, we are addressing those domestic deficiencies through the new bioterrorism law and substantially increased appropriations.

For example, in Delaware, we are developing the first, comprehensive, state-wide electronic reporting system for infectious diseases. This system will be used as a prototype for other states, and will enable much earlier detection of infectious disease outbreaks, both natural and bioterrorist. My congressional colleagues from Delaware and I have been working for over 2 years to get this project up and running, and we were successful in obtaining $2.6 million in funding for this project over the past 2 years. I and my colleagues have requested $1.4 million for additional funding in FY 2003, and we are extremely optimistic that this funding will be forthcoming.

It is vitally important that we extend these initiatives into the international arena. However, as many developing countries are way behind us in terms of public health resources, laboratories, personnel, and communications, these countries will need help just to get to the starting point we have already reached in this country.

An effective disease surveillance system is beneficial even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring. Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease. According to the World Health Organization, 30 new infectious diseases have emerged over the past 30 years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

According to a report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention. The World Health Organization reports that more than sixty percent of laboratory equipment in developing countries is either outdated or nonfunctioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints on flea infestation and a growing rat population was followed by a cluster of reports on patients exhibiting the symptoms of pneumonic plague. However, authorities were unable to connect the dots until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy $600 million. Had the Indian authorities employed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and surely avoided the panic that led to economically disastrous embargoes on trade and travel. An outbreak of pneumonic plague in India this February was detected more quickly and contained with only a few deaths—and no costly panic.

Developing nations are the weak links in any comprehensive global disease surveillance network. Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It is for these reasons that Senator HELMS and I have worked together to craft the Global Pathogen Surveillance Act of 2002. This bill authorizes $150 million in FY 2003 and FY 2004 to strengthen the disease surveillance capabilities of developing nations. First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques. It offers enhanced in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities.

Second, the bill provides assistance to developing nations to acquire basic laboratory equipment, including items as mundane as microscopes, to facilitate the quick diagnosis of pathogens.

Third, the bill enables developing nations to obtain communications equipment and information technology to

quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO. Again, we are not talking about fancy high-tech equipment, but basics like fax machines and Internet-equipped computers.

Finally, the bill gives preference to countries that agree to let experts from the United States or international organizations promptly investigate any suspicious disease outbreaks.

If this bill becomes law, the Global Pathogen Surveillance Act of 2002 will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network. This bill offers an inexpensive and common sense solution to a problem of global proportions—the dual threat of biological weapons and naturally occurring infectious diseases. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

In addition Senator HELMS and I have introduced a managers' amendment, which I expect will be adopted. This amendment, drafted in response to specific suggestions by executive branch departments and agencies as well as nongovernmental organizations, addresses two important objectives.

First, it ensures that priority in the provision of assistance to developing countries under the authority of this bill will be given those nations which agree to provide early notification of disease outbreaks. In the past, too many nations have sought to limit the release of information on disease outbreaks out of fear for the likely impact on their trade and tourism. In today's world, where an epidemic could be the first signs of a biological weapons attack, that type of reticence by national governments is simply unacceptable.

The amendment also stipulates that priority in assistance under this bill be assigned to those countries which agree to share with the United States data collected through its pathogen suveillance networks. Our epidemiological experts at the Centers for Disease Control and other U.S. departments and agencies are among the best in the world in analyzing such data. We should strive to create an international framework where multilateral organizations, national governments, and even private groups can examine aggregrate data on disease characteristics and symptom reports to help detect emerging patterns and provide early warning on alarming developments. In short, the more information shared under pathogen surveillance, the better protected the world is against surprise bioterrorist attacks and rapid natural epidemics.

Second, the managers' amendment makes the necessary changes to take into account the need for the quick transmission of data collected through pathogen surveillance networks to appropriately respond to local conditions. In the United States and other advanced industrial nations, disease surveillance may well operate most efficiently through Internet-based communications. In some developing countries, however, the cost of introducing new Internet links and computer equipment may be prohibitive. In those cases, leveraging existing telephone-based networks may prove a more cost-effective method in quickly relaying information such as patient reports. Under certain conditions, mobile phones may even prove a reliable tool. The managers' amendment will provide for such flexibility.

In conclusion, the fundamental premise of the Global Pathogen Surveillance Act of 2002 is that we cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security. Indeed, this bill can serve as a key contribution to strengthening our homeland security. I urge the Senate to pass S. 2487 and the related managers' amendment today.

• Mr. HELMS. Mr. President, the anthrax attacks against the Senate and the news media this past fall demanded that we recognize how vulnerable America is to bioterroism. The murderous and cowardly perpetrators of this terrorism must be brought to justice, but we must also prepare ourselves for other attacks in the future.

I am proud to have worked with Senator BIDEN in co-authoring the Global Pathogen Surveillance Act of 2002, S. 2487, and I am pleased that a bipartisan effort has led to its consideration today.

This bill recognizes that bioterrorism is a transnational threat and that the defense of the U.S. homeland is not an isolated activity. Rather, our homeland defense requires a comprehensive international strategy. A recent National Intelligence Estimate concluded that the prospect of a bioterrorist attack against U.S. civilian and military personnel will continue to grow as states and terrorist groups continue to acquire biological warfare capabilities. This same report warns that emerging and reemerging infectious diseases that originate overseas threaten Americans not only here in the United States, but also our military personnel stationed overseas participating in humanitarian and peacekeeping operations.

On September 5, 2001, the Senate Foreign Relations Committee held a hearing on ''The Threat of Bioterrorism and the Spread of Infectious Diseases.'' The compelling testimony of several expert witnesses, along with the assessments of the intelligence community, prompted Senator BIDEN and I to undertake this important legislation with the goal of combating bioterrorism, and ultimately enhancing U.S. national security. In order to enhance U.S. efforts to combat bioterrorism, it is critical that we address the glaring gap that exists in the capabilities of developing countries to conduct pathogen surveillance and monitoring.

This legislation authorizes the President a total of $150 million dollars over the next 2 years to fund pathogen surveillance and response activities through the Department of State, in consultation with the Department of Health and Human Services and the Department of Defense. Several provisions are designed to address shortfalls in public health education and training, including short-term public health training courses in epidemiology for public health professionals from eligible developing countries. The President is authorized to provide assistance for the purchase and maintenance of public health laboratory and communications equipment. In addition, the heads of appropriate Federal agencies are authorized to make available a greater number of U.S. government public health personnel U.S. missions abroad, international health organizations, and regional health networks.

All of the provisions of S. 2487 are directed towards enabling developing countries to acquire basic disease surveillance and monitoring capabilities to effectively contribute to community, local, regional, and global surveillance networks.

In order to ensure that the United States has all of the requisite tools at its disposal to protect U.S. civilians and military personnel against intentional or naturally occurring disease outbreaks, priority for assistance under S. 2487 will be for countries that provide early notification of disease outbreaks and pathogen surveillance data to appropriate U.S. departments and agencies. There is a critical need for transparency and information sharing of pathogen surveillance data so that the United States can utilize a comprehensive toolkit to combat bioterrorism. It is my expectation that developing countries receiving assistance under this Act will make a steadfast commitment to improving their pathogen surveillance and monitoring efforts.

I am particularly proud of the provisions of S. 2487 that address the glaring need for syndrome surveillance—the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators—to track the emergence of a disease in a population. Provisions on syndrome surveillance address the need to narrow the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health officials. Current disease reporting is paper-based and ineffective in transmitting important information to public health officials in developing countries where one doctor often cares for hundreds of patients. Thus, S. 2487 authorizes the President to provide assistance to eligible developing countries to purchase simple computer technology, including touch-screens and low-speed Internet connections for use by physicians in health clinics.

Let me close with the astute words of Dr. Alan P. Zelicoff, Senior Scientist, Sandia National Laboratory, as stated during his testimony before the Foreign Relations Committee in a March 2002, on the threat posed by chemical and biological weapons. Dr. Zelicoff has spent a considerable amount of his distinguished career developing technology and solutions to assist the medical and public health communities identify natural and deliberate disease outbreaks. According to Dr. Zelicoff,

When all is said and done, should would-be perpetrators of bioterror know that the effects of their attack would be blunted if not eliminated, they might well re-think their strategy in the first place. A multi-national cadre of clinicians and nurses, exchanging up-to-the-minute information is our single best defense, and we have the resource—now—to so equip them. All that is required is a policy shift emphasizing and strengthening this lynchpin capability.

While we are supportive of the public health benefits of this Act, we should not lose sight of the intent of this legislation—to combat bioterrorism and enhance U.S. national security. I look forward to working with the Bush administration and members of Congress to secure funding for these invaluable activities directed towards global pathogen surveillance and monitoring.●

Mr. REID. Mr. President, I ask unanimous consent that the Biden amendment at the desk be agreed to; that the bill, as amended, be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statement relating to the bill be printed in the RECORD.

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

The amendment (No. 4468) was agreed to, as follows:

AMENDMENT NO. 4468

On page 3, line 1, insert '', including data sharing with appropriate United States departments and agencies,'' after ''countries''.

On page 5, strike lines 9 through 14, and insert the following:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

On page 5, line 17, insert '', and other electronic'' after ''Internet-based''.

On page 6, line 5, strike ''including'' and all that follows through ''mechanisms,'' on line 7, and insert the following: ''including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications,''.

On page 9, line 15, insert before the period the following: '', provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies''.

On page 17, line 12, insert ''(and information technology)'' after ''Equipment''.

The bill (S. 2487), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

## ENCOURAGING THE PEACE PROCESS IN SRI LANKA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 516, S. Res. 300.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 300) encouraging the peace process in Sri Lanka.

There being no objection, the Senate proceeded to consider the resolution, which had been reported by the Committee on Foreign Relations with an amendment and amendments to the preamble, as follows:

[Omit the part enclosed by boldface brackets and insert the part printed in italic.]

Whereas the United States has enjoyed a long and cordial friendship with Sri Lanka;

**[**Whereas the people of Sri Lanka have long valued political pluralism, religious freedom, democracy, and a respect for human rights;

**[**Whereas the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam have waged a protracted and costly war for the past 19 years;

Whereas for the past 19 years, the Government of Sri Landa has fought a protracted and costly war against the Liberation Tigers of Tamil Eelam, a group labeled as a foreign terrorist organization by the Department of State;

Whereas an estimated 65,000 people have died in Sri Lanka as a result of these hostilities;

Whereas the war has created an estimated 1,000,000 displaced persons over the course of the conflict;

Whereas 19 years of war have crippled the economy of the north and east of Sri Lanka and resulted in low growth rates and economic instability in the south of Sri Lanka;

Whereas the economic impact of the conflict is felt most severely by the poor in both the north and the south of Sri Lanka;

Whereas efforts to solve the conflict through military means have failed and neither side appears able to impose its will on the other by force of arms;

Whereas the Government of Norway has offered and been accepted by the parties of the conflict to play the role of international facilitator;

Whereas an agreement on a cease–fire between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam was signed by both parties and went into effect February 23, 2002; and

Whereas both the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam **[**have agreed**]** *are now in the process of agreeing* to meet for peace talks in Thailand: Now, therefore, be it

*Resolved,* That the Senate—

(1) notes with great satisfaction the warm and friendly relations that have existed between the people of the United States and Sri Lanka;

(2) recognizes that the costly military stalemate that has existed between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam **[**can only**]** *should* be resolved at the negotiating table;

(3) believes that a political solution, including appropriate constitutional structures and adequate protection of minority rights and cessation of violence, is the path to a comprehensive and lasting peace in Sri Lanka;

(4) calls on all parties to negotiate in good faith with a view to finding a just and lasting political settlement to Sri Lanka's ethnic conflict while respecting the territorial integrity of Sri Lanka;

(5) denounces all political violence and acts of terrorism in Sri Lanka, and calls upon those who espouse or use such methods to reject these methods and to embrace dialogue, democratic norms, and the peaceful resolution of disputes;

(6) applauds the important role played by Norway in facilitating the peace process between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam;

(7) applauds the cooperation of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in lifting the cumbersome travel restrictions that for the last 19 years have hampered the movement of goods, services, and people in the war-affected areas;

(8) applauds the agreement of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in implementing the Sri Lanka Monitoring Mission;

(9) calls on all parties to recognize that adherence to internationally recognized human rights facilitates the building of trust necessary for an equitable, sustainable peace;

(10) further encourages both parties to develop a comprehensive and effective process for human rights monitoring;

(11) states its willingness in principle to see the United States lend its good offices to play a constructive role in supporting the peace process, if so desired by all parties to the conflict;

(12) calls on members of the international community to use their good offices to support the peace process and, as appropriate, lend assistance to the reconstruction of war-damaged areas of Sri Lanka and to reconciliation among all parties to the conflict; and

(13) calls on members of the international community to ensure that any assistance to Sri Lanka will be framed in the context of supporting the ongoing peace process and will avoid exacerbating existing ethnic tensions.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendment to the resolution be agreed to; that the resolution, as amended, be agreed to; that the amendments to the preamble be agreed to; that the preamble, as amended, be agreed to; that the motions to reconsider be laid upon the table, en bloc, with no further intervening action or debate; and that any statement relating to the resolution be printed in the RECORD.

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

The committee amendment was agreed to.

The resolution (S. Res. 300), as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

(The resolution, as amended, with its preamble, as amended, will be printed in a future edition of the RECORD.)

## DEPARTMENT OF VETERANS AFFAIRS EMERGENCY PREPAREDNESS RESEARCH, EDUCATION, AND BIO-TERRORISM PREVENTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Veterans Affairs Committee be discharged from further consideration of H.R. 3253 and

the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3253) to amend title 38, United States Code, to provide for the establishment within the Department of Veterans Affairs of improved emergency medical preparedness, research, and education programs to combat terrorism, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans Affairs, I urge the Senate to pass this legislation that would help VA—and our entire Nation—prepare for the potential medical consequences of another terrorist attack.

As Congress seeks ways to avert the threats posed by biological, chemical, radiological, and other potential terrorist weapons, we must make certain that we use our existing national resources as efficiently as possible. I thank Ranking Member SPECTER and his staff for their efforts in helping to ensure that VA—the Nation's largest integrated healthcare system—is prepared for the role that it can and must play during emergencies.

The pending measure is an omnibus bill that would improve VA's ability to fulfill its responsibilities to veterans, its staff, and communities during disasters, and would also address VA nonprofit research corporation activities.

''The Department of Veterans Affairs Emergency Preparedness Act,'' as reported, which I will refer to as the ''Committee bill,'' acknowledges VA's role in offering health care and support to individuals affected by disasters, and would give VA staff the tools that they need to continue serving veterans during emergencies.

The committee bill would establish four medical emergency preparedness research centers within the Department of Veterans Affairs health care system. VA researchers possess expertise in the long-term health consequences of biological, chemical, and radiological exposures, and sustain an unparalleled clinical management research program. The centers authorized by this legislation would make the most of these resources to learn how best to manage—or prevent—the mass casualties that might arise from the use of terrorist weapons.

The committee bill also includes provisions requested by the Administration that would create an office, directed by an Assistant Secretary, to coordinate preparedness strategies within VA and with other Federal, State, and local agencies. I strongly believe that this new office represents an essential step in helping VA improve emergency preparedness while maintaining its primary mission of caring for the Nation's veterans.

Another emergency preparedness provision within the committee bill would create no new responsibilities or missions for VA, but would authorize VA's enormous contribution to public safety and emergency preparedness. In 1982, Congress charged VA to care for active duty military casualties during a conflict or disaster. Since then, VA has taken a much larger share of the Federal responsibility for public health during emergencies, supporting mass care as part of the Federal Response Plan for disasters and serving as a cornerstone of the National Disaster Medical System.

VA has responded to every major domestic disaster of the last two decades with personnel, supplies and medications, facilities, and—when necessary—direct patient care for overwhelmed communities. VA health care providers who care for disaster victims serve not only as part of the Federal response to emergencies, but as part of the communities in which they live. The committee bill would acknowledge VA's emergency response missions by authorizing VA to provide medical treatment for individuals affected by or responding to disasters.

The committee bill also makes changes in law affecting VA's nonprofit research corporations. The first allows employees of nonprofit VA research and education corporations assigned to approved VA research, education, or training projects to be considered VA employees for purposes of the Federal Tort Claims Act. The other provision clarifies that VA Medical Centers may enter into contracts or other forms of agreements with nonprofit research corporations to provide services to facilitate VA-approved research and education projects. These changes would further VA's research and education missions.

In conclusion, I urge my colleagues to support these research and emergency preparedness enhancements for VA. This bipartisan commitment to our Nation's veterans and VA represents a small investment with potentially enormous rewards.

I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMAMRY OF S. 2132: THE DEPARTMENT OF VETERANS AFFAIRS EMERGENCY PREPAREDNESS ACT OF 2002

MEDICAL EMERGENCY PREPAREDNESS CENTERS IN THE VETERANS HEALTH ADMINISTRATION

Authorizes VA to establish four centers for medical emergency preparedness within existing VA medical centers.

Directs centers to carry out research on the medical management of injuries or illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices in coordination with national strategies for homeland security.

Allows centers to provide medical consequence management education and training to VA health care professionals, and to non-VA providers at the Secretary's discretion.

Authorizes VA to provide laboratory, epidemiological, medical, or other assistance to Federal, State, and local health care entities by request during a national emergency.

REORGANIZATION OF VA PREPAREDNESS FUNCTIONS

Increases the number of authorized assistant secretaries from six to seven, and adds ''operations, preparedness, security, and law enforcement'' to their authorized functions.

Increases the number of authorized deputy assistant secretaries from 18 to 20.

AUTHORIZING VA TO PROVIDE MEDICAL CARE DURING DISASTERS

Authorizes VA to furnish medical care to individuals—regardless of enrollment status—affected by a major disaster or presidentially declared emergency, or following activation of the National Disaster Medical System.

Allows VA to provide care to individuals affected by disasters before any other group except service-connected veterans and active-duty military casualties, and would allow VA to be reimbursed for care provided to employees of other Federal agencies.

VA NONPROFIT RESEARCH CORPORATION ACTIVITIES

Authorizes VA to contract with VA nonprofit research corporations in order to conduct VA-approved research, training, or education.

Allows employees of nonprofit VA research and education corporations assigned to approved VA research, education, or training projects to be considered VA employees for purposes of Federal Tort Claims Act.

Removes the sunset date of December 31, 2003, currently established in 38 USCS § 7638, for authority to establish nonprofit VA research and education corporations.

Mr. REID. Mr. President, I understand Senator ROCKEFELLER has a substitute amendment at the desk which is the text of S. 2132 and has been reported by the Veterans Subcommittee. I ask unanimous consent that the substitute amendment be agreed to, the bill, as amended, be read three times, passed, the motion to reconsider be laid on the table; that the title amendment be agreed to; and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4469) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 3253), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

The title amendment (No. 4470) was agreed to, as follows:

''A Bill to amend title 38, United States Code, to enhance the emergency preparedness of the Department of Veterans Affairs, and for other purposes.''.

## EXECUTIVE SESSION

### DELIMITATION OF A MARITIME BOUNDARY BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF NIUE—TREATY DOCUMENT NO. 105–53

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 5, treaty with Niue;

that the protocol be considered as having advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; and that the Senate now vote on the resolution of ratification.

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

The treaty will be considered to have passed through its various parliamentary stages up to and including the presentation of the resolution of ratification.

Mr. REID. I ask for a division vote.

The PRESIDING OFFICER. A division has been requested.

Senators in favor of the resolution of ratification will rise and stand until counted.

(After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification, with its reservation, was agreed to, as follows:

*Resolved (two-thirds of the Senators present concurring therein),*

That the Senate advise and concent to the ratification of the Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary, signed in Wellington on May 13, 1997 (Treaty Doc. 105–53).

Mr. NICKLES. Mr. President, if the Senator will yield, I say to my good friend that it is a unanimous vote in the Senate on this treaty.

Mr. REID. One of the few we have had lately.

I ask unanimous consent that any statements be printed in the RECORD.

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

Mr. REID. Mr. President, as I indicated earlier, when we read off all the bills that have passed, we have a large number of nominations. These have been cleared, and everyone is grateful. I am sure the people who are being approved are even more so. This is something I wish we could have done earlier, but things did not work out that way.

## EXECUTIVE SESSION

## EXECUTIVE CALENDAR

Mr. REID. I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Executive Calendar Nos. 846, 847, 848, 849, 850, 876, 906, 907, 908, 909, 923, 924, 925, 927, 928, 929, 930, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 957, 964, 965, 966, 967, 968, 970, 971, 972, 973, 974, 999, 1002, 1003. I ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, any statements be printed in the RECORD, and that the Senate now return to legislative session, with the preceding all occurring without any intervening action or debate.

Before the Chair rules, I reply to my friend, the assistant Republican leader, we read off a bunch of names, but these are people who have been waiting, some for a long time. Even though we did not read off all the names, this is very important, and these names refer to people who will play an important part in running our country.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The nominations considered confirmed en bloc are as follows:

DEPARTMENT OF STATE

David A. Gross, of Maryland, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for International Communications and Information Policy in the Bureau of Economic and Business Affairs and U.S. Coordinator for International Communications and Information Policy.

Jack C. Chow, of Pennsylvania, for the rank of Ambassador during his tenure of service as Special Representative of the Secretary of State for HIV/AIDS.

Paula A. DeSutter, of Virginia, to be an Assistant Secretary of State (Verification and Compliance).

Stephen Geoffrey Rademaker, of Delaware, to be an Assistant Secretary of State (Arms Control).

Michael Alan Guhin, of Maryland, a Career Member of the Senior Executive Service, for the Rank of Ambassador during tenure of service as U.S. Fissile Material Negotiator.

Tony P. Hall, of Ohio, for the rank of Ambassador during his tenure of service as United States Representative to the United Nations Agencies for Food and Agriculture.

COMMODITY FUTURES TRADING COMMISSION

Sharon Brown-Hruska, of Virginia, to be a Commissioner of the Commodity Futures Trading Commission for the remainder of the term expiring April 13, 2004.

Walter Lukken, of Indiana, to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 2005.

FARM CREDIT ADMINISTRATION

Douglas L. Flory, of Virginia, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for a term expiring October 13, 2006.

NUCLEAR REGULATORY COMMISSION

Jeffrey S. Merrifield, of New Hampshire, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2007. (Reappointment)

EXECUTIVE OFFICE OF THE PRESIDENT

Kathie L. Olsen, of Oregon, to be an Associate Director of the Office of Science and Technology Policy.

Richard M. Russell, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration.

FEDERAL MARITIME COMMISSION

Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner for a term expiring June 30, 2006.

THE JUDICIARY

James E. Boasberg, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

EXECUTIVE OFFICE OF THE PRESIDENT

Mark W. Everson, of Texas, to be Deputy Director for Management, Office of Management and Budget.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Michael D. Brown, of Colorado, to be Deputy Director of the Federal Emergency Management Agency.

DEPARTMENT OF STATE

Michael Klosson, of Maryland, 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 Cyprus.

Randolph Bell, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Mark Sullivan, of Maryland, to the United States Director of the European Bank for Reconstruction and Development.

ASIAN DEVELOPMENT BANK

Paul William Speltz, of Texas, to be United States Director of the Asian Development Bank, with the rank of Ambassador.

BROADCASTING BOARD OF GOVERNORS

Kenneth Y. Tomlinson, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004.

Kenneth Y. Tomlinson, of Virginia, to be Chairman of the Broadcasting Board of Governors.

Norman J. Pattiz, of California, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2004. (Reappointment)

ENVIRONMENTAL PROTECTION AGENCY

John Peter Suarez, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Carolyn W. Merritt, of Illinois, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

John S. Bresland, of New Jersey, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

DEPARTMENT OF STATE

James Howard Yellin, of Pennsylvania, 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 Burundi.

Kristie Anne Kenney, of Maryland, 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 Ecuador.

Barbara Calandra Moore, of Maryland, 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 Nicaragua.

John William Blaney, of Virginia, 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 Liberia.

Larry Leon Palmer, of Georgia, 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 Honduras.

DEPARTMENT OF JUSTICE

J. B. Van Hollen, of Wisconsin, to be United States Attorney for the Western District of Wisconsin for the term of four years.

Charles E. Beach, Sr., of Iowa, to be United States Marshal for the Southern District of Iowa for the term of four years.

Peter A. Lawrence, of New York, to be United States Marshal for the Western District of New York for the term of four years.

Richard Vaughn Mecum, of Georgia, to be United States Marshal for the Northern District of Georgia for the term of four years.

Burton Stallwood, of Rhode Island, to be United States Marshal for the District of Rhode Island for the term of four years.

DEPARTMENT OF DEFENSE

Vinicio E. Madrigal, of Louisiana, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

L. D. Britt, of Virginia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for the remainder of the term expiring May 1, 2005.

Linda J. Stierle, of Maryland, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring May 1, 2007.

William C. De La Pena, of California, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2007.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

John Edward Mansfield, of Virginia, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2006. (Reappointment)

Nancy J. Powell, of Iowa, 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 Islamic Republic of Pakistan.

NATIONAL MEDIATION BOARD

Edward J. Fitzmaurice, Jr., of Texas, to be a Member of the National Mediation Board for a term expiring July 1, 2004.

Harry R. Hoglander, of Massachusetts, to be a Member of the National Mediation Board for a term expiring July 1, 2005.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. NICKLES. Mr. President, first let me thank my friends and colleagues, Senator REID and Senator DASCHLE, for finally moving some of these nominees. Some are long overdue. Some are still yet to be confirmed.

I will make one mention: Kyle McSlarrow, to be Deputy Secretary of Energy. He worked for us in the Senate. He is more than qualified. I happen to know the Secretary of Energy because he used to be a Senator, Spence Abraham, and he has personally requested that he be confirmed. He needs a Deputy Secretary of Energy.

So while I am pleased we were able to confirm a large number of nominees, we have some nominees who are now going to have to wait the entire month of August and well into September to be confirmed. I find that to be unfair. I wanted to express my pleasure with the one we were able to confirm and my displeasure with the fact that there are about 30 people who will still be left on the calendar, including individuals such as Kyle McSlarrow to be Deputy Secretary of Energy, and other outstanding nominees who will still be held in limbo in the confirmation process throughout August and maybe well into September. I find that regrettable. There is no reason in the world not to move more of these nominees. I am appreciative of the many we have confirmed. I have not totaled the number, but it is a significant number. Still, there will be several very well qualified individuals who, for no reason whatever, are not being confirmed to this date.

I wanted to express my displeasure and mention that nominee. I could go through the list. I will not do that at this late time. I want my colleague to know I am not happy we were not able to confirm Mr. McSlarrow, who was reported out by the Energy and Natural Resources Committee unanimously on June 5. He has been waiting almost 2 months. The Secretary of Energy has been waiting to get a deputy. Unfortunately, he still will not have a deputy for the next couple of months, at a time when we will mark up an energy bill. It is probably the most significant piece of energy legislation in decades, and the Secretary does not have his deputy confirmed.

Mr. REID. Mr. President, it would be good if we could approve all of these, but problems occur. As I indicated, on one of these nominees, I personally went to a lot of trouble to find a Senator so we could get that person approved.

This is not a perfect system, but it works pretty well and we do the very best we can. It is not just holds over here; we have holds over there on people we care about.

I worked on the Aging Subcommittee; I am still a member of the Aging Subcommittee. One of the highest people assigned to me was a man by the name of Jonathan Steven Adelstein. I hoped he would be approved to serve on the Federal Communications Commission. We could go tit for tat. But I would tell my friend, the Senator from Oklahoma, for whom, everyone knows, I have the greatest respect about a trip I had a couple of weeks ago to Nevada. I had the wonderful opportunity to have three of my grandchildren spend a weekend with us. My little grandchild just turned 4, Mitchell. I did not realize his parents had told him to be patient because I would want to find out how Tiger Woods was doing in the golf tournament, and he wanted to watch a video. This little boy came into the room and looked at me with sad eyes saying: ''It is so hard to be patient.''

I say to my friend Senator NICKLES, it is so hard being patient, but being a Member of the Senate, you have to be. Even a 4-year-old said that. It certainly applies to what goes on in the Senate. It is hard to be patient, but I think a lot of people are celebrating tonight because these people have already been approved.

I look forward to coming back in the fall and hoping we can confirm more of these men and women who certainly, with rare exception, are qualified for the appointments they have been given.

Mr. NICKLES. Mr. President, I thank my friend and colleague. I understand that maybe he is not the source of some of the remaining holds. We are confirming a large number of people, well qualified people, at long last. That is good. There still remain some outstanding nominees; I think about 30.

I hope my colleague from Nevada will work with me and Senator DASCHLE and Senator LOTT and see if we can clean the rest of the calendar. Historically, we try to clean the calendar before we break, both in August and October. I hope we will not wait until the end, early October, to clean the calendar this time. I hope we will try to confirm as many of these nominees as early as we can in September, both for the agencies that need the help and the expertise and also for them individually. They should not be held indefinitely.

I will work with my colleague, and I would appreciate his assistance to see if we can get some of them through—there may be holds on both sides—and see if we can eliminate some of those and expedite the confirmation process.

Mr. REID. I look forward to that. One thing we need to do: It does not matter if you have a Republican President or a Democrat President, the problem is the slow process in approving nominees to serve in an administration. It is not right that we have to wait months for a Presidential nomination. Judicial appointments are a good example. They go step after step after step before we even get to look at them. We have to speed up this process for the good of the country. It is not right that this President is almost halfway through his term and still does not have people working for him. It is not all our fault, and it is not all the minority's fault. Much of it is the fault of the system. We have to do something to make it a system that moves more quickly.

If there were ever something we needed to work on in conjunction with the executive branch of Government, it would be to establish a blue ribbon panel to figure out a way we could speed up this process. It takes a long time for nominees to be sent to the Senate. We are running good people away from government, not because the process is too long, people are beleaguered before they even go through it.

I would be happy to work with my friend doing what we can to clear up the nominations. I look forward to that. I also hope the Senator will work with me, and maybe we can come up with an idea that will make all Presidencies a little more in tune with what is going on, because we have to wait for months and months to get people working in agencies.

Mr. NICKLES. If my colleague would yield, I would be happy to work with the Senator. Some legislation has been

considered by the Governmental Affairs Committee on that issue, and maybe we should review that to achieve more fair consideration.

I spoke earlier tonight about judicial nominations. We did confirm, I believe, seven or eight judges today. That is good. But on circuit court nominees, we have confirmed 13 out of 32; that is 40 percent, 8 of which have been languishing for over a year, 445 days, I think, since May of last year. Several of those eight are outstanding nominees. One of them, John Roberts, has argued 37 cases before the Supreme Court. Miguel Estrada has argued 15 cases before the Supreme Court and has yet to have a hearing. Another nominee argued 10 cases before the Supreme Court. Other nominees served on district court levels for years, and were rated very high by the ABA. For fairness, we need to treat these individuals with respect and give them a hearing before the committee.

Mr. President, 40 percent on the circuit court level is not satisfactory. I just mention that; I am not trying to pick a fight. I would just like to see that we let circuit court nominees have consideration. They should not have to languish for over a year after the nomination to have a hearing.

I might mention, two of the eight have had hearings. Six of the eight have not even had a hearing scheduled, and they have waited over a year.

So I mention that. I appreciate my colleague's consideration.

Mr. REID. I think, generally speaking, we have to do better. It is too bad that someone has had to wait a year. But during the time when we were trying to get some judges approved and we were in the minority, we had judges who waited 4 years. I hope that record is not beaten.

I would say we have held more hearings on district and circuit court nominees, 78, than in the past 22 years. I have all the statistics here. We need not go through them.

We need to try to have a better system. I am happy to work on that, and I will be happy to work with my esteemed friend, the senior Senator from Oklahoma, to do whatever we can to work out some of these bumps in the road that exist.

## ORDERS FOR TUESDAY, SEPTEMBER 3, 2002

Mr. REID. I ask unanimous consent that when the Senate adjourns tonight under the provisions of S. Con. Res. 132, it stand adjourned until 9:30 a.m., Tuesday, September 3; that on Tuesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then begin consideration of the motion to proceed to H.R. 5005, as under the previous order; that on Tuesday, the Senate stand in recess, until 2:15 p.m., at the conclusion of the rollcall which will begin at 12:30 p.m.

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

## PROGRAM

Mr. REID. I announce on behalf of the leader, for the information of the Senate, that on Tuesday when we return Senators can expect a rollcall vote at 12:30 on a judicial nomination, as I indicated in the unanimous consent request that the Chair has approved.

## ADJOURNMENT UNTIL 9:30 A.M. TUESDAY, SEPTEMBER 3, 2002

Mr. REID. I now ask unanimous consent that the Senate stand adjourned under the provisions of S. Con. Res. 132.

There being no objection, the Senate, at 9:32 p.m., adjourned until Tuesday, September 3, 2002, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate August 1, 2002:

### THE JUDICIARY

CHARLES E. ERDMANN, OF COLORADO, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES FOR THE TERM OF FIFTEEN YEARS TO EXPIRE ON THE DATE PRESCRIBED BY LAW, VICE EUGENE R. SULLIVAN, TERM EXPIRED.

### DEPARTMENT OF THE TREASURY

WAYNE ABERNATHY, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE SHEILA C. BAIR.

### DEPARTMENT OF STATE

JOSEPH HUGGINS, OF THE DISTRICT OF COLUMBIA, 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 BOTSWANA.

### BROADCASTING BOARD OF GOVERNORS

SETH CROPSEY, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE INTERNATIONAL BROADCASTING BUREAU, BROADCASTING BOARD OF GOVERNORS. (NEW POSITION)

### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

WENDY JEAN CHAMBERLIN, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE LORI A. FORMAN.

### POSTAL RATE COMMISSION

RUTH Y. GOLDWAY, OF CALIFORNIA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE TERM EXPIRING NOVEMBER 22, 2008. (REAPPOINTMENT)

### THE JUDICIARY

MARK E. FULLER, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA, VICE IRA DEMENT, RETIRED.

ROSEMARY M. COLLYER, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE THOMAS PENFIELD JACKSON, RETIRED.

ROBERT B. KUGLER, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE JOSEPH E. IRENAS, RETIRED.

JOSE L. LINARES, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE ALFRED J. LECHNER, JR., RESIGNED.

FREDA L. WOLFSON, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE NICHOLAS H. POLITAN, RETIRED.

RICHARD J. HOLWELL, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE BARRINGTON D. PARKER, JR., ELEVATED.

GREGORY L. FROST, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO, VICE GEORGE C. SMITH, RETIRED.

### DEPARTMENT OF JUSTICE

CAROL CHIEN-HUA LAM, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE ALAN D. BERSIN, TERM EXPIRED.

ANTONIO CANDIA AMADOR, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE JERRY J. ENOMOTO, TERM EXPIRED.

THOMAS DYSON HURLBURT, JR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE DON R. MORELAND, TERM EXPIRED.

CHRISTINA PHARO, OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE JAMES A. TASSONE.

DENNIS ARTHUR WILLIAMSON, OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS, VICE JAMES W. LOCKLEY, TERM EXPIRED.

JOSEPH R. GUCCIONE, OF NEW YORK, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE RUSSELL JOHN QUALLIOTINE.

### GOVERNMENT PRINTING OFFICE

BRUCE R. JAMES, OF NEVADA, TO BE PUBLIC PRINTER, VICE MICHAEL F. DIMARIO, RESIGNED.

### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. MARK R. ZAMZOW, 0418

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIG. GEN. PETER U. SUTTON, 9325

### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

REAR ADM. KEVIN P. GREEN, 8505

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS DEPUTY JUDGE ADVOCATE GENERAL OF THE UNITED STATES NAVY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5149:

*To be rear admiral*

CAPT. JAMES E. MCPHERSON, 8989

### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE MEDICAL CORPS IN THE GRADE OF COLONEL IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203, 12204, AND 12207:

*To be colonel*

RICHARD A. REDD, 9764

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

MARY C. CASEY, 0591

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be lieutenant colonel*

DAVID P ACEVEDO, 5339
WILLIAM J ADAMS, 0205
CHARLES T AMES, 8921
MICHAEL G AYCOCK, 2596
PETER C BARCLAY, 7307
JOHN S BARRINGTON, 5828
MICHAEL W BARTLETT JR., 1501
PETER J BEIM, 7365
JAMES C BELL, 5600
STEPHEN J BENAVIDES, 6392
BURT A BIEBUYCK, 7598
MICHAEL G BIRMINGHAM, 0849
KENNETH C BLAKELY, 2251
MICHAEL E BOWIE, 3627
MARK A BOYD, 2158
MERIDETH A BUCHER, 0774
GERALD V BURTON JR., 5832
MICHAEL R CHILDERS, 5423
KURT A CHRISTENSEN, 1008
NICHOLAS E CODDINGTON, 0636
JOHN P CODY SR, 3144
GLENN M CONNOR, 2946
JOSEPH A COUCH, 8587
MICHAEL L CURRENT, 7632
GREGORY D DODGE, 0574
MICHAEL J DOMINIQUE, 2199
CHARLES N EASSA, 2643
MARK A EASTMAN, 2914
JEFFREY A FARNSWORTH, 9722
LARRY S FELLOWS, 2481
KEVIN R GAINER, 5080
MATTHEW P GLUNZ, 3633
THEODORE R HANLEY, 9910
CHARLES E HARRIS III, 3367
PAMELA L HART, 2802
KEITH L HAYNES, 7544

MICHAEL K HAYSLETT, 8173
ERIC P HENDERSON, 7495
BRYAN C HILFERTY, 1610
DONALD M HODGE, 0109
JOHN W HOGAN, 2792
KEVIN L HUGGINS, 2366
IRIS J HURD, 3877
RODERICK E HUTCHINSON, 6761
BARRY A JOHNSON, 9466
THOMAS H JOHNSON, 5987
WALTER J KLEINFELDER, 2309
ROBERT C KNUTSON, 3550
ANTHONY D KROGH, 5150
MICHAEL J LEMANSKI, 2360
JON N LEONARD II, 3498
TODD S LIVICK, 4058
EDWARD D LOEWEN, 5975
LANCE D LOMBARDO, 3436
MICHAEL L LONGARZO, 8663
SCOTT F MALCOM, 5335
JAMES P MARSHALL, 6560
DANIEL R MATCHETTE, 7614
BRIAN C MCNERNEY, 6973
NORMAN W MIMS III, 4930
JONATHAN M MUNDT, 8494
ERIC NEWMAN, 7515
EDWARD T NYE, 6246
TIMOTHY L OCKERMAN, 4424
SCOTT A PARKS, 8410
SEAN P RICE, 2312
RUBEN RIOS, 5536
JOHN R ROBINSON, 4058
SCOTT D ROSS, 2990
JOAN E ROUSSEAU, 3485
GUY V RUDISILL, 4256
KIRK A SANDERS, 4880
JERRY L SCHLABACH, 1304
STEPHEN S SEITZ, 7230
STUART W SMEAD, 1555
NORMAN W SPEARS, 3630
ROBERT A SPUHL, 5642
DAVID H STAPLETON, 6210
JACK STERN, 1498
DANIEL F SULLIVAN, 6796
JOHN M THACKSTON, 2344
TIMOTHY J THURMOND, 4114
PHILIP VANWILTENBURG, 1654
BARRY E VENABLE, 1450
MALCOLM K WALLACE JR., 4802
WILLIAM E WHITNEY III, 2239
DON L WILKERSON, 6623
DANIEL T * WILLIAMS, 4498
MICHAEL L WILLIAMS, 2823
THOMAS J WILLMUTH, 4688
JEFFERSON K WON, 6674
KENSTON K YI, 9814
EDWARD W ZIMMERMAN, 6117

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be lieutenant colonel*

JOSEPH M ADAMS, 0024
DAVID R ALEXANDER, 5203
KELLIE M ALLISON, 8834
DAVID A ANDERSEN, 7996
KEVIN A ARBANAS, 5693
VICTOR BADAMI, 1052
WILLIAM R BALKOVETZ, 4792
ROGER S BASNETT, 5674
KIRK C BENSON, 8162
JOHN S BILLIE, 3704
SHANE R BURKHART, 8144
TIMOTHY S BURNS, 9852
TEDSON J CAMPAGNA, 2276
THOMAS E CARTLEDGE JR., 4728
JENNIFER A CARUSO, 6251
THOMAS L CASCIARO, 7167
LUIS CASTRO, 3952
HARLEY W CLARK, 1741
RONALD L CONDON, 6978
GUY T COSENTINO, 5962
DAVID P COURTOGLOUS, 0398
PAUL D COYLE JR., 0046
JUAN A CUADRADO, 8167
JOHN H DAVIS, 2441
WILLIAM J DAVISSON, 2387
DENNIS J DAY, 3838
RANDALL E DONALDSON, 4370
JAMES B DUNCAN, 1981
BRIAN K EBERLE, 5669
RONALD P ELROD, 6048
DAVID A EXTON, 8014
ROBERT H FANCHER JR., 4103
JOHN G FERRARI, 5696
JOHN C FLOWERS, 7255
JEFFERY D FORD, 8932
EDWIN L FREDERICK III, 4109
DARLENE S FREEMAN, 3785
NATHAN P FREIER, 9922
DAVID V FULTON, 0391
CHRISTOPHER M GARITO, 2911
ANTHONY L GARNER, 7731
KENNETH D GELE, 7932
JESSE L GERMAIN, 7313
DAVID C GRIFFEE, 2922
LEONARD E GRZYBOWSKI, 3043
JOHN B HALSTEAD, 7106
SEAN T HANNAH, 3276
WILLIAM H HARMAN, 8203
KEITH B HAUK, 1571
ALEX J HEIDENBERG, 5178
HARRY N HICOCK JR., 0027
CHRISTOPHER M HILL, 6381
STANLEY L HOLMAN, 1064
KEITH V HORTON, 0734
SCOTT T HORTON, 5992
KENNETH D HUBBARD, 5301
MICHAEL S JACOBS, 4293
MICHAEL J JOHNSON, 2351
ROBERT G JOHNSON, 0122
FRANK W JONES III, 4416
MICHAEL KENNELLY III, 6637
RICHARD E KNOWLES, 3729
DONNA K KORYCINSKI, 6230
ANTHONY D LANDRY, 5432
LARRY R LARIMER, 3508
MARK M LEE, 5509
JOE A LITTLE, 1958
ROBERT T LOTT, 0400
STEPHEN J MARIANO, 3261
PETER J MATTES, 8084
ALBERT T MAXWELL, 5634
STEPHEN G MCCARTY, 0083
GREGORY M MCGUIRE, 8180
KAYE MCKINZIE, 0169
JOHN H MCPHAUL JR., 3197
JOHN MILLER JR., 8871
MARK A MOULTON, 6357
CHARLES S MURRAY, 4479
JEFFREY H MUSK, 1158
RICHARD J ODONNELL, 9967
SCOTT E ONEIL, 3761
JONATHAN M PAYNE, 8937
ROBERT J PELLER, 6198
BRENT A PENNY, 3191
CECIL R PETTIT JR., 5097
JAMES C PIGGOTT, 7834
DAVID W POMARNKE, 2042
CRAIG P PRESTENBACH, 2052
NICHOLAS J PRINS, 2658
BRAD L RAMEY, 9261
LAWRENCE J RAVILLE JR., 1895
JAMES D RICHARDSON, 7880
MARK D ROBINSON, 1977
JAMES W ROSENBERRY, 8563
MARIA D RYAN, 9189
ROBERT W SADOWSKI, 8412
PHILIP H SARNECKI, 0972
JEFFREY B SCHAMBURG, 0274
FRANK O SCHNECK, 8465
SCOTT SCHUTZMEISTER, 6333
MICHAEL K SHEAFFER, 9976
RICHARD L SHELTON, 3631
MYRA J SHEPHERD, 6823
LYNN L SNYDER, 2596
JOSEPH M STAWICK, 0253
VANCE F STEWART III, 8161
RODNEY X STURDIVANT, 9432
GRANT H THOMAS, 5717
ERIC J TODHUNTER, 6033
OTILIO TORRES JR., 5831
DOUGLAS M VARGAS, 2345
MARK M VISOSKY, 5953
MARK R VONHEERINGEN, 6148
PHYLLIS E WHITE, 2224
ANTHONY D WILLIAMS, 5002
DEREK J *WILLIAMS, 0182
TASHA L WILLIAMS, 0417
JAMES A WORM, 9153

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To Be Lieutenant Colonel*

KIM J ANGLESEY, 6183
JOHN D BAKER, 8203
MARK E BALLEW, 9832
BRETT A BARRACLOUGH, 5406
DELOISE J BELIN, 0082
MARK E BERGESON, 3833
GEORGE W BOND, 9158
JEFFREY A BOVAIS, 3298
MICHAEL L BREWER, 1607
TODD D BROWN, 0760
JERHALD A BURGOA, 1808
STEVEN R BUSCH, 2330
DOUGLAS B BUSHEY, 6265
DENNIS A CARD, 7588
KENNETH G CARRICK, 2790
DANIEL P CASE, 6161
LARY E CHINOWSKY, 2246
WAYNE E CLINE, 3825
ANDREW V COCHRAN, 8187
WILLIAM E COLE, 9758
MARK F CONROE, 0113
STEVEN A CONROY, 7103
STEPHEN D COOPER, 9597
MICHAEL J CREED, 2549
LLOYD C CROSMAN, 9579
STEVEN F CUMMINGS, 5642
DEBRA D DANIELS, 5201
GLENN J DANIELSON, 9859
JAMES V DAY, 5515
TERRENCE P DELONG, 4300
DAVID F DIMEO, 4378
GWENDOLYN O DINGLE, 7220
ANDREW C EGER, 1449
MARK R ELLINGTON, 5842
VICTORE J EVARO, 9548
JOSEPH H FELTER III, 0616
MICHAEL P FLANAGAN, 1333
MICHAEL D FLANIGAN, 4427
JAMES C FLOWERS, 8442
ROBIN L FONTES, 9887
SCOTT D FOUSE, 6339
VINCENT L FREEMAN JR., 6982
GERRIE A GAGE, 6158
CARLETON T GEARY JR., 2566
BRUCE R GILLOOLY, 0976
BRIAN R GOLLSNEIDER, 4638
GREGORY B GONZALEZ, 7142
DANA E GOULETTE, 6358
MATTHEW B GRECO, 5635
WILLIAM E GREEN, 7436
DEBORAH L HANAGAN, 7076
KIMBERLY K HANCOCK, 6867
THOMAS H HARRISON, 9837
JON P HEIDT, 8402
JAMES W *HESTER JR., 8526
JOHN C HINDS, 6059
STEPHEN E HITZ, 7386
TIMOTHY D HODGE, 4631
MELVIN S HOGAN, 1902
MICHAEL D HOSKIN, 0664
RICHARD W HOUSEWRIGHT, 2346
JOHN P HOWELL, 7441
JEROME HUDSON, 6247
MICHAEL L HUMMEL, 8238
RONALD JACOBS JR., 1964
DAVID L JOHNSON, 7818
GREGORY M JOHNSON, 8683
THOMAS E JOHNSON, 8438
BRADLEY E JONES, 9410
WALTER JONES, 6033
WADE R JOST, 9577
GREGORY R KILBY, 3320
JOHN C KILGALLON, 5545
GREGORY A KOKOSKIE, 1043
BRENT C KREMER, 9481
WILLIAM B LANGAN, 6553
JOHN M LAZAR, 8222
JOHN R LEAPHART, 8863
STANLEY M LEWIS, 8297
RICHARD B LIEBL, 6186
NATHAN J LUCAS, 6820
KIRBY E LUKE, 9648
ROBERT L MARION, 7348
JOHN J MARKOVICH, 1113
PAUL C MARKS, 4976
PATRICK H MASON, 7313
WILLIAM R MASON, 0081
KEVIN W MASSENGILL, 7009
BRENDAN B MCALOON, 7460
DAROLD V MCCLOUD, 8834
JOHN D MCDONOUGH, 3251
GILBERT S MCMANUS, 1133
TAREK A MEKHAIL, 1474
DAVID C MEYER, 7483
JEROME C MEYER, 0604
PATRICK V MILLER, 7980
TIMOTHY N MILLER, 6385
ROBERT O MODARELLI II, 7046
THOMAS J MOFFATT, 4674
JEFFREY S MORRIS, 1165
TERRY L MOSES, 4904
JAY P MURRAY, 2397
VINCENT P OCONNOR, 5341
FRANCIS S PACELLO, 9114
MICHAEL A PARKER, 4026
THOMAS L PAYNE, 9032
ERIC M PETERSON, 9303
KENNETH W POPE JR., 9183
IRA C QUEEN, 0480
WARREN D QUETS JR., 8457
PATRICK D REARDON, 4187
DAVID W RIGGINS, 2066
NINA P ROBINSON, 7325
KENNETH P RODGERS, 2597
JOSE O RODRIGUEZ, 7701
CAROL A ROETZLER, 2468
JOHN D RUFFING, 2440
ARNOLD L RUMPHREY II, 5757
MICHAEL C RYAN, 9506
STEVEN SABIA, 0102
JOHN R SACKS, 5108
WILLIAM A SANDERS, 3238
DAVID W SCALSKY, 8646
TERRY J SCHAEFER, 3044
JOSEPH H SCHAFER, 4149
LISA R SCHLEDERKIRKPATRICK, 5196
PHILIP SCHOENIG, 8914
DAVID W SEELY, 0692
THOMAS E SHEPERD, 9824
DAVID W SHIN, 2375
BRIAN P SHOOP, 8769
BENNIE L SIMMONS, 0292
CARL J SIMON, 0797
RICHARD W SKOW JR., 9623
PETER M SLOAD, 7400
JAMES H SMITH, 8715
TODD L SMITH, 4571
JEFFREY K SOUDER, 3065
BERNARD R SPARROW, 8961
LOUIS F STEINBUGL, 3537
MICHAEL R SWITZER, 8333
PERRY W TEAGUE, 5797
TODD F TOLSON, 1880
TROY E TRULOCK, 7989
JOHN S TURNER, 5217
DOUGLAS P VANGORDEN, 1111
PHILLIP A VIERSEN, 3411
JOHN R WALLACE, 6280
RICHARD B WHITE, 0935
CHARLES H WILSON III, 6325
THOMAS F *WILSON, 4753
SCOTT E WOMACK, 8326
KELVIN R WOOD, 2756
GREGORY D WRIGHT, 3326
JAMES G YENTZ, 9461
REED F YOUNG, 0366
MICHAEL E ZARBO, 9447
JOHN V ZAVARELLI, 8081
ROBERT J ZOPPA, 8165

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be lieutenant colonel*

ANTHONY J ABATI, 9711
WILLIAM A ADAMS, 2888
FRANK T AKINS III, 4251
PEDRO G ALMEIDA, 6651
BRIAN K AMBERGER, 1914
DAVID P ANDERS, 6526
FRANK H ANDERSON III, 4553
DARYL W ANDREWS, 1411
DAVID B ANDREWS, 2986
ANTHONY W ANGELO, 1969
ANTONIO ARAGON, 8058
DAVID A ARMSTRONG, 0982
JEFFREY A ARQUETTE, 2119
HERMAN ASBERRY III, 9873
KEVIN J AUSTIN, 3675
ROBERT A BAER, 3929
RICARDO E BAEZ, 7103
EDWARD V BAKER, 2223
MICHAEL A BALSER, 9424
JOHN F BALTICH, 7772
BERNARD B BANKS, 1064
ROBERT A BARKER, 5547
MARK K BARKLEY, 1053
SUSAN M BARLOW, 4970
DONALD L BARNETT, 6736
GLENN J BARR, 8062
WILLIAM V BARRETT, 7087
DAVID B BATCHELOR, 2223
JOHN L BAUER, 3587
THOMAS C BEANE JR., 7814
ARTHUR B BEASLEY, 4104
DONALD BEATTIE JR., 2040
VERNON L BEATTY JR., 1322
STEPHANIE L BEAVERS, 3917
TIMOTHY D BECKNER, 2431
KIM L BENESH, 8213
ERNEST C BENNER, 1645
GEORGE W BENTER IV, 0270
DAVID J BERCZEK, 2413
ALAN R BERNARD, 6357
MARK A BERTOLINI, 1800
FRANCISCO R BETANCOURT, 4040
JOHN K BEUCKENS, 5454
LINDA K BEUCKENS, 3508
WILLIAM L BIALOZOR, 9981
STEVEN R BIAS, 3279
ELIZABETH A BIERDEN, 5604
KENNETH J BILAND, 7460
MICHAEL C BIRD, 8303
JAMES R BLACKBURN, 7670
PERRY W BLACKBURN JR., 4513
DIRK C BLACKDEER, 0927
BARRY L BLACKMON, 0662
ALAN C BLACKWELL, 3640
MARK A BLAIR, 3667
DARIN C BLANCETT, 9797
GREGG A BLANCHARD, 1265
MARK R BLIESE, 6845
BRADLEY D BLOOM, 8174
MICHAEL BOEDING, 8139
MICHAEL T BOONE, 3892
DANIEL J BOONIE, 4788
NERO BORDERS JR., 2075
JOHN R BOULE II, 5522
DANIEL P BOWEN, 9966
WILLIAM K BOYETT, 3733
LEO E BRADLEY III, 3034
MICHAEL J BRADLEY, 6549
SUZANNE L BRAGG, 4594
WILLIAM B BRENTS, 1896
PATRICK P BREWINGTON, 7660
DARRYL J BRIGGS, 6002
DOUGLAS J BRILES, 6995
BRIAN P BRINDLEY, 9325
GARY M BRITO, 9038
GALE J BRITTAIN, 9125
THOMAS H BRITTAIN, 8080
MICHAEL W BROBECK, 8173
JEFFREY M BRODEUR, 6038
JOHN J BROOKS, 8197
MICHAEL E BROUILLETTE, 2003
MICHAEL A BROWDER, 9627
EVAN L BROWN, 3656
KEVIN E BROWN, 3335
KEVIN P BROWN, 2326
ROBERT S BROWN, 6159
ROSS A BROWN, 6537
BYRON L BROWNING, 3716
EMORY W BROWNLEE JR., 6852
BRENT J BUCHHOLZ, 0969
CHARLES H BUEHRING, 9241
DAVID C BULLARD, 5949
JOHN W BULLION, 3418
JON K BUONERBA, 0945
KATHRYN A BURBA, 8511
FRANCIS B BURNS, 0476
DANIEL G BURWELL, 1560
DAVID A *BUSHEY, 1188
WILLIAM C BUTCHER, 0167
LORETTO M BYANSKI, 0767
SUSAN S CABRAL, 5395
DOUGLAS A CAMPBELL, 2459
ROBERT I CAMPBELL, 1531
KIMBERLY L CARDEN, 2485
CAMERON D CARLSON, 1533
CHRISTOPHER S CARNES, 3462
FORREST L CARPENTER, 3822
JOHN M CARPER, 6603
JOHNEE O CARR, 8838
SCOTT A CARR, 7664
CEDRIC O CARROLL, 7331
MIKE A CARTER, 7439
PERRY N CASKEY, 4831
BYRON T CASTLEMAN, 4592
CHRISTOPHER G CAVOLI, 7949
WALLACE B CELTRICK, 0085
ROBERT P CERJAN, 5198
KIM E CHAMBERLAIN, 1548
ROBERT L CHAMBERLAIN, 9500
ANTHONY K CHAMBERS, 4465
DOUGLAS G CHAMBERS, 3410
TONNEY A CHANDLER, 7776
ANDREW J CHANDO JR., 6183
DANIEL M CHARTIER, 9776
JOHN M CHARVAT JR., 2612
PAMELA R CHARVAT, 4920
WALTER B CHASE III, 0006
LUIS R CHAVEZ, 2742
RANDALL K CHEESEBOROUGH, 4007
MARCUS C CHERRY, 3500
MICHAEL P CHEVLIN, 9834
TODHUNTER J CHILES, 3651
MICHAEL J CHINN, 1458
FREDRICK S CHOI, 9072
JERRY W CHRISTENSEN, 6645
HOWARD R CHRISTIE, 2226
DAVID CINTRON, 0035
BRIAN J CLARK, 5739
BRIAN M CLARK, 3845
LINWOOD B CLARK JR., 6497
PERRY C CLARK, 7281
MICHAEL F CLARKE, 3976
DALE D CLELAND, 6362
ROSS M CLEMONS, 2467
TIMOTHY A CLEVELAND, 7050
CHARLES T CLIMER JR., 4060
ROGER L CLOUTIER JR., 9139
JOSEPH S COALE, 2430
NORMAN K COBB JR., 7146
THOMAS M COBURN, 7404
ALEXANDER S COCHRAN III, 2209
GREGORY G CODAY, 4570
DAVID C COGDALL, 1799
WILLIAM R COLEMAN, 3318
CRAIG A COLLIER, 4119
LYDIA D COMBS, 3976
ERIC R CONRAD, 0764
CAROLINE COOPER, 4391
SYLVESTER *COTTON, 2466
EMMA K COULSON, 5648
TRISTAN P COYLE, 6321
LISA L CRANFORD, 5532
KENNETH J CRAWFORD, 6006
THOMAS E CREVISTON, 8622
TELFORD E CRISCO JR., 6901
KEVIN J CROTEAU, 2051
WILLIAM E CROZIER III, 4276
BRIAN D CUNDIFF, 0514
JOHN R CUNNINGHAM, 8062
ORVILLE S CUPP, 7011
KENT C CURTSINGER, 8611
STEVEN G DAILEY, 4229
JAY T DAINTY, 9524
MICHAEL T DANDRIDGE, 5960
JAMES P DANIEL JR., 0979
ANTHONY J DATTILO JR., 1279
DALE E DAVIDSON, 4630
CHARLES E DAVIS IV, 5741
HERMAN D DAVIS JR., 7927
REGINALD R DAVIS, 3899
REX A DAVIS, 8404
BRANT V DAYLEY, 3279
CAROL R DEBARTO, 1785
THOMAS F DEFILIPPO, 4659
EDMUND J DEGEN, 4828
KEVIN J DEGNAN, 3406
ROBERT W DEJONG, 5597
RICHARD A DEMAREE, 3301
PAMELA J DENCH, 3644
SUZANNE M DENEAL, 5666
CARL L DETTENMAYER, 2848
TIMOTHY P DEVITO, 5225
RUZZA B DI, 8678
BARRY A DIEHL, 3746
BRIAN J DISINGER, 5501
SCOTT E DONALDSON, 5363
SUSAN K DONALDSON, 7189
GEORGE T DONOVAN JR., 7483
TERENCE M DORN, 1791
JOHN M DOUGHERTY, 8369
KENNETH E DOWNER, 3365
BARTEL G DRAKE, 1627
HELMUT F DRAXLER, 0996
THOMAS J DUBOIS, 7546
STEVEN W * DUKE, 0624
DEAN C DUNHAM, 9716
JOE * DURR III, 7302
JOHN C DVORACEK, 9952
DAVID B DYE, 1219
CHESTER F DYMEK III, 5421
JOHN S EADDY, 7027
MARK L EDMONDS, 1303
JAMES D EDWARDS, 0745
STEVEN M ELKINS, 5544
GEOFFREY D ELLERSON, 5616
JEFFREY A ELLIS, 8158
JOHN R ELWOOD, 1882
PAMELA B EMBERTON, 7401
MICHAEL T ENDRES, 8827
PAUL A ENGLISH, 8056
ROBERT W EOFF, 4562
BRITT W ESTES, 4993
KENNETH E EVANS JR., 8549
MICHAEL A EVANS, 9231
KATHLEEN J EZELL, 6692
CHRISTOPHER R FARLEY, 7003
STEPHEN E FARMEN, 8711
SCOTT C FARQUHAR, 1303
KEVIN W FARRELL, 9546
MICHAEL A FARUQUI, 7235
JOHN R FASCHING, 9887
RICHARD S FAULKNER, 7840
GREGORY A FAWCETT, 4762
JOSEPH J FENTY JR., 6692
ALEXANDER C FINDLAY, 3345
WILLIAM B FOGLE, 3965
DONALD J FONTENOT, 9882
TYLER L FORTIER, 2789
JAY D FOSTER, 0450
KEVIN D FOSTER, 1752
KEVIN L FOSTER, 0245
CHRISTOPHER O FOYE, 4776
ROBERT S FRAZIER, 0667
RICHARD L FRENCH, 9350
MALCOLM B FROST, 8125
LAWRENCE W FULLER, 5504
DAVID M FUNK, 8737
KIM G FUSCHAK, 0798
DAVID B GAFFNEY, 8332
ROBERT E GAGNON, 6945
TERESA A GALGANO, 5446
NANETTE GALLANT, 6409
DONALD N GALLI, 5042
PAUL B GARDNER, 9288
MARIO V GARIA JR., 5378
JAMES H GARNER, 8881
JOHN C GARRETT, 4698
KATHLEEN A GAVLE, 8364
MICHAEL J * GAWKINS, 5071
WILLIAM K GAYLER, 2754
STEPHEN J GAYTON JR., 7511
GIAN P GENTILE, 9950
KEVIN E GENTZLER, 6091
RAY D GENTZYEL, 5782
RANDY A GEORGE, 9642
RICHARD K GEORGE, 0948
LESLIE A GERALD, 1868
ALAN G GERSTENSCHLAGER, 4267
MARIA R GERVAIS, 6315
BERTRAND A GES, 9980
MICHAEL L GIBLER, 2824
CHRISTOPHER P GIBSON, 5003
PATRICK F GIBSON, 0395
TODD A GILE, 3187
CARL L GILES, 8392
PATRICK A GILLROY, 8198
MAXINE C GIRARD, 2687
DANIEL C GLAD, 9788
RANDY L GLAESER, 1541
SCOT P GLEASON, 6344
CLARENCE J GOMES JR., 5940
STEPHEN C GOMILLION, 1197
NICHOLAS C GONZALES, 3377
MARK J GORTON, 0595
PAUL F * GRACE, 9093
RONNIE L GRAHAM, 2664
NANCY J GRANDY, 2248
NEWMAN H GRAVES, 2531
THOMAS C GRAVES, 3857
JENNIFER L GRAY, 0682
SIDNEY J GRAY III, 0399
BRIAN A GREEN, 7302
WAYNE A GREEN, 8357
PAUL S GREENHOUSE, 0146
DENNIS G GREENWOOD, 0719
BARBARA A GREGORY, 4682
TIMOTHY E GRIFFITH, 0734
GREGORY J GUNTER, 3463
JERALD D HAJEK, 2126
CARY G HALE, 1208
KATHRYN R HALL, 4030
MARK HALL, 3580
MARK W HAMILTON, 2244
MICHAEL E HAMLET, 7291
DEBRA A HANNEMAN, 9085
MARSHA L HANSEN, 9898
GERALD M HANSLER JR., 2219
JOHAN C HARALDSEN, 3665
MICHAEL A HARGROVE, 5454
FREDERICK D HARPER, 5235
JOSEPH P HARRINGTON, 7304
MICHAEL J HARRIS, 1458
STEVEN C HARRIS, 2951
THOMAS J HARTZEL, 0049
SCOTT M HATHAWAY, 5640
LEO R HAY, 4319
ROBERT D HAYCOCK, 8590
MICHAEL A HAYDAK, 7134
ASHTON L HAYES, 6714
STEVEN P HEIDECKER, 1140
MICHAEL D HENDRICKS, 9886
RANDOLPH A * HENRY, 2063
EDWIN HERNANDEZ, 3482
NICOLAS A HERRERA, 8848
HORST P HERTING, 5545
ERIC J HESSE, 7483
JAMES R HEVEL, 5647
KENNETH E HICKINS, 3251
HOWARD O HICKMAN JR., 1029
KYLE D HICKMAN, 5629
JOSEPH E HICKS, 8910
MARK R HICKS, 8469
THOMAS E HIEBERT, 7597
MICHAEL S HIGGINBOTTOM, 8317
COLLIN K HILL, 1103
MICHAEL D * HILLIARD, 4950
ROBERT L HILTON, 1024
LYNN A HINMAN, 6657
ADAM R * HINSDALE, 0085
ALEX J HOBBS, 2839
BARRY HODGES, 0043
TERRY D HODGES, 8026
PATRICK B HOGAN, 7596

DAVID R HOLBROOK, 3217
JOHN A HOLLIS, 8905
MARK T HOLLOWAY, 4492
JAMES F HOLLY III, 1336
JON J HORNE, 3203
SKYLER P HORNUNG, 7414
MARK C HOROHO, 2857
ACHIM R HORTON, 7647
DOUGLAS M HORTON, 8458
BRADLEY E HOUGHTON, 3616
JAMES A HOWARD, 3838
JOE G HOWARD JR., 9731
SHAWN P HOWLEY, 5380
PHILIP A HOYLE, 0444
WILLIAM P HUBER, 2713
BENJAMIN L HUDSON, 8140
DALE E HUDSON, 4880
WILLIAM B HUGHES, 5042
DANIEL W HULSEBOSCH, 2950
LEONARD P HUMPHREY, 2789
PAUL G HUMPHREYS, 0600
DONALD F HURLEY JR., 7130
RICHARD K HUTCHISON, 1273
CLAYTON HUTMACHER, 6851
MARC B HUTSON, 0056
THOMAS E HUTT III, 0116
JAMES T IACCOCA, 1074
JOHN F IAMPIETRO, 0696
BRIAN J IMIOLA, 7941
MICHAEL J INFANTI, 5221
STEVEN P INGWERSEN, 2422
JAMES P INMAN, 8675
CHRISTOPHER M IONTA, 0812
CHARLES P IPPOLITO, 4578
CHRISTOPHER W IRRIG, 0241
CHRISTOPHER J ISAACSON, 3042
JACQUELINE E JAMES, 2604
CHARLIE R JAMESON JR., 6811
PAUL F JARVIS, 8236
JAMES H JENKINS III, 3465
SEAN M JENKINS, 3739
EDWARD D JENNINGS, 5271
JACK J JENSEN, 6074
MICHAEL J JESSUP, 9993
DONALD E JOHANTGES, 1501
FRED W JOHNSON, 7754
KENNETH L JOHNSON, 1135
KEVIN P JOHNSON, 5187
MICIOTTO O JOHNSON, 3230
NATHANIEL JOHNSON JR., 7585
GARY W JOHNSTON, 9901
HARRY E JONES II, 9412
HARVEY B JONES III, 5773
JON N JONES, 4243
MARK W JONES, 5799
MICHAEL J JONES, 5562
ROGER T JONES, 8434
ERIC M JORDAN, 4546
KELLY C JORDAN, 4693
PHILIP E JUCHEM, 7923
JACK T JUDY, 8146
KEVIN K KACHINSKI, 8040
RICHARD G KAISER, 9228
WILLIAM S KEARNEY, 1754
WILLIAM R KEETON, 0531
MICHAEL T KELL, 1771
JOHN P KELLEY, 0189
PAUL T KELLEY, 6739
WILLIAM J KELLEY III, 2446
JOHN B KELLY II, 3029
THOMAS L KELLY, 2640
FREEMAN E KENNEDY JR., 9201
GLENN A KENNEDY II, 9504
JAMES D KENNEDY, 8961
JEFFREY L KENT, 3840
ALLEN W KIEFER, 2622
MITCHELL L KILGO, 2288
PATRICK J KILROY, 3493
SCOTT D KIMMELL, 5229
RICHARD O KING JR., 8828
WILLIAM E KING IV, 4170
JAMES D KINKADE, 8923
JOHN K KIRBY, 0533
ROBERT C KLEINHAMPLE, 2946
ROBERT L KLIMCZAK, 1915
WILLIAM A KLIMOWICZ, 4347
MARK E KNICK, 8704
ROBERT D KNOCK JR., 9933
DAVIN V KNOLTON, 4228
JOHN D KNOX, 9240
CYNTHIA A KOENIG, 0122
PHILIP C KOENIG, 3599
REINHARD W KOENIG, 0162
STEVEN T KOENIG, 1700
CHRISTOPHER D KOLENDA, 3390
LAWRENCE A KOMINIAK, 0025
JOSEPH T KOSKEY JR., 3320
JAMES E KRAFT, 1031
RICHARD J KRAMER, 4419
FRED T KRAWCHUK JR., 0669
MARY A KRESGE, 4462
RYAN J KUHN, 4974
MICHAEL E KURILLA, 1139
JOHN P LADELFA, 1767
JOHN F LAGANELLI, 5373
JOHN R LAKSO, 7555
STEVE E LAMBERT, 9423
MARK D LANDERS, 5612
STEVEN E LANDIS, 6563
FRANCIS P LANDY, 7432
DREFUS LANE, 9825
THOMAS J LANGOWSKI, 0601
JAMES E LARSEN II, 6933
STEPHEN C LARSEN, 7407
THERESA J LARSEN, 4906
MARK V LATHEM, 3055
JAMES F LAUGHRIDGE, 3316
DONALD P LAUZON, 1431
JOSEPH K LAYTON, 5222
MARTIN C LEDINGTON, 5256
AUDREY L LEE, 2370
MICHAEL J LEE, 3210
TERRY M LEE, 0298
MICHAEL J LEVESQUE, 8792
DAVID J LIDDELL, 2733
EUGENE W LILLIEWOOD JR., 9379
MICHAEL J LIPINSKI, 0149
JAMES E LIPPSTREU, 9840
TIMOTHY E LOLATTE, 0778
TIMOTHY J LONEY, 1895
VICTOR H LOSCH II, 5693
RODNEY L LUSHER, 5337
LATONYA D LYNN, 0049
CHARLES C MACK, 2699
YVONNE B MACNAMARA, 2482
STAFFORD R MAHEU JR., 4921
ANDREW F * MAHONEY, 3981
THOMAS J MAHONEY, 2138
JOSEPH M MAIORANA, 0652
ROBERT A MALLOY, 5461
JOHN E MALONEY, 0331
MICHAEL T MANNING, 0404
FRED V MANZO JR., 1497
CLINTON J MARQUARDT, 8394
JOSE A MARQUEZ, 4783
MICHAEL MARTIN, 8126
STEVEN J MARTIN, 9809
WAYNE L MASON, 4790
JAMES V MATHESON, 3431
PATRICIA A MATLOCK, 7080
JAMES M MCALLISTER JR., 0940
SEAN W MCCAFFREY, 8330
THOMAS D MCCARTHY, 9665
JOHN C MCCLELLAN JR., 4064
MARK A MCCORMICK, 3102
DAN MCELROY, 8708
BRIAN S MCFADDEN, 8095
ROBERT D MCGEE, 8543
SHAWN P MCGINLEY, 1680
TIMOTHY P MCGUIRE, 1935
STEPHEN J MCGURK, 1416
JOHN M MCHUGH, 0164
JOHN R MCILHANEY JR., 8587
BRENDAN E MCKIERNAN, 1344
JAMES L MCKNIGHT, 4309
ROBERT F MCLAUGHLIN, 8054
STEVEN J MCLAUGHLIN, 5253
GARY R MCMEEN, 9206
TYRONE J MCPHILLIPS, 9519
JAMES R MCQUILKIN JR., 0454
MARK R * MEADOWS, 6185
JOSEPH C MENDEZ, 4718
ANDREW D MERCHANT, 5723
KENNETH O MERKEL, 3773
HOWARD L MERRITT, 9521
ROGER G MEYER, 2284
CHRIS E MILLER, 5422
LEANNA F MILLER, 6269
MICHAEL W MILLER, 2771
NACHEE MILLER, 8745
PHILLIP T MILLER, 6525
KEVIN W MILTON, 5432
JAMES B MINGO, 7379
THOMAS MINTZER, 2197
JAMES M MIS, 7728
CHARLES S MITCHELL, 0650
CLAY W MITCHELL, 9555
LENTFORT MITCHELL, 8506
MICHAEL J MITCHELL, 0389
JUDITH MOLINA, 8341
TOMAS E MONELL, 8547
STEPHEN P MONIZ, 4559
CLYDE A MOORE, 9976
MARC D MOQUIN, 5009
CONRADO B MORGAN, 1720
DOUGLAS W MORIARITY, 1458
LOUISE M MORONEY, 4596
FONDA E MOSAL, 1540
EDWARD J MOUNT JR., 1281
JOHN J MULBURY, 9092
MICHAEL R MULLINS, 0481
MATTHEW J MULQUEEN, 2937
ROBERT M MUNDELL, 6493
TONY C MUNSON, 9842
ANTONIA E MUNSTER, 1538
RICHARD J MURASKI JR., 0348
DANIEL S MURRAY, 1880
FRANK M * MUTH, 0975
DEBORAH A MYERS, 2001
JOHN K MYERS JR., 6257
BARRY A NAYLOR, 2217
LARRY D * NAYLOR, 4921
JOHN M NEAL III, 3686
JEFFREY W * NELSON, 5701
RODNEY C NEUDECKER, 2840
LANCE J NEWBOLD, 6256
CRAIG M NEWMAN, 2165
SCOT E NEWPORT, 8180
JAMES D NICKOLAS, 1447
NOEL T NICOLLE, 6607
GARY R NICOSON, 6536
RICARDO NIEVES, 3770
ERIC P * NIKOLAI, 6733
KIRK H NILSSON, 3920
JOHN D NONEMAKER, 3491
JOHN G NORRIS, 3302
LAWRENCE K NORTHUP, 4508
GERALD P OCONNOR, 3047
HUGH T OCONNOR JR., 3848
DEREK T ORNDORFF, 8378
MICHAEL S OUBRE, 9732
JAMES S OVERBYE, 0572
SANDRA W OWENS, 4375
LEO R PACHER, 5839
GEORGE E PACK, 2909
GUST W PAGONIS, 9264
PATRICK V PALLATTO, 1271
PETER PALOMBO, 0812
ALFRED A PANTANO JR., 6276
ROBERT J PAQUIN, 9360
HAE S PARK, 3873
THOMAS A PARKER, 8243
JACK O PARKHURST, 2522
ALBERT G PARMENTIER II, 5276
JOHN D PAUGH JR., 7479
JOHN M PAUL SR, 0292
GERALD M PEARMAN, 2375
MARK D PEASLEY, 1787
ROBERT B PEDERSON, 8205
JOHN A PEELER, 1742
BROC A PERKUCHIN, 5226
WARREN M PERRY, 1405
JAMES A PETERSON, 7852
JEFFREY D PETERSON, 3136
MILTON C PETERSON JR., 3661
JODY L PETERY, 6928
WILLIAM R PFEFFER, 7084
MAURICE S PICKETT, 4815
DELESIA E PIERRE, 6458
KURT J PINKERTON, 2744
DANIEL A PINNELL, 5728
JOHN T PITCOCK, 5705
RODNEY E PITTS, 3572
GREGORY A PLATT, 3125
ARNOLD PLEASANT, 1781
DALLAS W PLUMLEY, 7103
MARK B POMEROY, 2470
MICHAEL L POPOVICH, 0219
SCOTT J PORTUGUE, 2253
GLENN R POWERS, 4293
LOWELL C PRESKITT, 6996
RAYMOND PRIBILSKI, 6682
KEITH D PRICE, 4793
RICHARD B PRICE, 8707
WILLIAM W PRIOR, 4445
PHILIP M PUGH JR., 2895
BRIAN M PUGMIRE, 4329
DAVID G PUPPOLO, 2321
VINCENT V QUARLES, 9679
STEPHEN M QUINN, 0160
GREGORY C RAIMONDO, 2057
JAMES E RAINEY, 5842
MICHAEL D RANDALL, 6281
BURL W RANDOLPH JR., 7613
KIMBERLY A RAPACZ, 6832
WILLIAM P RAYMANN, 6246
VINCENT M REAP, 8754
CHRISTOPHER D REED, 9609
STEVEN N REED, 5174
DENIS P REHFELD, 1753
DAN J REILLY, 5670
JOHN G REILLY, 7591
PAUL K REIST, 9370
THOMAS V REMEDIZ, 1109
JOHN S RENDA, 2541
JEFFREY J RESKO, 3323
WESLEY A RHODEHAMEL, 8146
TERRY L RICE, 5316
MICHAEL R RICHARDSON, 1024
RICHARD S RICHARDSON, 6831
GLENN S RICHIE, 0443
GREGG A * RICHMOND, 2257
STEPHEN J RICHMOND, 0460
JAMES H RIKARD, 3648
MITCHELL RISNER, 7185
PAUL M RIVETTE, 0282
CHARLES E ROBERTS, 6288
JAMES M ROBERTSON, 8336
JEFFERY B ROBINETTE, 8459
HARVEY R ROBINSON, 3963
DAVID A RODDENBERRY, 6175
JOSE F RODRIGUEZ, 3124
DEBRA L ROESLER, 7029
ROBERT R ROGGEMAN, 1948
JOSEPH A ROSE, 6165
RONALD J ROSS, 1152
VINCE D ROSS, 2692
EDWARD C ROTHSTEIN, 4822
BRIDGET M ROURKE, 6465
EDWARD V ROWE, 7240
ROBERT J RUCH, 8317
BRYAN L RUDACILLE JR., 7765
WILLIAM I RUSH, 9703
STEPHEN V RUSHING, 4871
KURT J RYAN, 7572
MICHAEL P RYAN, 3800
PAUL J SABIN, 8913
JOSEPH A SALAMONE JR., 5840
PETER R SANDBERG, 5277
DAVID L SANDRIDGE, 7443
LYNN W SANNICOLAS, 4564
JACINTO SANTIAGO JR., 1592
STEVEN K SATTERLEE, 4590
OLIVER S SAUNDERS, 6647
DANIEL P SAUTER III, 9373
JOHN G SAUVADON, 4416
ERIC O SCHACHT, 1648
ERIC B SCHEIDEMANTEL, 9340
MARK A SCHEMINE, 3929
KURT A SCHNEIDER, 9056
THOMAS S SCHORR, 1726
MICHAEL J SCHROEDER, 5302
WILLIAM S SCHUMAKER, 5598
KEVIN G SCHWARTZ, 4646
ALFRED SCOTT JR., 3020
MICHAEL A SCUDDER, 4358
PAUL J SCULLION, 1416
MARK SEAGRAVE, 1550
DANIEL C SELPH, 7987
MARK A SHAFFSTALL, 9130
DARRYL T SHAMBLIN, 0235

MICHAEL A SHARP, 8765
RICHARD L SHELTON, 3709
GEORGE T SHEPARD JR., 5264
RICHARD L SHEPARD, 4700
MICHAEL F SHILLINGER, 3899
FRANK J SHIMANDLE, 7957
WILLIAM S SHOOK, 2669
GEORGE B SHUPLINKOV, 0707
STEPHEN J SICINSKI, 6748
JEROME SIMMONS, 7196
GEORGE SIMON III, 1342
JOSEPH A SIMONELLI JR., 8429
MICHAEL S SIMPSON, 5051
JOHN D SIMS, 5461
DONALD J SINGER, 7844
LAURA L SINGER, 5329
JAMES C SKIDMORE, 2742
MICHAEL K SKINNER, 4256
ROBERT E SLAUGHTER, 1281
JOE K SLEDD, 0245
JEFFREY A SMILEY, 8465
HOWARD G SMITH, 7357
KENNETH R SMITH, 7738
ROBIN M SMITH, 9373
ROBIN R SMITH, 6891
STANLEY A SMITH, 3372
THOMAS L SMITH JR., 6705
JEANNE C SMITHHOOPER, 2152
NATHAN D SMYTH, 5293
GARY L SMYTHE, 8714
THOMAS E SNODGRASS, 3373
PAUL E SNYDER, 5555
FRANK G SOKOL, 2554
JOHNNY W SOKOLOSKY, 5161
VICTOR L SOLERO, 1064
KURT L SONNTAG, 9060
WILLIAM E SPADIE, 9645
JAMES R SPANGLER II, 2448
JONATHAN H SPENCER, 9566
LORENZO SPENCER, 9214
GERRY M SPRAGG JR., 4548
DALE F SPURLIN, 0736
MARK R STAMMER, 5031
BRUCE E STANLEY, 2360
MATTHEW M STANTON, 7361
TIMOTHY J STARKE JR., 6111
JOHNNIE J STEELE, 6008
WILLIAM T STEELE, 0990
RICHARD F STEINER, 6456
THOMAS L STILES, 0594
RUSSELL E STINGER, 6036
ROCKO V STOWERS, 2396
DARRELL R STROTHER, 2688
DEBORAH S STUART, 2806
WAYNE L STULTZ, 0195
MICHAEL S STURGEON, 1472
MARK W SUICH, 2894
JOSEPH H SULLIVAN, 0304
JOHNNY M SUMMERS, 6733
WILLIAM E SURETTE III, 1206
JOHN H SUTTON, 8892
GEORGE L SWIFT, 2628
JAMES F SWITZER, 9636
CHRISTIAN D TADDEO, 0342
MARK E TALKINGTON, 2774
JEFFREY L TALLY, 7678
ROBERT M TARADASH, 6740
RANDY S TAYLOR, 4738
VINCENT J TEDESCO III, 3181
PATRICK R TERRELL, 7230
DAVID T THEISEN, 7046
JAMES D THOMAS, 2392
STEVE D THOMAS, 0043
DAVID E THOMPSON II, 7188
KEITRON A TODD, 5620
MICHAEL A TODD, 5268
DAVID W TOHN, 2946
MARK A TOLMACHOFF, 8808
CHRISTOPHER R TONER, 7110
EVELYN M TORRES, 7741
TIMOTHY B TOUCHETTE, 8532
RICHARD C TRIETLEY JR., 3936
GLENWOOD R TURNER JR., 7904
WILLIAM A TURNER, 5349
TOM C ULMER, 7245
JOHN C VALLEDOR, 2095
ALSTYNE T VAN, 1639
MARGARET M VANASSE, 2685
DAVID E VANSLAMBROOK, 2579
STEVEN J VANSTRATEN, 1632
JEFFREY G VANWEY, 9145
STEVEN VASS IV, 1335
JOHN H VICKERS, 2084
DOUGLAS L VICTOR, 3737
ROBERT E VIKANDER, 2521
MARIAN E VLASAK, 4958
PATRICK W VOLLER, 6107
JEFFREY E VUONO, 2867
STEVEN L WADE, 7606
CHRISTOPHER M WAHL, 6503
MARK D WALD, 8817
WILLIAM T WALL, 3484
PRISCILLA C WALLER, 0514
JOANNE E WALSER, 9752
RONALD H WALTERS JR., 6605
THOMAS M WALTON, 3098
TODD A WANG, 6973
GEOFFREY H WARD, 9817
JILL M WARREN, 4853
FREDERICK L WASHINGTON, 0292
PAUL C WASHINGTON, 2738
CYNTHIA K WATKINS, 2388
BRIAN T WATSON SR, 0406
MARK P WEBB, 6818
CHARLES R WEBSTER JR., 1172
DAVE WELLONS JR., 6470
FRANKLIN L WENZEL, 5075
RANDY A WESTFALL, 1818
TEDD A WHEELER, 1850
TODD M WHEELER, 1802
MARK M WHITE, 7728
RANDOLPH C WHITE JR., 6503
RONALD O WHITE, 9803
STEVEN J WHITMARSH, 7756
ANDRE L WILEY, 2554
HARRY F WILKES, 1243
CURTIS WILLIAMS JR., 7564
THEARON M WILLIAMS, 5901
RANDALL H WILLIAMSON, 4203
STEVEN C WILLIAMSON, 9276
DANIEL A WILSON, 7223
GERALD K WILSON, 0639
KEITH A WILSON, 5520
MITCH L WILSON, 8031
TIMMY L WILSON, 0080
ERIC J WINKIE, 7236
JAMES M WOLAK, 9330
WILLIAM M WOLFARTH, 2499
JAMES J WOLFF, 4869
AUBREY L WOOD III, 0775
MARK A WOOD, 0915
JOEY S * WYTE, 4563
LISSA V YOUNG, 6690
MATTHEW W YOUNGKIN, 4640
DOUGLAS K ZIEMER, 2262
MATTHEW H ZIMMERMAN, 1622
JOHN L ZORNICK, 5721
X2878
X041
X1408
X2386
X433
X047
X2435
X2574
X167

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

LEON M. DUDENHEFER, 9561

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

*To be lieutenant commander*

BRADLEY J. SMITH, 1008

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant commander*

THERESA M. EVERETTE, 5330

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant commander*

ANTHONY D. WEBER, 2369

# CONFIRMATIONS

## Executive nominations confirmed by the Senate August 1, 2002:

DEPARTMENT OF STATE

DAVID A. GROSS, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY IN THE BUREAU OF ECONOMIC AND BUSINESS AFFAIRS AND U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY.

JACK C. CHOW, OF PENNSYLVANIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL REPRESENTATIVE OF THE SECRETARY OF STATE FOR HIV/AIDS.

PAULA A. DESUTTER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF STATE (VERIFICATION AND COMPLIANCE).

STEPHEN GEOFFREY RADEMAKER, OF DELAWARE, TO BE AN ASSISTANT SECRETARY OF STATE (ARMS CONTROL).

MICHAEL ALAN GUHIN, OF MARYLAND, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, FOR THE RANK OF AMBASSADOR DURING TENURE OF SERVICE AS U.S. FISSILE MATERIAL NEGOTIATOR.

TONY P. HALL, OF OHIO, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE UNITED NATIONS AGENCIES FOR FOOD AND AGRICULTURE.

COMMODITY FUTURES TRADING COMMISSION

SHARON BROWN-HRUSKA, OF VIRGINIA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING APRIL 13, 2004.

WALTER LUKKEN, OF INDIANA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR A TERM EXPIRING APRIL 13, 2005.

FARM CREDIT ADMINISTRATION

DOUGLAS L. FLORY, OF VIRGINIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR A TERM EXPIRING OCTOBER 13, 2006.

NUCLEAR REGULATORY COMMISSION

JEFFREY S. MERRIFIELD, OF NEW HAMPSHIRE, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2007.

EXECUTIVE OFFICE OF THE PRESIDENT

KATHIE L. OLSEN, OF OREGON, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

RICHARD M. RUSSELL, OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FREDERICK D. GREGORY, OF MARYLAND, TO BE DEPUTY ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

FEDERAL MARITIME COMMISSION

STEVEN ROBERT BLUST, OF FLORIDA, TO BE A FEDERAL MARITIME COMMISSIONER FOR A TERM EXPIRING JUNE 30, 2006.

EXECUTIVE OFFICE OF THE PRESIDENT

MARK W. EVERSON, OF TEXAS, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET.

FEDERAL EMERGENCY MANAGEMENT AGENCY

MICHAEL D. BROWN, OF COLORADO, TO BE DEPUTY DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

DEPARTMENT OF STATE

MICHAEL KLOSSON, OF MARYLAND, 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 CYPRUS.

RANDOLPH BELL, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL ENVOY FOR HOLOCAUST ISSUES.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

MARK SULLIVAN, OF MARYLAND, TO BE UNITED STATES DIRECTOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

ASIAN DEVELOPMENT BANK

PAUL WILLIAM SPELTZ, OF TEXAS, TO BE UNITED STATES DIRECTOR OF THE ASIAN DEVELOPMENT BANK, WITH THE RANK OF AMBASSADOR.

BROADCASTING BOARD OF GOVERNORS

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004.

KENNETH Y. TOMLINSON, OF VIRGINIA, TO BE CHAIRMAN OF THE BROADCASTING BOARD OF GOVERNORS.

NORMAN J. PATTIZ, OF CALIFORNIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004.

ENVIRONMENTAL PROTECTION AGENCY

JOHN PETER SUAREZ, OF NEW JERSEY, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

CAROLYN W. MERRITT, OF ILLINOIS, TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

CAROLYN W. MERRITT, OF ILLINOIS, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

JOHN S. BRESLAND, OF NEW JERSEY, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

DEPARTMENT OF STATE

JAMES HOWARD YELLIN, OF PENNSYLVANIA, 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 BURUNDI.

KRISTIE ANNE KENNEY, OF MARYLAND, 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 ECUADOR.

BARBARA CALANDRA MOORE, OF MARYLAND, 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 NICARAGUA.

LARRY LEON PALMER, OF GEORGIA, 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 HONDURAS.

NANCY J. POWELL, OF IOWA, 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 ISLAMIC REPUBLIC OF PAKISTAN.

## NATIONAL MEDIATION BOARD

EDWARD J. FITZMAURICE, JR., OF TEXAS, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2004.

HARRY R. HOGLANDER, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2005.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

## THE JUDICIARY

HENRY E. AUTREY, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI.

RICHARD E. DORR, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI.

DAVID C. GODBEY, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.

HENRY E. HUDSON, OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA.

TIMOTHY J. SAVAGE, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

AMY J. ST. EVE, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

DAVID S. CERCONE, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

MORRISON C. ENGLAND, JR., OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA.

JAMES E. BOASBERG, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS.

## DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN, OF WISCONSIN, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WISCONSIN FOR THE TERM OF FOUR YEARS.

CHARLES E. BEACH, SR., OF IOWA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF IOWA FOR THE TERM OF FOUR YEARS.

PETER A. LAWRENCE, OF NEW YORK, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS.

RICHARD VAUGHN MECUM, OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

BURTON STALLWOOD, OF RHODE ISLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF RHODE ISLAND FOR THE TERM OF FOUR YEARS.

## DEPARTMENT OF DEFENSE

VINICIO E. MADRIGAL, OF LOUISIANA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2003.

L.D. BRITT, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR THE REMAINDER OF THE TERM EXPIRING MAY 1, 2005.

LINDA J. STIERLE, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING MAY 1, 2007.

WILLIAM C. DE LA PENA, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2007.

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

JOHN EDWARD MANSFIELD, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD FOR A TERM EXPIRING OCTOBER 18, 2006.