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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

TUESDAY, SEPTEMBER 3, 2002

The Senate met at 9:30 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

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

Almighty God, Sovereign of this Nation, Lord of this Senate and source of strength for leaders, we turn to You for guidance for the intensely busy weeks ahead in this fall session. As we convene, it is difficult not to consider every issue in terms of the forthcoming elections. Our party differences often are sharply focused. And yet, the agenda before the Senate is made up of crucial matters for the good of America. Enable the Senators to think creatively, to speak clearly, and to vote with conviction. May they seek Your will, stay open to each other, and give our Nation an example of how leaders can be decisive without being divisive.

This morning we lift up to You the family of Senator JOE BIDEN whose father, Joseph R. Biden, Sr., passed away yesterday. Comfort them with Your peace that passes understanding as they walk through this difficult time. Watch over the entire Senate family and surround us with Your protections. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 3, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

RECOGNITION OF THE ACTING PRESIDENT PRO TEMPORE

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

PROGRAM

Mr. REID. Mr. President, good morning. I welcome back every one of our very competent staff which has been away for 30 days.

Mr. President, this morning we are going to begin consideration of the homeland security legislation, H.R. 5005, with 7 hours of debate on the motion. The time will be divided between Senators LIEBERMAN and THOMPSON, and in opposition that time will be controlled by Senator BYRD.

At 12:30 today, we will proceed to executive session to vote on the confirmation of a judicial nomination. Following that vote, the Senate will recess until 2:15, as we do each Tuesday for party conferences. Debate on the motion will resume at 2:15.

All Senators should be alerted that in addition to the vote on the judicial nomination at 12:30 today, the Senate will vote on the motion to proceed to H.R. 5005 upon the expiration or yielding back of all time—somewhere around 6:15 this afternoon.

Today, we have a motion to proceed, as I have indicated. Tomorrow, we have the morning devoted to the Interior appropriations bill starting at 9:30. Then we will move again to homeland security.

Tomorrow evening at 6 o'clock, Vice President Mondale will be here for the Leader Lecture Series.

It will be a relatively short day tomorrow.

Then on Thursday, we will have full debate, which will include work on the Interior appropriations bill. We hope we can complete the Interior appropriations bill this week.

Hopefully, with permission of the minority, we can move to another appropriations bill.

We have one additional bill which the House passed, Treasury-Postal Service appropriations. That is something we have to do. There is a lot of work to do. Thursday will be our last legislative workday this week because Congress is going to New York on Friday.

As the leader announced, on each Monday there will be votes—some as early as noon. One week from Monday is a Jewish holiday. It is my understanding we will not work that day. At least that is the indication I got a

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

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short time ago in speaking with the leader.

MEASURE PLACED ON THE CALENDAR—S.J. RES. 43

Mr. REID. Mr. President, I understand that S.J. Res. 43 is at the desk due for its second reading.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask that S.J. Res. 43 be read for a second time, and then I object to any further proceedings at that time.

The ACTING PRESIDENT pro tempore. The clerk will read the title of the bill for a second time.

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.

The ACTING PRESIDENT pro tempore. Objection having been heard, the measure will be placed on the calendar.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

HOMELAND SECURITY ACT OF 2002—MOTION TO PROCEED

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to H.R. 5005, a bill to establish the Department of Homeland Defense.

Tom Daschle, Harry Reid, Zell Miller, Joseph Lieberman, Tim Johnson, Debbie Stabenow, John Edwards, Jon Corzine, Susan Collins, Robert F. Bennett, Trent Lott, Pete Domenici, Rick Santorum, Fred Thompson, Peter Fitzgerald, Jim Bunning.

The ACTING PRESIDENT pro tempore. Under the previous order, time for debate on the motion is limited to 7 hours to be equally divided between the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Tennessee, Mr. THOMPSON, for the proponents, and the Senator from West Virginia, Mr. BYRD, for the opponents, or their designees.

Mr. REID. Mr. President, the two managers will be here very shortly. I ask unanimous consent that the time for the quorum be charged equally against both sides, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, let me beg the Senator's forgiveness. Before he begins, I want to ask this earlier rather than later. May I ask a question with respect to the amendment?

Mr. LIEBERMAN. Of course.

Mr. BYRD. Is the amendment that the distinguished Senator will offer as a substitute the amendment I have seen? Is that the amendment?

Mr. LIEBERMAN. In responding to the Senator from West Virginia, that is indeed the amendment. What is before the Senate now, as the Senator from West Virginia knows, is the House-passed bill. It is my intention, assuming the motion to proceed passes today, to offer as a substitute the legislation that was adopted by the Senate Governmental Affairs Committee in July, which has been distributed to the Senator from West Virginia and others.

Mr. BYRD. May I ask the distinguished Senator, with great respect, does he have any suggestion as to how we will handle the time on quorum calls?

Mr. LIEBERMAN. I appreciate the question. It was my hope we could agree that the time on the quorum calls be subtracted equally from each side. Is that agreeable to the Senator from West Virginia?

Mr. BYRD. I hope it would not be. Once I begin, I don't plan to have any quorum calls. Yet, of course, at times it becomes necessary. When I do ask for a quorum call, I will expect that to be taken out of my time. I would not want to divide the time equally on quorum calls, I say with great respect.

Mr. LIEBERMAN. The Senator has that privilege, and I have no desire to limit debate. So let us just agree that quorum calls will remove time from the side that asks for the quorum call.

Mr. BYRD. Very well. I have one further question. In closing the debate, does the Senator have any particular way he wishes to proceed? I believe he would want to close the debate. If I might make a suggestion.

Mr. LIEBERMAN. Please.

Mr. BYRD. I ask if I could go preceding the Senator and if the distinguished minority member, Mr. THOMPSON, could speak just prior to me. That would be my suggestion. However, if Senator THOMPSON wants to do this differently, I will accept that.

Mr. LIEBERMAN. I thank the Senator from West Virginia. That order was exactly what I had in mind. I ask Senator THOMPSON if that is agreeable to him.

Mr. THOMPSON. It is most agreeable to me. I think that is the way to proceed.

Mr. LIEBERMAN. Fine. So we will close the debate in the last half hour going from Senator THOMPSON, to Senator BYRD, to myself.

Mr. BYRD. Mr. President, will the Senator yield further?

Mr. LIEBERMAN. I will.

Mr. BYRD. May I say, I hope we will not confine our closing arguments to a half hour. As far as I am concerned, when we get to that point, perhaps we can wait until the last hour to close the arguments, or the last hour and a half, and Senator THOMPSON would proceed, and then the Senator from West Virginia, and then the distinguished manager of the bill, and that we not limit ourselves—the three of us—to the totality of 30 minutes.

Mr. LIEBERMAN. Once again, Mr. President, that suggestion is agreeable to me. Debate, as the Senator from West Virginia knows, is limited to 3½ hours on each side. But some of this will depend on how many colleagues come to the floor to speak. Let us work together. I agree that we don't have to limit the time in which we go to closing arguments to the last half hour. We can work that out ourselves and take longer than that. That is fine.

Mr. BYRD. Mr. President, may I say I thank the distinguished Senator, the manager of the bill. I have only the very highest degree of respect for him, and I have only the highest degree of respect for the committee, and for his counterpart—if I may use that word—a very respected Senator, the Senator from Tennessee. I have great respect, and anything I say during this debate will be only with the desire in mind to contribute something that will reflect well upon this Senate in the days and years to come.

I have every belief that the Senator from Connecticut and the Senator from Tennessee approach the matter in the same spirit. I thank the Senators for yielding.

Mr. LIEBERMAN. Mr. President, I thank the Senator from West Virginia for his graciousness. Of course, Senator THOMPSON and I return the respect the Senator kindly offered to us. This is a very significant debate. It goes to the heart of the security of the American people today, post September 11, and it is also, by my calculation, the largest reorganization of the Federal Government since the late 1940s. Therefore, the kind of debate in which I know the Senator from West Virginia intends to engage is very much in the public interest. I look forward to it.

Mr. BYRD. Mr. President, I thank the Senator.

September 11 is now one of the darkest days in American history because of the almost 3,000 innocent lives that were taken and because of the way in which the American people were jarred from the dream that we would experience a time of extended peace after our victory in the cold war. The attacks made against us on September 11 were not just vicious in their inhumanity and in the lives that were taken in

tragic consequences, but also in the assault made by the terrorists on our very way of life, on our values.

We are a nation whose founders stated right in the original American document, the Declaration of Independence, that every citizen has the right to life, liberty, and the pursuit of happiness and that right is the endowment of our Creator. Yet we were attacked on September 11 by a group that claimed to be acting in the name of God. Yet they took planes into buildings full of thousands of people without regard to the lives of those people, killing them only because they were Americans, acting in the name of God to kill almost 3,000 children of God—diverse and varied in age and demographics, as the American people are.

It is in that sense that I view September 11 as an attack on our way of life. It is why we have pulled together after that as united people to resist, to strike back at those who struck at us first, through our courageous and skillful military achieving a great victory in Afghanistan. We must continue, since Afghanistan was only the first battle in the war against terrorism, to search out and capture or destroy all the enemy that remains in this unprecedented war, unprecedented in so many ways because we cannot see the enemy on a battlefield, they are not on ships at sea, but they are out there living in the shadows, preparing to strike us again.

What this proposal is about, stated in the most direct way, is to diminish, hopefully eliminate, the vulnerabilities of which the terrorists took advantage to strike at us on September 11, so that they will never again be able to do that.

I am not one who views another September 11-type attack as inevitable. We are the strongest nation in the history of the world, militarily and economically. We are united by our shared values. We are a patriotic and innovative people, and if we marshal these strengths, we can make another September 11-type attack impossible, and that is the aim of the legislation our committee puts before the Senate today.

The urgent purpose of all three versions of homeland security that are in the discussion now—and I am speaking of the proposal by President Bush, the proposal passed by the House, and the one endorsed by the Governmental Affairs Committee of the Senate—is to meet the urgent post-September 11 security challenge we face, which is unprecedented, by consolidating the disparate Federal agencies and offices that deal with homeland security into a single Cabinet department under a strong, accountable Secretary.

In one sense, one might say the problem with the Federal Government's organization today with regard to homeland security is that a lot of people are involved in homeland security but nobody is in charge. The mission of this new Department that all three proposals would create is to spearhead the Federal Government's defense of the American people against terrorism on our home soil, working particularly with States, counties, cities, towns, and Native American tribes across the country and working with the private sector to improve their preparedness and response capabilities.

As the 1-year anniversary of September 11 approaches, the reconstruction of the Pentagon is almost complete, the field in Pennsylvania, to the casual eye, looks almost like any other field, and plans for the redevelopment of the World Trade Center site are already being actively discussed. But the reality is that the vulnerabilities the terrorists exploited on September 11 in America's homeland defense structure still exist. We are still at risk, and that is why we must urgently proceed to discuss, debate, and then adopt legislation creating a Department of Homeland Security.

The dark day of September 11 and the future it foretold are seared in our minds and our hearts. We must never stop feeling anger and outrage about what our enemies did to us. We must never stop mourning the 3,000 lives we lost. We must never stop honoring the legacy they left. We must never stop supporting the families whose loved ones were the first casualties of the war on terrorism. And we must never stop treasuring the freedoms and the opportunities that make this Nation truly the light it is to so many people around the world.

The single most important action we can take now as individuals and as a nation, in addition to continuing the military phase of the offensive war against terrorism, is to channel our sorrow, our outrage, our unity, our anxiety, and our pride into building better defenses at home.

This legislation is not a single-magic-bullet answer to our homeland security challenges—much more work needs to be done—but I am convinced it is a strong and necessary first step. It will provide the structure that can deliver the defense the American people deserve.

I thank President Bush for embracing the creation of a Department of Homeland Security and for the diligence with which he and his staff have worked through the details with members of our committee, with Members of the Senate, and with Members of the House. Amendments always highlight differences, but the reality is that President Bush and the majority of members of the Governmental Affairs Committee who reported out the legislation are in agreement on more than 90 percent of what this legislation provides. We stand broadly on common ground, even as we debate some of the remaining differences between us.

I also want to thank my colleagues in this Chamber for their contributions and cooperation across party lines for the building of this proposal. We have come a long way, and we must get to the end in this session. I particularly want to thank my ranking member, Senator THOMPSON, for his characteristic constructive and thoughtful contributions to this proposal, even when we have been in dissent. The least we can do for the American people and for Senator FRED THOMPSON is to pass this legislation while he is still a Senator, before he retires.

The President and Congress and the American people have made real progress since September 11. A successful military campaign in Afghanistan, creating the Office of Homeland Security, passing the USA Patriot Act, creating a Transportation Security Administration, beginning to reform the FBI—those are just a few of the significant steps we have taken forward together.

Federal employees are working very hard at their assigned tasks and working increasingly in cooperation with our State and local colleagues to keep the American people safe. We have to speak frankly about this as we begin the consideration of this legislation.

Our progress will hit a wall—in effect it has—if we do not reform the Federal Government's homeland security capabilities because the gains we have made in keeping America safe since September 11 have been, and will continue to be, in some sense despite the system, not because of it.

The system, the organization, is dispersed and in some ways it is dysfunctional. It needs to become coherent and consolidated, coordinated, to rise to the complex challenge of defeating 21st century terrorism in our homeland.

The 18 hearings we on the Governmental Affairs Committee have held since September 11 on this matter, and countless other hearings by so many other committees, have made the scope and depth of this disorganization and dysfunction clear.

To sum it up in the words of Stephen Flynn, senior fellow of national security studies at the Council on Foreign Relations, who testified before us on October 21 of last year:

We have built our defense and intelligence communities to fight an away game.

Now we must build them to fight at home and to win. Across our Government, we are dividing our strengths when we desperately need to be multiplying them. As the President acknowledged on June 6, the Office of Homeland Security, though ably headed by Gov. Tom Ridge, did not have the structural power to get the job done we need done. Indeed, the release on July 16 of the President's national strategy for homeland security, underlay the importance of creating a Department that can orchestrate the huge task ahead.

The status quo is simply unacceptable and we must rise to the occasion by organizing for the occasion. We must move from disorganization toward organization. When we pass this legislation, the American people, for

the first time, must be able to look to a single Federal agency that will take the lead in the homeland fight against terrorism and to hold that agency accountable for accomplishing what is Government's first responsibility, and that is to provide, as the Constitution says, for the common defense. And now that means the defense of the American people at home.

The Department we will create will be led by a Presidentially appointed, Senate-confirmed Secretary. It would be comprised of six directorates that, taken together, would accomplish its missions and goals. Let me briefly describe them now.

First is intelligence. I put that first intentionally because we cannot prevent attacks, nor can we adequately prepare to protect ourselves or respond if we cannot first detect the danger. This legislation would establish a strong intelligence division to receive all terrorism-related intelligence from Federal, State, and local authorities; from human intelligence and signal intelligence; from closed and open sources; from the FBI and the CIA, including foreign intelligence analysis from the Director of Central Intelligence's Counterterrorism Center. Then it would have the authority to fuse that all in a single place. This would be the one place—which does not exist in our Government now—where all the proverbial dots could be connected as they were not because of existing barriers to sharing information prior to September 11. Indeed, the new Department will not just receive and analyze intelligence collected from other agencies; it will contain agencies within itself that collect intelligence and will share it and send it up to this directorate of intelligence. I am speaking of the Customs Service, of Immigration, of the Coast Guard, of the Transportation Security Agency, all examples. All of that will be fed into the same stream.

I want to stress that stream will include information from State and local law enforcers who we acknowledge now are the first responders, as we saw on September 11.

If this directorate of intelligence is working well, State and local law enforcers can become first preventers. They are hundreds of thousands of eyes out across America who can share information, who can help us detect patterns and work with law enforcement to prevent any future attacks against America. This precise capability exists nowhere in Government and would be designed to complement the Director of Central Intelligence's Counterterrorism Center and the capabilities of other intelligence and law enforcement agencies such as the FBI.

This directorate would not collect intelligence; it would receive it and analyze it. It would mean all information related to terrorist threats on American soil would, for the first time in our history, come together in this one place. Perhaps it could be called a hear-all-evil and see-all-evil office. That is precisely what we need to prevent the recurrence of the disastrous disconnects that left the puzzle pieces of the September 11 plot laying scattered throughout our Government, when they should have been together in one box so they could have been assembled. That is what this division of intelligence would do.

The second, critical infrastructure: We can expect terrorists to try to hurt us by destroying or disrupting our infrastructure. What do we mean by that? Well, our water and agricultural delivery systems, our energy grids, our information technology networks, our transportation systems, our ports and airports, and more. Eighty-five percent of our infrastructure is actually owned and operated by the private sector. That is the nervous system, the respiratory system, the circulatory system of our society. Infrastructure, however, is not the only target. Indeed, attacks by weapons of mass destruction have up until now been designed largely to destroy people, not to damage our infrastructure. In fact, of course, the attacks on September 11 were not against infrastructure in the way in which that term has normally been meant. They were against the World Trade Center and the Pentagon. But infrastructure is a big, vulnerable, and complex target.

Today, responsibility for working with the private sector to safeguard it is spread thin throughout the Federal bureaucracy. This directorate would mesh critical infrastructure protection programs now residing in five different Federal agencies, including the Department of Energy, the Department of Commerce, and the General Services Administration.

Third is a border and transportation protection directorate. Every potential source of danger that is not already inside our country must come in through our ports or airports or over our borders. Once danger gets inside, it is much harder to root out. So to effectively interdict, interrupt, and intercept terrorists and the weapons of toxic materials or mass destruction they seek to smuggle in, this directorate would bring together our Customs Service, the border quarantine inspectors of the Animal and Plant Health Inspection Service of the Department of Agriculture, the recently created Transportation Security Administration, and the Federal Law Enforcement Training Center.

The Coast Guard will also be transferred to the new Department reporting directly to the Director of Homeland Security and will work closely with all other authorities on our waterways, in our ports, and at our borders.

Fourth is science and technology. Now terrorists will try to turn chemistry, biology, and technology against us in untraditional and inhumane ways. So we are challenged to marshal our superior technological talents to preempt them and protect our people.

This science and technology directorate is intended to leverage America's advantage on this front, creating a lean entity to manage and coordinate innovative homeland security research and development and to spearhead rapid technology transaction and deployment. It would be armed with an array of mechanisms to catalyze and harness the enormous scientific and technological potential residing within our Government, within our private sector, and within our university communities.

One of the key features of this directorate will be a homeland security version of the Defense Advanced Research Protects Agency, DARPA, which has sparked the development of Revolutionary Warfighting Tools for our military throughout the cold war and now into the post-cold-war world, the very tools and systems and weapons that enabled our courageous and skillful fighting forces to terrify and defeat the Taliban in Afghanistan so brilliantly and to disrupt the al-Qaida network.

Of course, DARPA has also spun off from its technologies to create some of the most remarkable commercial and civilian technologies that characterize our age, including the Internet.

It is our hope and prayer that this new Department, which we would like to call SARPA, the Security Advanced Research Projects Agency, will do the same for our homeland security and for our economy.

Fifth, emergency preparedness and response: After September 11, we all have an obligation to think about and to prepare ourselves for the unthinkable, including attacks with chemical, biological, radiological, and nuclear weapons at home. This directorate with the Federal Emergency Management Agency at its core will combine and integrate the strengths of a number of Federal agencies and offices responsible for dispensing critical vaccines and medicines for training local and State officials in emergency readiness, and for reacting to and helping the American people recover from the attacks that we hope and pray and will work to deter, but we must be ready to respond.

Six is immigration. America's positive fundamental heritage of immigration, central to our character as a country of opportunity and responsibility and community, must be honored. But at the same time, after September 11 we have to look with new clarity and intensity at illegal immigration as well as how to better screen those who come to this country legally and may stay beyond the time allowed.

Our proposal brings the troubled Immigration and Naturalization Service into the Department of Homeland Security and places those functions in a separate division within it. Then, to undo internal conflicts in the agency and give each set of functions the concerted attention it deserves, we propose to split the directorate into two

distinct but closely linked bureaus as called for in the bipartisan INS restructuring plan of our colleagues, Senator KENNEDY and Senator BROWNBACK. This is a long overdue major reorganization of a very troubled agency.

We also require the Secretary to establish a border security working group comprised of himself, working with the Under Secretary for Border and Transportation Security and the Under Secretary for Immigration Affairs. Our goal is to make passage more efficient and orderly for most people and goods crossing the border while at the same time raising our capacity to identify and stop dangerous people and things from entering America.

Those are the six core directorates which we see as six spokes of the wheel. Where they meet at the axis is where our security at home comes together.

There are a few important pieces of this legislation I want to describe additionally. As we need to keep reiterating, this is not solely a Federal responsibility or a Federal fight in the war against terrorism, it is a national responsibility and a national fight, with the front lines being drawn in our cities and towns all across America. One need only look at the long list of fallen heroes of September 11 to understand that. That is why we in Washington must do a far better job of creating and sustaining potent partnerships with States and localities which will be facilitated, I am confident, through the new Department. We are creating an Office of State and Local Government Coordination. This office is designed to assess and advocate for the resources needed by State and local governments all across the country.

In fact, there is separate legislation, quite appropriate, recommending the creation of a homeland security block grant. The initial amount proposed is $3.5 billion for fiscal year 2003.

I know from having spoken to the Presiding Officer, speaking to the local responders and first preventers, they are already spending significant funds to carry out the wider range of homeland security responsibilities they have. This is a national problem, and they are playing a large role in responding. We have to give them the resources, the funds, to make that possible. In fact, to meet the pressing need for well-trained firefighters in our communities, our legislation includes an amendment offered by Senators CARNAHAN and COLLINS that points Federal assistance to local communities nationwide, patterned on the very successful COPS program adopted during the Clinton administration. This program for firefighters would enable the hiring of as many as 10,000 additional firefighters per year.

The Office of State and Local Government Coordination would also be strengthened with the help of an amendment offered by Senators CARPER and COLLINS providing a number of new mechanisms, including the creation of liaison positions in each State in the country, a liaison with the new Department of Homeland Security to ensure close and constant coordination between the Federal Government and the first responders, first preventers, who are our principal partners in this solemn task.

Recognizing the need to ensure that fundamental American freedoms are not curbed as we build a more secure society, our legislation also creates positions of civil rights officer and privacy officer, as well as a designated officer under the inspector general within the new Department. Those positions will provide the Secretary valuable guidance to help craft effective policies and practices that don't compromise individual rights, and ensure there is an effective avenue for receiving complaints and investigating them. Outside of this Department, within the White House, the amendment would create another entity, a National Office for Combating Terrorism. Here I want to give substantial credit to the Senator from Florida, Mr. GRAHAM, who has worked very hard with Members of both parties, in this Chamber and the other body, to fashion this proposal.

We cannot fail to recognize that the fight against terrorism is, by definition, larger than what will be done by this new Department of Homeland Security. It will involve our military and intelligence communities separately, our diplomatic services, our law enforcement agencies, our international economic agencies, and many others. It seems to me and the committee that it is therefore still necessary to have a policy architect in the White House who can design and build the overriding antiterrorism strategy for and with the President, and to coordinate the implementation of that strategy that will necessarily go beyond the Department of Homeland Security.

The director of this office will work, of course, with the Homeland Security Secretary to develop the national strategy for combating terrorism and the homeland security response. With budget certification authority, the director of this White House office will be able to make sure all the budgets that make up our antiterrorism national strategy fit together smoothly. And because of the critical nature of this job, according to our legislation, the director would be confirmed by the Senate, making him or her accountable to the Congress and to the people of the United States.

That is an overview of our legislation as will be contained in the amendment I look forward to putting before the Senate this evening, after, hopefully, we have adopted the motion to proceed. I am proud that on the guts, on the fundamentals, of this proposal we in the Senate are near unified on this attempt to form, in a very modern context, what our Founders described as ''a more perfect Union.''

Winston Churchill once said:

> A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.

I think only a big pessimist would see the difficulty in the opportunity this Department would create to secure our people and our homeland. We have crafted here a fundamentally optimistic and I think realistic answer to the homeland security challenges we face—seeing opportunity, not difficulty. As we go forward with amendments and discussion and votes on the remaining differences, I hope and believe that optimism will prevail and constructive action will result. Together, united across party lines, as it has been over and over again throughout history, our great country, which today faces a challenge that is unprecedented, will give the response we are called on to give—which is equally unprecedented.

I yield the floor.

The PRESIDING OFFICER (Mr. BAYH). The Senator from Tennessee.

Mr. THOMPSON. Mr. President, it is indeed true that today we begin consideration of the most significant reorganization of the executive branch in over 50 years. Not since the creation of the Department of Defense and the creation of the national intelligence apparatus in the National Security Act of 1947 has the Senate considered such a massive restructuring of Federal agencies.

Just as World War II and the start of the cold war demonstrated the need to reorganize our defense and intelligence establishment, the terrorist attacks of September 11 demonstrate the need to reorganize our homeland security establishment to address the threat of terrorism and other types of asymmetric warfare against our country and against our people.

I start by acknowledging and thanking Senator LIEBERMAN, the manager of the bill, for his leadership on this issue. He was an early supporter of legislation to reorganize the executive branch to confront emerging threats against our country. He recognized what needed to be done and has worked hard to get us to the point where we are today.

While we have some disagreements in some important areas, in the end we both believe that the creation of a new Department of Homeland Security is needed to make this country safe. Our Nation and the Senate also owe a debt of gratitude to the Members of the Hart-Rudman and Gilmore Commissions. Recommendations from both commissions have contributed greatly to our efforts. Indeed, the proposal before us owes much to the insight and thoughtful recommendations of our former colleagues, Senators Gary Hart and Warren Rudman.

This legislation is one of the centerpieces of our country's overall homeland security strategy. What we do here will have lasting effects on our Nation. It will certainly outlive us. We should not shy away from the fact that

while some bureaucracies will be reduced and eliminated, we will be creating a large new bureaucracy with new leadership, a new mission, and a new culture. However, even advocates of smaller Government realize it is a mission that is vital to the security of this Nation, the most important responsibility of this or any other government and one of the basic responsibilities outlined for the National Government by the framers of our Constitution. That is what we are about today.

I think it is appropriate perhaps to take a moment to reflect on how we got here. It is obvious to all that in the last several years we have undergone a revolution in the world in terms of the advances of modern technology. The same thing has happened with regard to transportation. We have also seen the emerging of a brand of religious radicalism that has infected certain parts of our world. We have seen the merging of those factors together, now, so that a small band of people, a small group of people, or even individuals on the other side of the world can wreak tremendous damage to our homeland.

It is a different world we live in today, and we must have different means of dealing with it. We have seen attacks on us over the last several years that have become more and more indicative of the kind of world we can expect in the future: The Khobar Towers in Saudi Arabia, the original World Trade Center bombing, our embassies have been attacked, the U.S.S. *Cole* has been attacked. There have been other attempts that have failed because of the intelligence we were able to obtain. Attacks have been thwarted.

We have seen over the last few years, through our committee hearings and through reports of the GAO and other governmental entities, a rising pattern of capabilities, in terms not only of terrorism but of rogue nation-states and their increasing ability to deliver weapons of mass destruction, to develop those weapons of mass destruction, and to have the missile capability and other capabilities of delivering those for thousands and thousands of miles.

We have seen intelligence reports reminding us from time to time that this is what is going on out there.

We have not paid as much attention to that in times past as we should have. When we look back with the vision we have now and see the attacks that have come upon us around the world, attacks on our interests and our people, coupled with the intelligence information we were getting here in our own Congress, we should have been able to see, as some of us have seen, that there was a developing pattern out there that needed to be addressed by the Congress.

One of the good things that comes from such a tragedy under which we are now laboring is that it does finally focus our attention and allows us to do some things we should have done some time ago. It is a terrible price to pay in order to get us here, but we are here now and we should take advantage of that opportunity.

How do we react to something like September 11? We react by coming together, as the American people have. We react by being strong militarily and having the kind of leadership that we have to carry out the necessary operations overseas. We are doing that. The President said in the very beginning that it was going to be a long, tough road. Indeed, it is proving to be. It doesn't take a whole lot of effort for people to rally right after an attack. But it is going to take something special from the American people to have the stick-to-itiveness, and to have the stamina it is going to take, over a long period of time, for us to do what we are in the midst of doing now militarily.

We also react by changing our priorities. We cannot continue, in the Congress of the United States, in terms of budgetary matters, for example, to act as if these are normal times. We cannot have guns and butter at all times. We cannot have our cake and eat it, too. We have to prioritize now to deal with this threat that we have to our Nation.

Finally, the other important thing we can do is the one we are dealing with here today, this week, and days hereafter, and that is addressing and improving the institutions we have in our Government to deal with such matters and specifically the new threat we face.

We have seen—Senator LIEBERMAN and I—especially in the Governmental Affairs Committee over the last several years, an increasing array of problems that our Government has. There have been problems in management. There have been problems in trying to develop information technology that the private sector already has up and running. We have spent billions and billions of dollars and still have difficulty in getting that right and integrating those systems into our governmental operations.

We have financial management difficulties. We literally cannot pass an audit as a Government. We lose things and misplace things such as military equipment and other troubling things such as that. We have human capital problems. Half our workforce is going to be eligible for retirement before long. We do not have what we should have, in terms of ability to recruit, ability to retain, ability to keep the people we need and not keep the people we do not need, and pay the ones we need to pay for these high-tech jobs—jobs that are so highly paid out in the private sector—to do the things we have to do in Government now.

All of this presents a real problem to us, as a government, a Government-wide problem that has been growing—and growing all too silently out there—and without us doing too much about it.

The GAO reminds us every year that the same agencies year after year appear on the high-risk list. That is the list that is compiled, as you know, on a yearly basis to lay out the agencies that are most susceptible to waste, fraud, abuse, overlap, duplication, and inefficiencies. The same agencies appear year after year. Some of those agencies are the ones being brought into this homeland security bill.

We can't afford, as we create this new Department, to incorporate the same kinds of problems that we are seeing government-wide because the stakes are too great. It is not just a matter of wasting a few billion dollars of the taxpayers' money; it is a matter that could literally be life and death. This is what this bill is all about. This is why Senator LIEBERMAN took the initiative. This is why the President decided, once the strategic view was presented to him by the people he had commissioned to look at all of this, that a homeland security approach was needed, and that the 22 agencies out there needed to be pulled together into one cohesive entity that could work to make our country safer.

Certainly, there are very important areas. I will not go over all of them. Senator LIEBERMAN has done that.

But border security, for example, has never made any sense when we have people crossing borders, when goods cross the borders, and when plant life crosses the borders—all of which can be dangerous to the American people. They can cross them by water, they can cross the borders by air, they can cross the borders by highways. All of those things are just different aspects of the same problem. It all has to do essentially with border security. It has never made any sense to have all of this dispersed throughout Government.

What the President does and what the committee bill does is to pull those in. We have different ways of doing it. We will have an opportunity to discuss those in more detail as we proceed, but it gets its arms around the border security problem.

A lot of experts will say if you can do much better on the border problem, you can do better in the intelligence area, then you have gone a long way toward solving the problem.

In the intelligence area, the President's approach is to have an intelligence entity that will allow us to protect our infrastructure. As you know, our infrastructure is elaborate, far-flung, and complex. Almost all of it is in private hands. It is an extremely difficult problem to address and to get our arms around and to protect. We can never be totally protected at all times in all ways. It is going to require a great deal of attention and expenditure of money by State, local, and Federal Government over years to come.

We are going to have to address the vulnerabilities that we have. The President's approach would set up a system to assess those vulnerabilities in order to protect those infrastructures. The committee's approach is a broader approach. We will have an opportunity to discuss that.

I have concern about this broader approach because I don't think we can address the difficulties with the intelligence community in this bill and give it to a sub-Cabinet officer to have authority to pull all the dots together and all the things that need to be done in the intelligence community. We have seen, goodness knows, over the last several months and few years the difficulties we have in those areas of collecting intelligence, analyzing intelligence, and disseminating intelligence properly. That, to me, is a very important area that is going to have to be led by the President. It is going to have to be done by the administration. I view that as somewhat separate from the homeland security effort. But we can never mesh our entire intelligence community into this new Department.

The analyses that we are going to need for the Homeland Security Department are also needed by these various intelligence communities.

These are legitimate differences of view and approach that we will have an opportunity to discuss as we proceed. But we all agree that we, No. 1, must do much better in terms of our intelligence community and capabilities government-wide; secondly, this new entity must have some new intelligence entity to assist it to do what we properly decide that it ought to be doing. We will have an opportunity to discuss that in some more detail.

I think as we proceed we can flesh this legislation out and we can make it even better than it is. Senator LIEBERMAN is correct. I think there are many things we have basic agreement on here on a bipartisan basis. There are some serious differences of view on some important areas—differences the majority of the committee took versus what the President wishes to do. I think in these times the President must be given some leeway. It is going to be a long time before we put the final period to the last sentence of this legislation. I think it will be changed, as many other pieces of legislation dealing with the Department of Defense and the Transportation Department and others have changed over the years. I think there will be amendments and changes as we go forward. But it is important that we get off on the right foot.

It is important, for example, that we give the new Department the management tools it needs. I have mentioned some of the problems we have traditionally with Government and the fact that we can't afford to bring those problems into the new Department. We can't expect to keep doing things the same old way and get different results. We don't want those inefficiencies, those overlaps, duplications, and waste, lost items, and things such as that, to follow us into the Department of Homeland Security. We can't have that happen. It won't work.

What is the answer? The answer is to give the new Department sufficient management flexibility in order to address these issues. We have recognized this need in times past. We have given this flexibility in terms of hiring and firing and managing and compensating. Most of it has to do with compensation. A lot of people will say this is anti-employee or union-busting or what not. It has nothing to do with that. Various agencies and the GAO came to us. The IRS came to us. The FAA came to us. The Transportation Security Administration came to us. They all came to us and said: Look, we either have special circumstances or we have special problems and we need some additional tools to deal with that. We need the right people in the right place to deal with those matters.

In every one of those instances which I mentioned, Congress gave it to them. Congress gave them additional flexibilities that are not within the body of title V because we perceived those needs to be exactly as they were described to us.

Now we are pulling 22 agencies together—some of them, quite frankly, already dysfunctional—and giving out these new responsibilities. We talk about how important it is to the new Department.

My question is, If we are going to give these flexibilities to these other agencies, my goodness, why not this one, of all agencies or all departments?

The President's national security authority must be preserved. We have significant disagreement with regard to whether the traditional authority that Presidents have had since President Jimmy Carter in the national security area in terms of the justifiable need to activate collective bargaining agreements with particular entities at particular times, for good reason. Presidents have used this authority judiciously. As far as I know, there has never really been a problem with it.

This bill, as written, would take a step backwards from that authority of the President. I don't think it is fair in these times, of all times, to do that.

On the issue of the White House staff, should we force on the President a Senate-confirmed person in that position when he says he is creating a new Department and a new Secretary with all of this elaborate mechanism, and he wants his personal person—some people make the analogy with the National Security Council, for example, that it is not Senate confirmed—inside the White House working for him?

I assume, as Mr. Ridge is doing today, should we not give the President that? I believe so, after a sound intelligence approach, as I mentioned earlier, with not too many directorates, and not making this more elaborate and complex than we should.

Those are issues that we have. I think they are legitimate. I think they are important. They will be the subject of amendments as we proceed.

But, again, we do not want to look at a glass that is almost full and say that it is almost empty, because it is not. We agree on many, many important fundamental aspects. I think it is our job to get about the consideration of it, and to improve it, to discuss these important issues and differences that we have, and come to a conclusion that is going to achieve what we are all striving for; that is, a safer United States of America.

Mr. President, I yield the floor.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Tennessee for his very thoughtful statement. It has been a pleasure to work with him on the Governmental Affairs Committee, both when he led the committee and in the time that I have. I look forward to working with him in the weeks ahead to achieve what we all want to achieve, notwithstanding some differences that we have today, which is to secure the future of the American people here at home.

I know that the intention was that Senator BYRD would speak next. He is not on the floor at the moment. I note the presence of the Senator from Texas.

Mr. THOMPSON. I would ask that the Senator from Texas be given as much time——

Mr. GRAMM. Why don't I take up to 10 minutes. Every time I have ever heard anybody say they will not use it, they talk more. But certainly everything I would want to say or should say or am competent to say I can say in 10 minutes.

Mr. LIEBERMAN. Very well. Then it would be our understanding, after the Senator from Texas has completed his statement, that Senator BYRD will be recognized.

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will withhold for a moment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I greatly appreciate my friend from Texas withholding. He has always been very courteous. Today is no different than any other time.

ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that the Senate proceed to executive session, today, at 12:30 p.m. to consider Executive Calendar No. 962, Terrence McVerry, to be a United States District Judge; that the Senate immediately vote on confirmation of the nomination, that the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, any statements thereon be printed in the RECORD, with the preceding all occurring without any intervening action or debate, and that upon the disposition of the nomination, the Senate resume legislative session and stand in recess until 2:15 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, as in executive session, I ask unanimous consent

that it be in order to request the yeas and nays on the nomination at this time.

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

Mr. REID. Mr. President, I do, therefore, ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, whenever a bill comes to the floor from a committee, obviously, a lot of people have had an opportunity to have an input in it. It is always easy for people who do not serve on that committee to stand on the outside and jeer and throw rocks through the windows. And we are going to have a long debate. I think this bill is going to change dramatically. So rather than spending my time being critical of the product, I would like to just talk about some basic principles, sort of where I am coming from and what I hope can happen.

First of all, when September 11 occurred, it sort of awakened the country to a threat we always knew was there. But there is nothing like seeing your fellow countrymen suffer to focus the mind on a challenge that too often we chose to pretend did not exist. I think we all concluded, in the wake of September 11, that our country had changed, perhaps forever. Part of that change had to do with coming up with an effective response.

Free societies are vulnerable to terrorist attacks. There is nothing we can do about that since we are going to remain a free society.

The President, who has the responsibility under the Constitution, as Commander in Chief, to defend the homeland, spent time and effort in getting together the best people, at least in his mind, that he could assemble, and he came up with a plan. That plan involved bringing all or part of 22 agencies together in a new Homeland Security Department.

I know there are many people who have many different views, and that is what makes democracy strong. But I would like to begin with the point that the one person who has the constitutional responsibility, the one person who has access to more information than anybody else in our society, made a proposal; and that is the President's proposal.

In my mind, under these circumstances, and in this clear and present danger that we face, I believe—no blank check, no guarantee we are going to do it just as the President wants it—we ought to bend over backwards to try to accommodate the man who has the constitutional responsibility and is ultimately going to be given the credit or the blame by the American people based on what happens.

The President primarily asked for three things. One, he wanted flexibility in reorganizing these Departments. The flexibility wanted was substantial, but it was not without precedent. We had given similar flexibility to the Department of Energy, which was created from other Departments. We had given similar flexibility to the Department of Education, which was created in part by transfer and part by creation. Yet, remarkably, the bill that is before us denies the President the same flexibility that the President had when the Departments of Energy and Education were created.

Now, energy is important, especially if you are in an energy crisis. Education is always important. But is there anybody who really believes the crisis we face is so unimportant that President Bush should not have the same powers in setting up the Department of Homeland Security that the President had in setting up the Department of Energy? I do not think many people take that position, but we have a problem in that the bill before us takes that position. In my mind, that has to be fixed.

I understand reasonable people with the same facts are prone to disagree, but, as I look at this first request of the President, that he be given enhanced flexibility, not dissimilar to what we had with the Department of Energy and the Department of Education, to me, that is pretty close to a no-brainer that the President ought to have that flexibility.

The second request is that the President have the power, based on national security, to override labor agreements. Now, that sounds like a pretty dramatic power. In fact, the way opponents normally talk about it, it is basically giving the President the power to eliminate collective bargaining. In my mind, nothing could be further from the truth. All this power does is gives the President the power to set aside elements of collective bargaining when national security is involved.

Interestingly enough, the power the President sought he has under existing law. The President was simply asking for an affirmation of existing power. But, remarkably, in the wake of 9/11, not only did the committee not reaffirm this existing power but they took power away from the President in saying that whereas today, whereas on September 11, or September 10, the President could have waived collective bargaining agreements for national security purposes, under this bill he would not be able to do that. But the prohibition would apply only to the Department of Homeland Security.

I submit there is always room for disagreement, there is always room for some negotiation in trying to understand what other people think, but, to me, it is incomprehensible and absolutely unacceptable that we should be setting up a Department of Homeland Security and at the same time take away power the President has under existing law to take action based on national security concerns.

The provision taking away the President's national security powers simply does not fit in this bill. I do not think it fits in any bill. But in a bill that is trying to respond to 9/11, it clearly does not fit and cannot be accepted and will never be accepted. Clearly, that is something that has to be fixed.

Let me give you some examples. We currently have labor contracts negotiated with Government employee labor unions that prohibit the stationing of Border Patrol in areas that do not have laundries, that do not have access to personal services. There is a long list of things that were written.

Now, in normal circumstances, where you have people trying to lead a quality life like everybody else, you can understand those things. The ability to take your clothes to the drycleaners is pretty important when you are wearing uniforms that require drycleaning. But in an emergency circumstance, do we really not want to have the power to waive that collective bargaining agreement?

Another thing that has constantly driven me crazy, being in a border State—a huge border—with Mexico, is that trying to get the Border Patrol, INS, and Customs all to work together, trying to get them to cross-train so that people can perform various functions, is like trying to get them to use the same toothbrush. In fact, President Clinton's National Security Adviser talked about his frustration in dealing with the INS and Customs and the unwillingness of one agency to open the trunk in working with another agency.

Now, look, I understand work rules. I admit I am probably less sympathetic to them than most other people. I think if you sign onto a job, whatever the job requires, within the limits of human dignity, you ought to be willing to do. I don't understand negotiating about who pushes what button or who opens what trunk. To me that seems silly. I am not very sympathetic to it. But when we are dealing with national security concerns, when the lives of our fellow citizens are at stake, we cannot put up with that business.

So all the President is asking for is the power to set aside those kinds of agreements in dealing with national security. It is not a question of being anti-union, it is a question of having concerns that override collective bargaining. We don't have collective bargaining for the Marines because they are about very serious, life-threatening circumstances and tasks. In dealing with homeland security, we are dealing with exactly those kinds of circumstances.

Finally, the President's proposal asks for personnel flexibility—the ability to put the right person in the right position at the right time, without waiting for the normal 6 months, and the right to transfer people who are incompetent, and the right to fire people.

I understand collective bargaining, and I understand writing in requirements of how the personnel system

works. I understand trying to prevent people from being arbitrary and capricious. But the bottom line is, if we are trying to fight and win this war on terrorism, we need to have the ability to hire, fire, and promote based on merit in those agencies that are involved. I will give you two examples.

A woman FBI agent sends a cable to the home office basically saying that maybe we ought to be concerned about people with terrorist connections who are taking flight training and are focusing on flying planes but not landing them. That actually happened. In the whole process of trying to absorb massive amounts of information with conflicting jurisdiction, nobody ever responded to it. But don't you think we ought to promote that woman? Don't you think we ought to promote her out of grade and reward her—not only to reward the fact that she was paying attention to her business, she was alert to a potential problem that, God knows, we wish we had been alerted to, and we want to send a signal to others in the FBI and other agencies that if you are doing a good job, we are going to reward you.

On the negative side—and I don't want to belabor it because I don't know the circumstances and I am not at INS. I don't know the individual life stories of the people involved or the problems they had or the bureaucracy they faced. But, look, when we granted visas to terrorists who had their picture on every television screen in the world, whose names are on the front page of every newspaper in America because they had killed over 3,000 of our citizens, and then weeks later we processed a visa request for these brutal terrorist/murderers, maybe somebody should have been fired. Maybe somebody should have been transferred.

I know that theoretically in the Federal Government you can fire people, but the reality is that it is virtually impossible. As everybody in the Senate knows, fewer than 1 percent of people who are found to be doing totally unsatisfactory work end up being fired in the Federal Government, and 80 percent of them, because of the momentum of the seniority system, end up getting raises after they have been deemed to be doing failing work.

In the Department of Homeland Security, where we are dealing with people's lives, we need the flexibility to promote and reward. And, quite frankly, despite all the protests from the labor unions, every time I talk to people in Government agencies who would be affected, they like this flexibility, they like rewarding merit, they believe they would benefit and thrive in this system.

I will conclude by simply saying this: The President is not saying do it my way or forget it. I think the President has been and will be flexible in terms of trying to work out an agreement. I think there is room for flexibility on the whole funding issue and reprogramming and the rights of the legislative branch. But when you get down to the ability to reorganize, the President is not going to accept a bill that gives him less power in the name of national security than the President had when we created the Department of Energy. He is not going to do that, and he should not do it. There is no possibility that the President is going to accept a bill that takes away emergency powers that he has today to waive collective bargaining agreements in a bill that claims to enhance the President's power to deal with national security.

Finally, we gave flexibility on personnel under the FAA reorganization bill, under the IRS reorganization bill, and under the Transportation Security Administration reorganization bill. Yet in a bill trying to deal with homeland security, do we think it is less important than the FAA, or the IRS, or the Transportation Security Administration? Well, obviously, if you look at this bill, we do. So I don't think it is productive for this to degenerate into any kind of partisan battle.

But the problem is, this is a bill that does not do the job. This is a bill that we would be better off—if it were adopted in its current form—not having. The President is not going to accept this bill, and I think we have reached the moment on a critical issue where we need simply to promote a bipartisan solution, work out these agreements, give the President these three powers he wants, work something out on the appropriations issue for enhanced reprogramming and a partnership, and preserve the ability of Congress to control the purse.

I think the President, for every one problem he will have with money, will have 100 problems dealing with reorganization and personnel flexibility.

I am hopeful we can work something out. We are going to be offering a series of amendments. I assume at the end we will offer a substitute. I hope that substitute will be broadly supported. Senator MILLER and I, along with almost 40 of our colleagues, have introduced the President's bill because we wanted to try to promote a compromise moving in the President's direction.

I thank Senator THOMPSON for his leadership on this issue. As I have followed what he has had to say, there is not any issue on which I have a substantive disagreement with him. I look forward to following his leadership as we work out these three key issues, but these issues have to be dealt with. There cannot be a bill that does not give the President reorganization flexibility, the ability to override collective bargaining agreements in the name of national security and personnel flexibility. Denying these three powers simply is a denial of common sense and a denial of the crisis as we all know it exists, and the bill has to be changed.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Tennessee.

Mr. THOMPSON. Madam President, I ask unanimous consent that the time used by the Senator from Texas not be charged to either side.

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

Mr. THOMPSON. Madam President, 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. THOMPSON. 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. THOMPSON. Madam President, I was in error when I asked that the time of the Senator from Texas not be charged against anyone. I think that should be charged against the time of Senator LIEBERMAN and myself. I ask unanimous consent that be done.

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

Mr. THOMPSON. Madam President, I am getting ready to suggest the absence of a quorum again, and I ask unanimous consent that the quorum call we are about to go into not be charged against either side.

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

Mr. THOMPSON. Madam President, 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. BYRD. 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. BYRD. Madam President, I thank the majority leader for the courtesies which have been extended to all Senators, myself in particular because I am the one I know most about, naturally, in listening to our concerns with respect to the legislation that is before the Senate.

I am glad Members of this body had the opportunity during the August recess to study the House bill, to study the substitute that will be posed eventually by the distinguished Senator from Connecticut, Mr. LIEBERMAN, which substitute, of course, is the product of his very great committee and the product in particular of the ranking member, Mr. THOMPSON of Tennessee, on that committee.

I proceed today with a great deal of humility, realizing that I am not a member of the committee. I have no particular reason, other than the fact that I am 1 of 100 Senators who speaks on this matter today with no particular insight from the standpoint of being on the committee which has looked at this legislation. I have read the newspapers. I have read and heard a great deal about what the administration wants. I have done the best I could during the August break, in addition to several other responsibilities I had, to read the House legislation and the substitute which will be proposed by Mr. LIEBERMAN.

So I say to the members of the committee, and to Mr. LIEBERMAN and to Mr. THOMPSON in particular, I respect the work they have done.

I believe one of the two Senators today said there have been 18 hearings of the committee. I was not present at those hearings.

I respect the work of the committee. I have been a Member of Congress 50 years. I know something about committees. I know something about committee hearings. I know something about the time and the energy that are put into hearings by the Members, as well as by the staffs of the members of the committee and the personal staffs of the Senators. I approach this subject today somewhat timidly because I am not on the committee but I am a Senator and I have been very concerned. The reason I am here today is that I am very concerned about how we go about creating the Department of Homeland Security.

First of all, I am very much for a Department of Homeland Security, and I think I made that position clear many weeks ago. I had some concerns with respect to the proposal the House sent over after 2 days of debate on the House floor.

I had some concerns about the appropriations process. Senator STEVENS, distinguished ranking member of the Appropriations Committee, and I have joined in informing Mr. LIEBERMAN and Mr. THOMPSON of our concerns. Mr. STEVENS is a member of Mr. LIEBERMAN's committee. We informed them of our concerns in writing. They have taken our concerns, studied them, and for the most part have dealt with our concerns. So from this moment on, I will have no more to say about the appropriations process because the Lieberman bill, in great measure, puts that thing right.

I have other concerns. I am very concerned President Bush has been promoting his Homeland Security by citing the National Security Act of 1947 as a role model for Government reorganization.

In his weekly radio address on June 8, for example, President Bush stated that he was proposing ''the most extensive reorganization of the federal government since the 1940s. During his presidency, Harry Truman recognized that our nation's fragmented defenses had to be reorganized to win the Cold War. He proposed uniting our military forces under a single Department of Defense, and creating the National Security Council to bring together defense, intelligence, and diplomacy.''

President Bush is correct to hold up the National Security Act as a role model. Here it is. It is the perfect example of why we must move slowly and carefully in reorganizing our government and avoid acting too swiftly or blindly. A look at the history of the unification of the armed forces reveals that government reorganization is not as quick, or as simple and easy as President Bush may have implied.

Enactment of legislation providing for the unification of the military did not occur in a matter of weeks, nor even months, but years.

On November 3, 1943, the Army Chief of Staff, General George C. Marshall, broke with long-standing War Department anti-unification policy and submitted to the Joint Chiefs of Staff a proposal favoring a single Department of War. In his book, The Politics of Military Unification, Demetrios Caraley writes: ''The conflict over military unification that eventually led to the passage of the National Security Act of 1947 can be said to have begun November 3, 1943.'' In other words, this was the beginning of what would become a four-year struggle in the effort to reorganize our government by unifying our armed services.

In April 1944, the War Department submitted a unification proposal to the House Select Committee on Postwar Military Policy. That same month, the Committee began two months of hearings on the creation of a single department of the armed forces. The committee concluded that the time was inappropriate for legislation on a single department, strongly implying that such a reorganization might be a distraction from the war effort, and, therefore, should wait until the war was over. The Committee report reads in part:

> The committee feels that many lessons are being learned in the war, and that many more lessons will be learned before the shooting stops, and that before any final pattern for a reorganization of the services should be acted upon, Congress should have the benefit of the wise judgment and experience of many commanders in the field.

I point out that, more than two full years had elapsed since General Marshall's proposal, and there had been considerable congressional and administrative activity, including a number of studies, a number of alternate proposals, and a number of hearings, yet Congress at this stage was nowhere close to approving the reorganization of our government.

On June 15, 1946: President Truman, in a letter to congressional leaders, recommended a 12-point program for unification. But considerable opposition to reorganization still remained, and as a result, President Truman eventually requested that the Senate drop consideration of military unification until the next session of Congress.

The next year, February 26, 1947, in a communication to congressional leaders, and I was a member of the West Virginia state legislature, President Truman submitted a unification proposal, which became the National Security Act of 1947, that had been drafted by representatives of the armed forces and had been approved by the Secretaries of War and Navy, and the Joint Chiefs of Staff.

Did you catch that? President Truman submitted a proposal that had been drafted, not by four people in secrecy in the basement of the White House, but by representatives of the armed forces and had been approved by the Secretaries of War and Navy, and the Joint Chiefs of Staff.

What a difference in Administrations! What a difference in attitudes toward government!

After President Truman's proposal was introduced in both houses of Congress, the Senate Committee on Armed Services began hearings that lasted for ten weeks. The House Committee on Expenditures in the Executive Departments also conducted hearings on the proposal that lasted from April 2 to July 1, 1947.

Meanwhile, on May 20, 1947, the Senate Committee on Armed Services commenced an executive session ''to review the testimony received in extensive hearings on the bill and to consider proposed amendments.''

Let me say that again: The Senate Committee on Armed Services commenced an executive session—whoa—''to review the testimony received in extensive hearings on the bill and to consider proposed amendments.''

Again, I call attention to how slowly, how carefully, and how deliberately Congress was proceeding on this important issue involving the national security of our country. Senators can read the report of the Senate Committee on Armed Services on S. 758 which stressed this very point. The report reads, in part: ''In determining the most suitable organization for national security no effort has been spared to uncover past mistakes and shortcomings. During the hearings . . . all phases of each plan were exhaustively examined.''

Let me repeat that. The Senate Committee reported that ''no effort has been spared to uncover past mistakes and shortcomings'' and ''all phases of each plan were exhaustively examined.'' The committee was pointing out that Congress knew what it must do. That there would be no rush to judgment. They were not about to be stampeded into unwise legislation. There was no herd mentality there. They knew that what they were doing would help decide the fate of American government and American society for decades to come. They knew that, as the Nation's lawmakers—and that is what we are, the Nation's lawmakers—they had to be careful and deliberate because so much was at stake.

On July 9, 1947, after debate and amendments, the Senate finally approved the National Security Act.

The House of Representatives was just as careful and deliberate in considering this reorganization of our Government. The reason, the House Committee on Expenditures in the Executive Departments pointed out in its report, was that ''both civilian and service witnesses advised against a too-hurried consideration of the bill.''

Finally, on July 19, 1947, the House began considering H.R. 4214, the committees's version of the President's draft bill. It approved the measure only

after considering 17 amendments. Nine of the amendments were approved.

On July 24, 1947, after five meetings, a conference committee reported a compromise version of S. 758 and so The House adopted the conference report.

Two days later, President Truman signed the National Security Act into law, one half year after the legislation had been introduced, and four years since General Marshall recommended unification of our armed forces.

I realize we do not have 4 years to act in this situation. I realize the situations are different in many ways; the circumstances are different in many ways. I know that. But this is a government reorganization that President Bush holds up as the role model for the present government reorganization which we are considering. The problem is that this administration envisions Congress approving in just a few weeks a massive reorganization of the Federal Government that involves 22 agencies and 170,000 Federal workers.

The administration should stop reading ''Gulliver's Travels'' and start reading some history, especially the history behind the unification of our Armed Forces. If it is going to use that as the role model, the National Security Act—the reorganization of our military, the establishment of a Department of Defense—we should read the history behind the unification of these Armed Forces. It is a cautionary tale, and one that the administration and we would do well to remember.

I am very concerned that 30 years from now, Congress will be struggling to rectify the problems that we will be creating with hasty, ill-considered enactment of the Department of Homeland Security. There was all this rush, there was all this hue and cry that we ought to get this done before Congress goes out for the August recess. The House passed this bill after 2 days of floor debate and took off a week earlier than the Senate did. Then there was the idea we ought to do this by September 11.

What we need to do is to develop a product that works. We need to have legislation enacted by Congress and signed by the President that is right, not something that is hurriedly passed just to conform with an artificial deadline on the calendar. How much harm could be done in the meantime can be imagined. I am referring to damage to the rights and the liberties that we hold most dear: civil rights, labor rights, labor protection, civil liberties of all Americans. I am talking about damage to our constitutional process. We can inflict damage upon the constitutional process if we act in haste, and that damage perhaps cannot be and will not be rectified for years to come. We must not inflict damage on our constitutional processes.

President Bush's proposed Department of Homeland Security is an enormous grant of power to the executive branch. I hope that everyone who hears me will understand that—an enormous grant of power to the executive branch. It constitutes control of 170,000 Federal workers and a huge piece of the Federal budget. It will mean a major change in the governmental infrastructure of our Nation.

This may be for keeps. This may be the infrastructure that will last through the lifetimes of at least some of us. And we cannot and must not close our eyes to the threats that are involved here, by well-intentioned people I am sure, the threats to the constitutional processes that have guided this Nation for 215 years and should continue to guide it in the future.

This Constitution is good enough to guide us through whatever emergencies may confront this country. We must not cede this power, power that the administration wants but not necessarily needs—but the administration wants it. Let's stop, look, and listen and be careful what we are doing.

I wonder how many out of 100 Senators took the time during the recess to read the House bill, to read the substitute that is about to be proposed by Mr. LIEBERMAN and Mr. THOMPSON. How many Senators took the time to read and to ponder what we are about to do? I did. I am not an expert on the House bill or the substitute by Mr. LIEBERMAN. I have not put as much time, naturally, by any means, in my study of the Lieberman substitute as has he or his counterpart or the members of that committee.

So the members of that committee knew very well what was in the bill. But how many other Senators took the time to sit down and read and mark and underline and think about the words, the phrases, the sentences that are included in this substitute and in the underlying bill?

Let Senators remember that once we pass a bill in the Senate, which we must and which we will, then we in the Senate—half of the legislative branch, this half, except for the committee conferees—will be out of it. I don't bemoan the fact that I will be out of it, but most of the Senate will be out of it. We will have said our piece. We will have made our press releases. And we will have had an opportunity to offer amendments.

But how many of us are prepared to offer amendments? How many of us have read this legislation? How many in the media know what we are talking about and what is in this legislation? The people out there, 280 million of them, who are represented by 100 Senators, do not have the slightest idea what is encompassed in this legislation. They have heard the President on the campaign trail talking about this bill: pass it, pass it, pass it. They have heard others in the administration. I don't have any criticism of that. They naturally want this bill passed.

We need to look at it. We Senators have a duty to study it and to take the time and, if necessary, offer amendments where we believe amendments should be offered and the Senate must be given the opportunity to work its will. And it will work its will.

But I am concerned. That is where I am coming from, and I am sure there are other Senators who would be equally concerned if they read these bills. But they have been busy. Senators are very busy people. I know that.

In a recent column, David Broder wisely pointed out that because the mission of the Department of Homeland Security ''is so large and its scale is so vast, it is worth taking the time to get it right.''

That is David Broder, and he got it right when he said that. I will continue with his words.

> It is worth taking the time to get it right. Having the bill on the President's desk by the symbolic first anniversary of the terrorist attacks is much less vital than making the design as careful as it can be.

Hallelujah. That was David Broder. He is right.

Now let me read what he said without my editorial comment. He said: . . . the mission of the Department of Homeland Security ''is so large and its scale is so vast, it is worth taking the time to get it right. Having the bill on the president's desk by the symbolic first anniversary of the terrorist attacks is much less vital when making the design as careful as it can be.''

I remind my colleagues that once the genie is out of the bottle, it is gone. It would be difficult to get it back into the bottle. This bill is the best, if not the last, opportunity for Congress to make sure that we are not unleashing a genie, a very dangerous genie.

I realize it is not easy to go against the administration for some of my colleagues, in an election year especially. But our duty to our country and to future generations compels us to do no less. And I intend to do no less than stand on my feet and speak my thoughts. This is what separates the men from the boys, the women from the girls, and the statesmen from the politicians.

Madam President, how much time do I have remaining?

What is the time situation with respect to the upcoming vote?

The PRESIDING OFFICER. We are going into executive session at 12:30.

Mr. BYRD. I thank the Presiding Officer.

Madam President, I hope Senators will take a look at this morning's Washington Post. On the front page there is a column by Gregg Schneider and Sara Kehaulani Goo, Washington Post staff writers. The headline reads as follows:

> Twin Missions Overwhelmed TSA. Airport Agency Strives to Create Self, Stop Terror.

This story that I am about to take excerpts from tells exactly why we ought to take time and do this right.

I read from the column:

> When a gunman opened fire at a Los Angeles International Airport ticket counter on July 4, the nation's new agency in charge of airport security got its first chance to swing into action.

Instead, it claimed the shooting was outside its jurisdiction.

After bullets sprayed across the crowded holiday terminal, killing three, the agency's director at the time, John W. Magaw, looked on helplessly as his own spokesmen dismissed the incident as a matter for local police and the FBI. ''That's nuts. That is nuts,'' Magaw said later.

But by that holiday, with the nation on edge about a terrorist attack, Magaw had lost control of the Transportation Security Administration. He had run the high-profile, multibillion-dollar agency far astray from what Congress and the Bush administration said they wanted, alienating everyone from local airport operators to commercial airline pilots.

Now get this. I continue to read:

The agency simply couldn't keep up with the twin demands of creating itself and devising a system of stopping terrorists.

There you are in a nutshell. That is the problem.

Internally, there was tension over the TSA's mission, with a growing core of leaders steeped in law enforcement at odds with political forces demanding customer service. Magaw and his deputies clashed with key members of Congress and the White House over budgets and left airport managers around the country feeling shut out.

The fact that the TSA was flat-footed on the day of the most violent attack on U.S. aviation since Sept. 11 underscores how, after nearly a year of building a new federal agency to take over airport security, few broad changes have taken place.

There you are. That is our problem. We are about to create a new department of homeland security, which I am for. I will vote for that. Then we are about to create 6 directors, and we are about to set up a superstructure. In this bill, once we pass the package and send it down to the President, we are going to say there it is. You take it. It is yours. Then the administration will have the colossal task of transitioning, as I read it, 22 agencies.

I was talking with Senator LIEBERMAN this morning. I was told that more likely there will be 28 agencies and offices. There you have it, Mr. Administration. It is yours. That is what Congress is about to do. It is yours.

Can one imagine the chaos that is going to occur when all of these agencies are supposed to be transitioned into the department of security within 13 months, and the people within them. One-hundred and seventy thousand Federal employees will have to become accustomed to a new culture, once they are transitioned. They will have to move their desks, their computers, and their telephones. They will have to get acquainted with new associates. They will have new and different missions.

When we talk about the 1947 role model of the National Security Act, we are talking about military branches that had the same mission, overall. Those were not different missions. These people are going to be put into a brand spanking new, polished-chrome metal piece of toy to guard the homeland, and to guard the people. All of these people put into one agency are going to be concerned about their pay scales, their worker rights, and their privacy rights—all of those things. There they will be. All yours, Mr. President. Here it is. You asked for it. Here it is now so Congress can stand on the sidelines for the next 13 months.

I am saying no. Congress should not stand on the sidelines for the next 13 months. We have a duty under the Constitution to exercise oversight and to see that the agencies are properly brought into the six directories.

I am thinking of the same directorates the committee recommended, the same superstructure. I am saying that is fine. But now, when it comes to bringing in the 22 agencies or the 28 agencies or the 30 agencies or the 25 agencies—I have heard all of these numbers; we do not even know the number of agencies—when it comes to fusing those, what are the criteria for this agency or that agency or some other agency or some part of that agency? What are the criteria by which somebody is going to have to be guided in bringing these agencies into the superstructure and making them part of the directorates, which are parts of the new Department of Homeland Security?

Who knows? I have not seen anything in my reading, anything in writing. I have not heard anything in any way by which these 22 agencies—I will say 28, since Mr. LIEBERMAN has counted them. What are the criteria and what is going to happen?

Look at what the Post is reporting happened to the brandnew, shiny transportation agency, the TSA. And here we are talking about 22 or 25 or 28 or 30 more agencies, putting them all in. Here, Mr. President. Here is what you asked for. Here is the bill. You take it. That is what we are about to do, and I do not think we should do it.

I think Congress should stay in the mix, should continue to exercise its oversight, its judgment, give its advice, give its consent, and vote up or down as we go along on the procedure.

Now, I am going to offer an amendment at some point. I may offer several amendments, but the first amendment I offer will deal only with title I, only with title I. But my concern is that Congress has a responsibility, it has a duty to which it must face up, and that duty is to keep a hand on this, to maintain oversight. And I think these 22 agencies—I will quit using 22; I am going to use JOE LIEBERMAN's figure, 28—these 28 agencies should be phased in, in an orderly process that gives the Congress the time, as we go along, to look at what the administration—through this new Secretary of Homeland Security, through his recommendations—recommendations are.

Congress should not just hand this thing over lock, stock, and barrel, to this administration, or any other administration, and say: Here it is. You take it.

So here, in microcosm, is the problem. And we are reading about it right here in this Washington Post of today. I won't read the whole column right now. I may refer to it again later.

But let me proceed now by saying that the homeland security legislation that we will be considering this week has become something much more than mere legislation. It has become a political windstorm blowing down Pennsylvania Avenue and through the Halls of Congress.

The President's proposal has been barreling through Congress like a Mack truck, threatening to run over anyone who dares to stand in its way. And Congress, so far, has cleared a path and cheered on this rumbling big rig, without stopping to think seriously about where it is ultimately headed. Now we are going to think seriously about it.

The President assures us that he is safely behind the wheel, and that all we need to do is give him the ''flexibility''—I use his word, ''flexibility''—he needs to fight terror immediately, and he will handle it from there.

While the President's assurances may help some people sleep better, I am left tossing and turning on my pillow at night. I fear terrorism as much as anyone, and I recognize the need for constructive, decisive action in these daunting times. But lately I have also been plagued by the fear that, in the name of homeland security, we may be jeopardizing liberties from within our own Government by unwittingly trading in many of the constitutional protections which were designed by the Founding Fathers as safeguards against the dangerous tendencies of human nature.

In Federalist No. 48, James Madison wrote:

It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it.

Now, that is James Madison:

It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it.

The President is clearly attempting to remove the limits on his power. I don't question his good intention. Maybe he doesn't understand what he is doing. But this is clearly an attempt to remove limits on the Executive's power, and Congress is doing very little, up to this point, to restrain the administration's ambitions.

I am alarmed that the President is demanding such broad authority over an unprecedented amount of resources and information, while at the same time asking us to eliminate existing legal restrictions to allow him the ''managerial flexibility'' to respond to changing threats. His proposal gives the Secretary of Homeland Security almost unlimited access to intelligence and law enforcement information without adequate protections against misuse of such information. I am willing to give the President necessary authority to secure the Nation's safety, but I believe we can give him flexibility without giving him a blank check.

In Federalist No. 48—and Senators and Representatives and other people should read the Federalist Papers once again—in Federalist No. 48 here is what he said:

> An elective despotism was not the government we fought for. . . .

Nobody is suggesting there be an elective despotism. But I am suggesting that we better go very carefully, as we legislate on this proposal, that we do not release to the executive branch, by legislation, powers that the Constitution guards against.

This is what Madison says:

> An elective despotism was not the government we fought for. . . .

We can, in this Senate, very well pass legislation that ends up giving to any President—I am not just talking about Mr. Bush—the powers that amount to an elective despotism. That is what I am concerned about in this legislation—one of the things.

> An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others.

Now, that is what I am saying Congress needs to be aware of. We need to be on guard that we do not pass legislation that, in the end, gives a President—and there is no assurance that this President will be President forever; he may be President for 2 more years or maybe 6 more years. Who knows. But the Congress must be on guard in this legislation—I know it is very tempting to vote without further delay, without any argument, vote for a new department of homeland security. And we ought to have it. But it will be very easy for Congress to pass legislation that, in the end, results in elective despotism. Madison warns us against it.

The President's proposal cripples internal oversight offices and weakens external legal controls on the Department, including unnecessary exemptions from public disclosure laws such as the Federal Advisory Committee Act and the Freedom of Information Act, allowing the Secretary to exercise his broad authority in relative secrecy.

In many of these areas, Senator LIEBERMAN's committee, working with Senator THOMPSON, has brought in a bill that is, in my judgment, much better than the administration's proposal, which is largely reflected by the House bill. And at the end of the day, the House bill will be before the Senate—at some point, Mr. LIEBERMAN will offer his substitute—so that the Senate will have before it both the House bill and the Lieberman proposal.

So what I am saying is not altogether, or even in great part, criticism of the product the committee has given to the Senate. I am stating my concerns. We cannot brush aside the House bill. It is going to be in conference, and we are going into conference, and these conferees are going to be up against the House conferees—the House, which is under the control of the other party, which is in control of the White House. So I do not envy the challenges that are going to be before our Senate conferees. I am speaking of my concerns with respect to one or both of these measures that will be before the Senate.

These exemptions reflect the administration's strong antagonism toward traditional ''good government'' and ''sunshine'' laws that attempt to cast light on government activities and subject them to public scrutiny. The administration is seizing on this legislative opportunity to weaken these important laws.

The administration is attempting to gut the traditional protections for personal privacy and civil rights abuses from the new Department, and the bill that was passed by the House of Representatives effectively dismantles most of these safeguards. Unfortunately, the Senate doesn't do enough, in my judgment, to restore those checks.

The Senate bill does require, very generally, that the Secretary and the directorate for intelligence establish rules and procedures for governing the disclosure of sensitive information. Some of this language restricts the use of information to only authorized and ''official'' purposes, but this restriction is meaningless because the vague authority given to the Secretary allows him to claim that almost anything he wants to do constitutes an ''official'' purpose.

In pressuring Congress to pass homeland security legislation, the administration is using the ''war on terror'' as a red herring to draw attention away from the underlying objectives of the administration's proposal, which include expanding the regime of secrecy that has been established by the White House to the 22, 25, 28, or 30 agencies of the new Department of Homeland Security.

Once the Department has been legally shrouded in secrecy, the President can take advantage of his broad access to information and its vague mission and authority to command the ''war'' without scrutiny from Congress or the public.

The President has proclaimed that we are entering a ''new era,'' one that will resemble the cold war in its concerns for national security. His proposal marks a disturbing start for this era and I am afraid may be a sign of things to come. The cold war began with an iron curtain descending over Europe. Under this bill, the war on terror may have begun with an iron curtain descending around our Government.

Congress must not defer to executive judgment alone. Congress must not trust that this administration, or any other administration, will always act in the best interest of the Nation. Absolute trust and unquestioning deference are dangerous gifts for the legislature to bestow on the executive, even when our leaders have given us no reason for doubt.

Good intentions do not guarantee good government. As Madison tells us in Federalist No. 51:

> If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Madam President, Justice Brandeis echoed Madison's warning of the dangers of relying on the good intentions of government. He wrote:

> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

I suspect that this administration means well in its desire to mobilize the Government against terror, but so many in the administration have come lately—not all, but some. I fear that some of what the administration is asking for is a danger to the people's liberty.

In our rush to reorganize the Government, we seem to have forgotten the principles upon which the Government was founded. The Constitution established a system of divided Government, a system that feared tyranny more than it favored efficiency. The Constitution's separation of powers and checks and balances were not designed to provide managerial flexibility to any President, Democrat or Republican. They were designed to limit the power of the state over its citizens by ensuring that individual liberties could not be easily abridged by the unchallenged authority of any one branch of Government.

President Harry Truman proposed the most dramatic reorganization of the last century, creating the Department of Defense and the CIA in response to the new threats of the cold war. But even after he presided over such a critical moment of national security, he remained skeptical of the need for efficiency and flexibility in the executive branch. Truman said:

> When there's too much efficiency in government, you've got a dictator. And it isn't efficiency in government we're after, it's freedom in government. . . .

That is Truman. That is my favorite Democratic President in our time. Following him came Mr. Eisenhower, who I have—at least lately—come to believe was the greatest Republican President in our time.

I continue with Truman's words:

> And if the time ever comes when we concentrate all the power for legislating and for

justice in one place, then we've got a dictatorship and we go down the drain the same as all the rest of those republics have.

Madam President, the administration's proposal makes clear to me that it is not freedom in Government the administration is after.

The Secretary of Homeland Security will become a human link between the FBI, the CIA, and local police departments, serving as a ''focal point'' for all intelligence information available to the United States. I am concerned that in this role he may be able to circumvent existing legal restrictions placed on those agencies to protect individual privacy, civil rights, and civil liberties.

The Homeland Security Department will be authorized to draw on the resources of almost any relevant agency at the Federal, State, and local level, ranging from sensitive international intelligence compiled by the CIA and the NSA to surveillance of U.S. citizens by the FBI and local police. Many of these agencies were very purposely kept separate and distinct, or were given limited jurisdiction or investigative powers, in order to reduce abuses of power. However, when the Department—this new Department—draws on the resources and information of other agencies, it may not necessarily be subject to the same legal restraints imposed on those agencies.

In addition, the civil rights officer and the privacy officer established under the administration's plan to uncover abuses in the Department are not given enough authority to actually carry out their jobs. They are essentially advisers with no real investigative or enforcement power. Both officers are responsible for ensuring compliance with existing law, but their only legal recourse after identifying a problem or violation is to report the problem to the Department's inspector general.

However, the inspector general, in turn, is under no obligation to follow up on privacy and civil rights complaints, only an obligation to inform Congress of any ''civil rights abuses'' in semi-annual reports. If and when the IG does choose to investigate, he will often be unable to do so independently as the Inspector General Act intended, because this plan provides that the inspector general will be ''under the authority, direction, and control of the Secretary''—now get that. That ought to be enough to curl your hair. Let me read that again. The inspector general will be ''under the authority, direction, and control of the Secretary''—meaning the Secretary of Homeland Security—''with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information.'' And the Secretary can say no if he determines certain things, which I can read into the RECORD—he determines; if he determines, the Secretary; if he determines no, the inspector general is stopped in his tracks. That is it. Is that the way the people in this country want it to be? I do not believe so.

Granting the Secretary control over internal investigations puts the ''fox in charge of the hen house'' whenever the fox claims a national security reason for it.

The inspector general can say: I have a national security reason. You have to stop. You cannot investigate further. You cannot subpoena witnesses. You cannot because Congress passed the law that the administration wanted saying you cannot. So you stop right here in your tracks.

Is that the way the American people want it? No.

The President's proposal also lets the fox have his way when he uses working groups—now get this—to investigate or craft policy. Although not included in the Senate bill, the House bill, which will be before the Senate likewise, allows the Secretary of Homeland Security to exempt advisory groups within the Department from the disclosure requirements of the Federal Advisory Committee Act. The practical effect of this authority would be to give the Secretary of Homeland Security the ability to conduct secret meetings to craft Department policy, minimizing interference from Congress and the public.

This would appear to expand the model of secret policymaking currently employed in the administration, the most notable example being Vice President CHENEY's secret energy working group.

While the Federal Advisory Committee Act does exempt the Central Intelligence Agency and the Federal Reserve from disclosure requirements, the justification for doing so cannot support providing the same exemption for the Department of Homeland Security.

The broad authority and domestic jurisdiction of the Department distinguish it from the CIA which has no authority to invade the privacy of U.S. citizens domestically and whose activities are controlled more directly by the President in exercise of his constitutional powers over foreign affairs. The exemption for the Federal Reserve protects financial information and economic projections in order to protect the integrity of the markets.

While it may be reasonable to excuse the Fed from this kind of public disclosure, I am not comfortable in allowing the Secretary of Homeland Security to set the level of preparedness in complete secrecy in the same way that Alan Greenspan sets interest rates.

The Federal Advisory Committee Act already allows waivers for sensitive information, so there is no compelling national security justification for providing this blanket exemption. Removing this exemption would not eliminate the Secretary's ability to convene committees in secret, but it would make the Secretary and the President more accountable—more accountable—for choosing to do so.

The President is authorized under existing law to determine which committees should be exempt from disclosure for national security reasons, and he must explain himself every time he does so. The bill passed by the House allows the Secretary to exempt committees at will, while only paying lip-service to Congress. Both the House bill and the Senate bill provide an unnecessary exemption, in my viewpoint, from the Freedom of Information Act for critical infrastructure information provided by private corporations.

The FOIA requires public disclosure of Government materials on request, but it already provides exemptions for national security information, sensitive law enforcement information, and confidential business information. The administration's proposal extends these exemptions to include any information voluntarily submitted by corporations to the Department. As a result of this exemption, this corporate information could not be released under the Freedom of Information Act for other enforcement purposes, so corporations would be allowed to escape liability for any information they submit.

I have argued, Madam President, that parts of this bill should be put off to allow enough time for informed deliberation. I reaffirm my objections to rushing into all of these agency transfers and new directives. However, these secrecy problems have to be addressed also.

The President has said that how we respond to this crisis will determine what kind of legacy we leave. I agree with the President on that point. That is exactly why I suggest to the Members of the Senate we should take time to remember the legacy that we have inherited, a legacy of liberty and limited Government, and preserve these principles in the legacy that we will bequeath.

This new Department is going to be with us for some time, so we must think beyond the next election and act with an eye to the future. This Congress needs to make sure we will have some recourse in the event that the administration's reorganization does not live up to all of its promises. Congress has a role to play in the ongoing supervision of the Federal Government, and we should not compromise that role by hastily surrendering our constitutional powers.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF TERRENCE F. MCVERRY, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 962, which the clerk will report.

The assistant legislative clerk read the nomination of Terrence F.

McVerry, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID, I announce that the Senate from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), the Senator from Vermont (Mr. LEAHY), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Pennsylvania (Mr. SPECTER), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Texas (Mrs. HUTCHISON), are necessarily absent.

I further announce that if present and voting the Senator from New Mexico (Mr. DOMENICI), and the Senator from North Carolina (Mr. HELMS), would each vote ''yea''.

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

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 208 Ex].

YEAS—88

Allard	Dorgan	McCain
Allen	Durbin	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Reed
Brownback	Graham	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hagel	Sarbanes
Campbell	Harkin	Schumer
Cantwell	Hatch	Sessions
Carnahan	Hollings	Shelby
Carper	Hutchinson	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Johnson	Stabenow
Cochran	Kennedy	Stevens
Collins	Kerry	Thomas
Conrad	Kohl	Thompson
Corzine	Kyl	Thurmond
Craig	Landrieu	Voinovich
Crapo	Levin	Warner
Daschle	Lieberman	Wellstone
Dayton	Lincoln	Wyden
DeWine	Lott	
Dodd	Lugar	

NOT VOTING—12

Akaka	Helms	Murkowski
Biden	Hutchison	Santorum
Domenici	Jeffords	Specter
Gramm	Leahy	Torricelli

The Nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

Mr. LEAHY. Madam President, today the Senate is confirming Terrence McVerry to the United States District Court for the Western District of Pennsylvania. He is the 73rd judicial nominee of President George W. Bush to be confirmed by the Senate since July 20 last year. With today's vote, the Democratic-led Senate has already exceeded the number of circuit and district court nominees confirmed in the last 30 months of Republican control of the Senate, when 72 judges were confirmed in those 2½ years. Democrats have done more than Republicans did in less than half the time.

It is revealing that Republicans, with all of their misleading statistics, consistently fail to compare their actual results during their most recent period of control of the Senate with the progress we have made since the shift in the Senate majority. They do not want to compare their own record over the prior 6½ years with our record of accomplishment in evaluating judicial nominees. They do not want to own up to their delay and inaction on scores of judicial nominees during the last administration. During the period of Republican control of the Senate, judicial vacancies rose from 63 to 110. Since the change in majority, the Democratic Senate has worked hard to help fill 73 of those vacancies.

All too often the only claim that we hear about the Republican record is that President Clinton ultimately appointed 377 judges, five fewer than President Reagan. Our Republican critics try to obscure the fact that only 245 of those district and circuit court judges were confirmed in the 6½ years that the Republican majority controlled the pace of Senate hearings and consideration. That averages only 38 confirmations per year. Over an 8-year period that would have yielded 304 confirmations. In fact, the Republican majority over the last 6 years of the Clinton administration produced on average only 58 percent of the confirmations achieved during the first 2 years of that administration.

As of today, the Democratic majority in the Senate has acted to confirm 73 judges, including 13 nominees to the circuit courts. We have proceeded to almost double the confirmation rates of the former Republican majority. We have done more in less than 15 months then they achieved in their last 30 months in the majority.

The reason Republicans do not want to talk about their record and compare apples to apples is because this truth does not fit comfortably with the myth of obstruction by Democrats that they have been working so hard to disseminate for their own partisan purposes. This situation reminds me of a quote by Adlai Stevenson, who said ''I have been thinking that I would make a proposition to my Republican friends . . . that if they will stop telling lies about the Democrats, we will stop telling the truth about them.'' Unfortunately, the persistence of the myth of inaction in the face of such a clear record of progress on judicial vacancies by Democrats makes me worry that Republicans are following the cynical observation that a lie told often enough becomes viewed as the truth. I am confident that Americans understand that Democrats have been fairer to this President's judicial nominees than Republicans were to his predecessor's nominees.

Today's vote is another example. The Senate has acted quickly on this nomination to the District Court in Pennsylvania. Mr. McVerry was nominated in January, received his ABA peer review in March, participated in a hearing in June, and he was reported out of the Senate Judiciary Committee in July. The Judiciary Committee has held hearings for 10 district court nominees from Pennsylvania and the Senate has confirmed nine of them in just five months. There is no State in the Union that has had more Federal judicial nominees confirmed by this Senate than Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate, particularly regarding nominees in the western half of the State. Despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from every part of his home State, there were seven nominees by President Clinton to Pennsylvania vacancies who never got a hearing or a vote.

A good example of the contrast between the way the Democrats and Republicans have treated judicial nominees is the case of Judge Legrome Davis, a well qualified and uncontroversial judicial nominee. He was first nominated to the Eastern District of Pennsylvania by President Clinton on July 30, 1998. The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after two more years.

Under Republican leadership, Judge Davis' nomination languished before the Committee for 868 days without a hearing. Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania during the Republican control of the Senate. This year, the Democratic-led Senate moved expeditiously to consider Judge Davis, and he was confirmed promptly, five weeks after receiving his ABA peer review, without a single negative vote. The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret, anonymous holds by Republicans for reasons that were never explained.

The hearing we had earlier this year for Judge Joy Conti was the very first

hearing on a nominee to the United States District Court for the Western District of Pennsylvania since 1994, despite President Clinton's qualified nominees to that court. It is shocking to me that this was the first hearing on a nominee to that court in eight full years. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate during the Clinton Administration. One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given a hearing. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench. With the confirmation of Judge Conti, we confirmed the first nominee to the Western District of Pennsylvania since October of 1994. Despite this history of poor treatment of President Clinton's nominees, the Democratic-led Senate continues to move forward fairly and expeditiously. Terry McVerry is the most recent example of our willingness to proceed in spite of recent Republican obstructionism.

Democrats have reformed the process for considering judicial nominees. For example, we have ended the practice of secretive, anonymous holds that plagued the period of Republican control, when any Republican Senator could hold any nominee from his or her home State, his or her own circuit or any part of the country for any reason, or no reason, without any accountability.

We have returned to the Democratic tradition of regularly holding hearings, every few weeks, rather than going for months without a single hearing. In fact, we have held 23 judicial nominations hearings in our first 12 and one-half months, an average of almost two per month. In contrast, during the 6½ years of Republican control, during each of 30 months they did not hold a nominations hearing on a single judicial nominee. By holding 23 hearings for 84 of this President's judicial nominees, we have held hearings for more circuit and district court nominees than in 20 of the last 22 years during the Reagan, first Bush, and Clinton administrations. The opposition party would rather not refer to these facts, which debunk Republican myths about who caused the vacancy crisis and delayed judicial appointments.

When the Senate Judiciary Committee reorganized after the change in Senate majority, there were 110 judicial vacancies. That included 33 circuit court vacancies, twice the number that existed when Republicans took over the Judiciary Committee in 1995. During the past 13 and one-half months, another 43 vacancies have arisen, largely due to retirements of past Republican appointees to the courts. If Democrats had, in fact, obstructed judicial nominees, as Republicans so often claim, there would now be 153 vacancies in our Federal courts, not the 80 that currently remain.

We have tried to do our best to address the judicial vacancies problem. We have been able to consider district court nominees more quickly because they have been generally less controversial and ideological than this President's choices for the circuit courts. Not all of the district court nominees we have considered, however, have been without controversy. One of the nominees on whom we have proceeded received a majority ''Not Qualified'' peer review rating from the ABA due to his relative inexperience. Five other district court nominees have received some ''Not Qualified'' votes during the ABA peer reviews. This is despite the fact that the ABA's rating now come after the President has given his imprimatur to the candidate and peers may be chilled from candidly sharing their concerns.

A number of President Bush's district court nominees to lifetime seats on the Federal bench have also been unusually young and have been practicing law for a little more than a decade. Some of them have views with which we strongly disagree. Several of this President's judicial nominees seem to have earned their nominations as members of the Federalist Society. Others have records demonstrating that they are pro-life and will actively undercut women's right to choose. Some have already gone on to issue decisions against the privacy rights of women. Many of this President's district court nominees have been very active in Republican and conservative politics or causes. Still other nominees have been intimately involved in partisan politics or played key roles in Republican fundraising. Today, the Senate is confirming a person whose spouse is employed as the treasurer of Senator SANTORUM's election campaign.

The Federal district courts matter. They are the courts of first resort, the trial courts where individuals' claims are tried or dismissed. Not everyone can afford the costs of appealing a trial court ruling. Additionally, circuit courts traditionally give great deference to the findings of the lower court that examined the claims and observed witnesses first hand, rather than making new factual findings based on a cold record. Of course, matters of law are reviewed by the circuit courts, and their rulings can have a substantial impact on the development of the law, especially with a Supreme Court that hears fewer than 100 cases per year.

Because we have moved quickly and responsibly on consensus nominees, the number of vacancies is not at the 153 mark it would be at with no action, but is down to 80. On July 10, 2001, with the reorganization of the Senate, we began with 110 vacancies, 77 of which were on the district courts. Despite the large number of additional vacancies that have arisen in the past year, with the 60 district court confirmations we have had as of today, we have reduced district court vacancies to 51. That is almost to the level it was at when Republicans took over the Senate in 1995.

The opposition party dismisses this achievement in a backhanded way, but it is one of the most significant things we have accomplished for the sake of the Federal courts and for litigants in the Federal courts. It has not been easy to process that many district court nominees in little more than one year. We have confirmed more of this President's district court nominees over the past year than in any of the prior 6½ years of Republican control. Indeed, we have achieved more district court confirmations in the last 13 months than Republicans accomplished in all of 1999 and 2000 combined and more than were confirmed during the last 30 months of Republican majority control of the Senate.

We have had hearings for more of this President's district court nominees than in any year of the Reagan Administration, and he had 6 years of a Senate majority of his own party. Indeed, we have confirmed more of President George W. Bush's district court nominees in these past 13 plus months than were confirmed in any year of his father's presidency and more than were confirmed during his father's first two full years combined.

In contrast to how fairly we have treated this President's Federal court nominees, consider how poorly nominees were treated during the prior 6½ years of Republican control of the Senate. Some district court nominees waited years and never received a hearing. For example, nine district court nominees from Pennsylvania alone never got hearings, including then Pennsylvania Common Pleas Court Judge Legrome Davis, who was subsequently re-nominated by President Bush and confirmed earlier this year. Four district court nominees from California were never given a hearing by Republicans despite the full support of their home-State Senators. These are just a few examples of Republican obstruction of judicial nominees. In all, more than three dozen of President Clinton's district court nominees never received hearings or votes by Republicans.

Several others received hearings but never were given votes by the Republican-controlled Judiciary Committee. These included six district court nominees, such as Fred Woocher, a California district court nominee and Clarence Sundram from New York. Still others waited hundreds and hundreds of days to be confirmed, such as Judge Susan Oki Mollway of the District Court in Hawaii, whose nomination languished for 913 days before she was confirmed, and Judge Margaret Morrow of the District Court for the Central District of California who waited almost 2 years, 643 days, to be confirmed. Let us not forget Missouri Supreme Court Justice Ronnie White who was delayed twice only to be defeated on the Senate floor, in a sneak attack.

Judge White had waited 801 days only to be defeated through character assassination on the floor of the Senate. In all, nearly 60 of President Clinton's judicial nominees were blocked, many in the dark of night through secretive, anonymous holds.

When confronted with their record Republicans often refer to all nominees not getting hearings in 1992. That year, the Senate confirmed more of President George H.W. Bush's judicial nominees than in any year of his presidency and confirmed more judges than in any year in which the Republican majority controlled consideration of President Clinton's nominees. In 1992, 66 judges were confirmed. So, even though some nominations were returned, the Senate in 1992 worked hard to confirm a substantial number, 66, of new judges in the 10 months they were in session during that presidential election year. By contrast, in 1996 when the Republicans were in the Senate majority only 17 judges were confirmed all year and none for the vacancies on the courts of appeals. In 2000, the Republican majority in the Senate confirmed only 39 judges.

When the Senate is working hard to confirm judges, as it was in 1992 and since last summer, it may be understandable that not all nominees can be considered. When, as was the case during the Republican majority, the Senate is averaging only 38 confirmations a year and going months and months without a single hearing, the circumstances are quite different. The Republican majority in their 6½ years of control of the Senate ensured that they never treated President Clinton's judicial nominees better than the best year of former President Bush's Administration—just as they made sure that President Clinton's total number of judges appointed never reached that of President Reagan. By contrast, the Democratic majority has reversed the downward spiral and has treated this President's nominees more fairly than the Republican majority treated those of the last President.

We have also been confirming this President's judicial nominees at a record pace. Rather than continue the Republican pace of 38 confirmations a year, we have worked hard to do better. We have been so fair to President George W. Bush, despite the past unfairness of Republicans, that if we continue at the current pace of confirmations, President Bush will appoint 227 judges by the end of his term. If this President were to serve two terms like Presidents Reagan and Clinton, he would amass 454 judicial appointments, dramatically shattering President Reagan's all-time record of 382. Some may say we have been foolishly fair, given how Republican treated the nominees of the last Democratic President. But this, too, demonstrates how fair the Democratic Senate majority has been these last 13½ months.

When we adjourned for the August recess we had given hearings to 91 percent of this President's judicial nominees who had completed their paperwork and who had the support of both of their home-State Senators. That is, 84 of the 92 judicial nominees with completed files had received hearings. Indeed, when we held our last nomination hearing on August 1, we had given hearings to 66 district court nominees and we had run out of district court nominees with completed paperwork and home-State support. Only two district court nominees were eligible for that hearing. This is because the White House changed the process of allowing the ABA to begin its work prior to formal nomination. This unilateral change by the White House has already cost the federal judiciary the chance to have 12 to 15 more district court nominees on the bench and hearing cases these past 13 months. Many more of the two dozen pending nominees may not receive an ABA evaluation in time to be considered by the Senate this year.

On average, the ABA reviews of district court nominees have been received 59 days from the date of nomination. With the recent delays that we have experienced in the time nominees are taking to complete the Committee questionnaire and the changeover in personnel at the ABA, that time may continue to expand in the few weeks remaining to us before the recess in October this year. Thus, even as the White House professes to blame the Senate for not making progress on even more nominees, it continues to do all it can to delay the process due to its unilateral approach.

In January I had proposed a simple procedural fix to allow the ABA evaluation to begin at the same time as the FBI investigation, as was the practice in past Republican and Democratic administrations for 50 years. Then the ABA could be in position to submit its evaluation immediately following the nomination. Had this proposal been accepted, I am confident there would be more than a dozen fewer vacancies in the Federal courts. Instead our efforts to increase cooperation with the White House have been rebuffed. We continue to get the least cooperation from any White House I can recall during my nearly three decades in the Senate.

In spite of the obstacles they have put in the way of their own nominees through their lack of consultation and cooperation, we have been able to have a record-breaking year restoring fairness to the judicial confirmation process. We have been rewarded with nearly constant criticism from the administration and its allies.

White House Counsel Alberto Gonzales dismisses our accomplishments with a terse, one-sentence acknowledgement that Democrats have ''made progress in holding hearings and votes on district court nominees.'' With today's vote, we have already confirmed 60 new Federal trial court judges. That is more than were confirmed in 21 of the past 23 years. We have confirmed more district court nominees in these past 13½ months than were ever confirmed by the Republican majority during their prior 6½ years of control of the Senate.

For example, in 1995, the year the Republicans took over the Senate, President Clinton nominated 68 district court candidates, but the Republican controlled Senate held hearings for and confirmed only 45 of those nominees. Republicans would call that 66 percent. In 1996, Republicans confirmed only 17 of the district court nominations pending and, of course no nominees to the circuit courts. That was 50 percent of the district court nominees. In 1997, Republicans allowed only 50 percent of the pending district court nominees to be confirmed. In 1998, they hit their high mark in considering district court nominees and allowed 77 percent to be confirmed. In 1999, they were back down to allowing the confirmation of slightly over half, 58 percent, of the district court nominees to be confirmed. Finally, in 2000, again Republicans allowed only little more than half, or 56 percent, of the pending district court nominees to be confirmed.

In contrast, we have already had hearings for 100 percent of those district court nominees who were eligible for a hearing. We have had hearings for 66 district court nominees, voted 64 of them out of committee and, as of today, 60 of them have been confirmed by the Democratic-led Senate.

I would like to thank the members of the Judiciary Committee who have labored long and hard to evaluate the records of the individuals chosen by this President for lifetime appointments to the Federal courts. The decisions we make after reviewing their records will last well beyond the term of this President and will affect the lives of the individuals whose cases will be heard by these judges and maybe millions of others affected by the precedents of the decisions of these judges.

While the opposition party seeks to attribute the vacancy crisis in the Federal courts to the Democrats, who only recently became the majority party in the Senate, I remain hopeful that the American people will discover the truth behind such partisan accusations. Republicans are trying to take advantage of the vacancies they hoarded while waiting for a Republican President with an ideological approach to judicial nominations. Democrats are trying to clean up the vacancies mess that the Republican majority created. I am proud of the efforts of the Senate to restore fairness to the judicial confirmation process.

The Senate Judiciary Committee is working hard to schedule hearings and votes on the few remaining judicial nominees, but it takes time to deal with a mess of the magnitude we inherited. I think we have done well by the Federal courts and the American people, and we will continue to do our best to ensure that all Americans have access to federal judges who are unbiased,

fair-minded individuals with appropriate judicial temperament and who are committed to upholding the Constitution and following precedent. When the President sends judicial candidates who embody these principles, we have tried to move quickly. When he sends controversial nominees whose records demonstrate that they lack these qualities and whose records are lacking, we will necessarily take more time to evaluate their merits.

Mr. HATCH. Madam President, I rise today in support of the confirmation of Terrence McVerry, who has been nominated to serve as a U.S. District Judge for the Western District of Pennsylvania.

Terrence McVerry has the breadth of experience and accomplishment we look for in a Federal judge. After graduating from law school, Mr. McVerry served in the U.S. Army Reserves and the Pennsylvania Air National Guard. He then went to work as an assistant district attorney for Allegheny County, prosecuting hundreds of trials with an emphasis in major felonies and homicides.

Mr. McVerry also has 17 years of civil litigation experience representing individuals in a variety of matters including personal injury, real estate, contracts, family matters, estate planning, and small businesses and corporations.

Mr. McVerry has been an able legislator, winning election to the Pennsylvania House of Representatives in 1979 and serving there for 21 years. In 1998 Governor Tom Ridge appointed him to fill a judicial vacancy on the Court of Common Pleas of Allegheny County in the Family Division. Currently Mr. McVerry is the solicitor of Allegheny County, acting as the chief legal officer and director of a governmental law department comprised of 36 attorneys.

I thank my colleagues for joining me in my unqualified support for Mr. McVerry.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 1:01 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

HOMELAND SECURITY ACT OF 2002—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to proceed under Senator LIEBERMAN's time.

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

TERRORISM INSURANCE

Mr. REID. Mr. President, I have to believe that the President is not getting the right information from his staff; otherwise, knowing him, I cannot believe he would say some of the things he has said recently.

I was running yesterday morning, and on Public Radio I heard a preview of the speech the President was going to give before a union in Pennsylvania. And I thought they must have made a mistake. Then, later in the day, I heard him complete that speech, and he went ahead just as they had said on Public Radio.

As we consider homeland security and the measures we should take to defend America, I think it is important we talk about terrorism insurance. That is the issue I want to talk about. I believe the President has not received the proper information from his staff.

Following the attacks on the World Trade Center and the Pentagon about a year ago, many American businesses have had trouble purchasing affordable insurance covering acts of terrorism.

As a consequence, many construction projects and real estate transactions have been delayed, interrupted, and in some cases canceled. We are talking about billions of dollars worth of projects that have been stalled, some terminated, solely because of the lack of being able to purchase terrorism insurance.

These problems cost many American workers their jobs and prevent businesses from being as productive as they could be. Clearly, the lack of affordable terrorism insurance has had a harmful effect on our Nation's already troubled economy.

I am glad we are back from our break and the President is back from his vacation. However, as I have indicated, yesterday, the President made some statements relating to terrorism insurance, about the need for Congress to move forward on terrorism insurance, that simply were without any fact.

As millions of students across the country go back to school, I want them to understand that they must speak the truth. I repeat, I do not think the President said what he said yesterday based upon full knowledge of all the information.

The truth, Mr. President, is Senate Democrats—because I have been here offering the unanimous consent request for months—have been leading the effort to pass an effective terrorism insurance bill—and we started on this last year—while Republicans have delayed and attempted to thwart this important legislation time after time. The President should know that. The leadership in the Congress of his party has not allowed us to go forward on this legislation.

One of the statements he made before the union is: I am for hard hats, not trial lawyers.

This is terrorism insurance. We should move it forward. I am confident everyone can see through these statements the President made as being without fact.

I want to remind him and the people who give him advice—give him good information, good background information so he can speak with the full knowledge of the facts.

We are eager to pass terrorism insurance. We have done everything within our power to do that. This would help workers, businesses, and the Nation's economy.

Shortly after the terrorist attacks last year, our colleagues—Senators DODD, SARBANES, and SCHUMER—developed a strong bill to help businesses get the affordable terrorism insurance they badly need.

When we attempted to move this bill last December, the minority voiced no fundamental disagreement with the bill but argued over the number of amendments to be offered. This was done in an effort to prevent us from moving forward on this legislation. So we could not do it in December. We came right back and started on it. After having had many private attempts to get this legislation moving, we decided to go public and try to move it from the floor, right from where I stand.

We tried offering in early spring unanimous consent agreements to take up the terrorism insurance legislation. Again, there was no objection to the base text or that the Dodd-Sarbanes-Schumer bill should be the vehicle we would bring to the floor. They wanted some amendments. We wanted to treat this as any other legislation. They said let us agree on the number of amendments. Whatever number we came up with wasn't appropriate. We could not move it. Finally, they simply disagreed with bringing up the bill at all.

It is the right of the majority leader to decide which bills are brought to the floor. If the minority is opposed, they have the right to offer amendments and attempt to modify the text of the bill. We have offered to bring the bill up with amendments on each side so everyone could have the opportunity to make changes.

Nevertheless, the minority continued to object and further prevented us from passing the terrorism insurance legislation.

In April, the importance of the terrorism insurance legislation was enunciated by Secretary O'Neill in his testimony before the Appropriations Committee that the lack of terrorism insurance could cost America 1 percent of the GDP because major projects would not be able to get financing.

Finally, we were able to get an agreement that we could bring the bill to the floor. We passed the legislation. And then came weeks and weeks of more stalling by the minority. We could not get agreement on appointing conferees. We attempted and attempted and attempted. First, they were upset because the ratio was 3 to 2, which is fairly standard. They said they wanted 4 to 3. So we came back

and said OK, and they still would not agree.

Finally, we were able to get agreement on the appointment of conferees. But now nothing is happening in the conference. We cannot do that alone. So I hope the record is clear. I know we refer to ''the people downtown''—that is, the government representatives, the lobbyists who are concerned about this issue, the real estate and hotel owners, and these special interest groups. They know how we have tried to move this legislation. I only hope the people who have lost their jobs and are unable to move forward—these people in Pennsylvania yesterday who were told we are holding this up—understand that simply is not the truth.

So I certainly hope this legislation can be completed and we can have a bill sent to the President. It is the right thing to do. The legislation is important, and I hope we can do it sooner rather than later.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LIEBERMAN. Mr. President, I yield 15 minutes of my time now to the Senator from Illinois who, I might say parenthetically, has been an extraordinarily thoughtful, constructive participant in the Senate Governmental Affairs Committee's consideration of the question of homeland security and, in that sense, has contributed mightily to the proposal we will put before the Chamber tonight. I am glad to yield 15 minutes to Senator DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank Chairman LIEBERMAN for his leadership on the Governmental Affairs Committee. I think the record demonstrates that before the President called for the creation of a Department of Homeland Security, our committee, the Governmental Affairs Committee of the Senate, under Senator LIEBERMAN's leadership, proposed a law to create such a Department.

At the time, it is interesting because it was on a partisan roll call, if I remember correctly, nine Democrats for it, seven Republicans against it. We argued that a question of this magnitude, a challenge of this gravity, required a separate Department at that moment in time. Neither the President nor his loyal followers in the Senate were prepared to join us in that effort.

So I salute Senator LIEBERMAN for his leadership, and I am happy now that we have reached the point where we are speaking again, as we should when it comes to our Nation's defense, in a bipartisan manner. I hope that as we proceed to the debate on this bill, we can gather together again that same bipartisan force.

There is nothing that says Congress or the Senate have to agree on everything and, frankly, if we did, it would probably betray the principles and values of this Nation. But when it comes to our national security and defense, particularly the creation of a Department of this magnitude, I think it is all well and good that when the debate ends, we do try to find some common ground.

Our Government simply has to change and adapt to the challenge of international terrorism. A reorganization of this magnitude is not going to be simple—it is going to take some time—but this Congress is up to the task. Throughout our history, from 1789 when the first Congress created the first executive branch Departments of State, War, and Treasury, to 1988 when the latest Department, the Department of Veterans Affairs, was created, Congress has worked to make sure the Government was organized to do the job the American people asked of it.

Protecting our Nation's people is our highest priority. On March 15, 2001, almost 6 months before the attack on September 11, the U.S. Commission on National Security/21st Century, known by the shorthand name of the Hart-Rudman Commission, named after its co-chairmen the distinguished former Senators Gary Hart and Warren Rudman, released a report entitled ''Road Map For National Security: An Imperative For Change.'' The Commission was, unfortunately, prescient in seeing the vulnerability of the United States to terrorism. The No. 1 recommendation of the Hart-Rudman Commission was to create a Department of Homeland Security.

It is worth quoting for the record some of the report that came out of the Commission. It says, the combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the U.S. homeland to catastrophic attack.

These words were written 6 months before September 11. They went on in their report to recommend the creation of an independent national homeland security agency, and they suggested there were some agencies of Government which naturally would come under the roof and under the authority of this new Department and quite effectively, or at least more effectively, defend the United States.

The blueprint they laid out was really the basis for this bill we have before us, the Senate version, the Governmental Affairs version, from Senator LIEBERMAN. The backbone of the new Department will be FEMA, the Federal Emergency Management Agency, along with the Departments guarding our borders and our perimeter. This new Department everyone sees as a way to protect our country more robustly.

Some have questioned, though, how a new Department and how reorganizing Government will really make us any safer. Right now there are more than 45 agencies in the Federal Government with some responsibility for homeland security. If we look at it, it is just too diffuse. It cannot be focused. It cannot be coordinated. In the words of my friend and former House colleague, Gov. Tom Ridge, we are going to, frankly, not have the force multipliers we need that organization and coordination will bring.

Some of my colleagues have charged we are moving too quickly. Well, I happen to agree with the premise that this race to enact this legislation by September 11 of this year, on the 1-year anniversary of that terrible disaster, was precipitous. It would have been a miracle if we had been able to create a bill that quickly which would have really met the task. It is better for us to take the additional time to do it right. To meet some self-imposed deadline or some deadline imposed by the press or our critics does not make a lot of sense when we are talking about a Department that is going to be facing the responsibility of protecting America for decades to come.

As a member of the committee, I want to report to our colleagues that I think our committee has done its job. This does not mean we should not debate the issue and deliberate on some alternatives and some modifications. What we have before us is an effort, backed by bipartisan work for many years under both Republican and Democrat chairmen. This committee has held 18 hearings since last September 11 setting up this new Department. It is a committee that has held a series of hearings over the last 4 or 5 years on the issues that are involved.

I remind my colleagues that this extensive body of work of this committee and its chairman allowed our committee to report out a bill on May 22. Once the President decided he wanted a similar Department, we tried to coordinate his intentions with our own. Realizing that all wisdom does not reside in one branch of Government or the other, we have listened to the President's suggestions. I am hopeful he will be open to our own.

One of the things I included in this as an element that was of particular personal interest related to the whole question of information technology. The proposal to restructure 28 agencies into a new, unified Homeland Security Department poses a complex challenge to integrate the system's infrastructure of our information technology to support the new Department's mission.

Let me get away from these high falutin' words, high sounding words, and get back to the real world where I live, because I am not part of this computer generation. I struggle with my own computers and e-mail to try to be up to speed. In the amendment that I adopted, what we are really saying to the Office of Management and Budget

is: We want you to have a special person, a special group, assigned the responsibility to coordinate the architecture of the computers that are supposed to be cooperating and working together in all of the different intelligence agencies.

I am sorry to report to the Senate and to the people following this debate that that does not exist today. In fact, it has been a very low priority. If we look at the sorry state of affairs of computers at agencies such as the Federal Bureau of Investigation, we can certainly understand the need for this amendment. Currently, each of the agencies we expect to consolidate has its own separate information technology budget and program—the Coast Guard, Customs, FEMA, INS, Secret Service, Transportation Security Administration, and others. Each one has a unique system that does not necessarily have the capacity to communicate or coordinate these activities. Frankly, is that not what this debate is all about, so that all the agencies of the Federal Government will coordinate their resources, their authority, and their wisdom into one unified effort to create the force multiplier that Governor Ridge mentioned?

Because these divergent systems need to be linked, it is important to ask key questions now to ensure this new Department will help the agencies brought together and others outside to coordinate their communication and share information. It is equally important to establish appropriate links between the Homeland Security Department and other agencies, such as the CIA, the National Security Agency, the Department of Defense, the FBI, the State Department, and State and local officials, which may not be embraced under the Homeland Security Department's organizational umbrella.

Given the current state of affairs in the Federal information technology systems reflected in incomprehensible delays in meeting congressional mandates, I think this is long overdue. I will give two illustrations of why this is timely.

Six years ago, Congress mandated the Customs Department and INS to establish a database to record those exiting the United States with visitor's visas. Those coming into the United States in many instances need visas to be in the United States, and we thought we should keep track of those who are leaving so we will know the net number of visa holders in the United States, which can range in the tens of millions at any given time.

Six years ago, Congress said to the INS: Keep track of people leaving with a visa. Six years later, it is still not done. It has not been accomplished. The inspector general at the Department of Justice tells us it is years away.

So when Attorney General Ashcroft said, to make America safer, we are going to take the fingerprints and photographs of all people coming into the United States on a visa, I am sure people around America were nodding their heads saying, I guess that is necessary; it is certainly reasonable. Well, it is technologically impossible today to do it. We do not have the computer capability to keep track of people leaving the United States with a visa, let alone the millions coming into the United States on visas.

So for the Attorney General to make that suggestion is to say that he is going to go drill for oil on the Moon. It is not going to happen—not until we come a long way from where we are today.

We also said, incidentally, to the FBI and the Immigration and Naturalization Service: We notice that they both collect fingerprints. Can they merge their databases so that law enforcement agencies across the Federal Government, across the Nation, around the world, will have access to a common database of fingerprints collected by the United States? We asked them to do that 3 years ago. It still has not been done.

So when it comes to information technology, do not delude yourself into believing we are where we ought to be. We are not. The creation of this Department and the amendment which Senator LIEBERMAN and others were happy to accept and said nice things about, I hope will move forward in achieving that goal.

The enterprise architecture and resulting systems must be designed for interoperability between many different agencies. I hope we get this achieved quickly.

I have had a great deal of frustration, even anger, over the lack of progress we have made since September 11. To have the new person in charge of information technology from the FBI testify before the Judiciary Committee saying it will be 2 years before the FBI is up to speed with their computers is totally unacceptable. Members should not stand for that one second. To think one can go to any computer store in any major city in America and buy computers with better capability than the computers of the Federal Bureau of Investigation is shameful. That exists today; it should change. This bill will be part of the change.

Also, I raise another issue briefly. After the events of September 11, we heard from a number of people—Governor Ridge, Secretary Thompson of the Department of Health and Human Services—about concern for our Nation's food supply and its vulnerability to attack. We have to be mindful and sensitive. I thank Senator LIEBERMAN for including my language on food safety and security in this legislation, directing the Secretary of the Department of Homeland Security to contract with the National Academy of Sciences to conduct a detailed study to review all Federal statutes and regulations affecting the safety and security of the food supply, as well as the current organizational structure of food safety oversight to figure out if we can do it better. I think we can. I believed that for a long time. I pushed for better coordination, better definition, better objectives for food safety. Now, this is a different level. It is not a question of food that can be contaminated by natural causes, but food that could be jeopardized and contaminated by enemies of the United States. It is part of the same consideration but raises it to a much higher level.

I close by thanking Senator LIEBERMAN for his leadership on this issue. This reorganization is complicated. Although we are a great deliberative body, we have to roll up our sleeves and deal with it. We approach the anniversary of September 11 and know further attacks are not only possible, but in many instances our open society invites them. We do not have the luxury of waiting. If there were another attack since last September 11, this bill would have passed out of here a lot sooner. Now that we have the time to do it, let's do it and do it right.

I thank Senator LIEBERMAN for his leadership, and I yield the floor.

Mr. LIEBERMAN. Mr. President, I thank Senator DURBIN for his statement and for the contributions he made substantively to the proposal and for his eloquent advocacy for the urgent necessity to get together and create a Department of Homeland Security.

I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Maine?

Ms. COLLINS. Mr. President, I yield myself as much time as I may consume from the time of Senator THOMPSON.

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

Ms. COLLINS. Mr. President, I rise to discuss the legislation before the Senate that will result in the most significant reorganization of the executive branch in more than 50 years. The creation of a Cabinet-level Department of Homeland Security is of fundamental importance to our national security. I believe it is one of the most important pieces of legislation we will consider during this Congress.

In the year since the terrorist attacks on our Nation, much has been done to make our country more secure. Congress has approved billions of dollars to secure our borders, protect critical infrastructure, train and equip first responders, and better detect and respond to a bioterrorism attack. Our brave men and women in uniform have been fighting valiantly in Afghanistan and have succeeded in many of the goals in the war against terrorism.

The creation of the Department of Homeland Security is another important step in our efforts to secure our Nation against another terrorist attack. This sweeping reorganization dwarfs any corporate merger that you can think of. It involves some 200,000 employees and nearly $40 billion in budget. The task before the Senate is truly daunting, and it is important we get the job done right.

Currently, as many as 100 Federal agencies are responsible for homeland security. But not one of them has homeland security as its principal mission. That is the problem with our current organizational structure. With that many entities responsible, nobody is accountable and turf battles and bureaucratic disputes are virtually inevitable.

If we are to overcome these problems and create a national security structure that can defend our Nation, we must unite the current patchwork of agencies into a single new Department of Homeland Security. This agency would work to secure our borders, help protect our ports, our transportation sector, and protect our critical infrastructure. It would synthesize and analyze homeland security intelligence from multiple sources, thus lessening the possibility of intelligence breakdowns or lack of communication. Furthermore, the new domestic security structure would coordinate Federal communications regarding threats and preparedness with State and local governments, as well as with the private sector.

Our efforts to create a new Department of Homeland Security will help to remedy many of the current weaknesses of the past and thus help to protect us against future terrorist attacks.

As a member of the Senate Governmental Affairs Committee, which held extensive hearings on the reorganization legislation, I have had the opportunity to consider a multitude of ideas and concepts regarding the creation of the new Department. We heard excellent testimony from Governor Ridge, from the Directors of the FBI and the CIA, and from a host of other experts. They all shed light on the problems that are created by our current disorganization in the area of homeland security. They all shed light on the problems that have impaired our ability to defend our homeland and on the threats that we now face and inevitably will face in the future.

During the committee's consideration of this bill, I expressed concerns that in our effort to create a new Department, we must be careful to protect the traditional missions, the very important missions of the agencies that are being assembled into this giant new department. In particular, I believe the Coast Guard's traditional functions, such as search and rescue and marine resource protection, must be protected and maintained.

Since the tragic events of September 11, the Coast Guard's focus has shifted dramatically to homeland security. I talked with Coast Guard officers in Portland, ME, who told me the amount of time they are now spending on port security operations and inspecting foreign vessels coming into the harbor in Portland. I have no doubt these are very important missions and that the Coast Guard plays an essential role in homeland security. And I believe it should play a leading role in the new Department. However, we know the Coast Guard cannot continue to focus on homeland security missions without jeopardizing its traditional focus. I am concerned that if the current resource allocation is maintained and the Coast Guard continues to perform these new homeland security responsibilities, its traditional missions will be sacrificed.

The President's budget goes a long way to try to remedy this problem by allocating significant new funds for the Coast Guard. But we also need to make sure the organizational structure in the new Department also safeguards the Coast Guard's traditional mission.

For example, prior to September 11, port security missions accounted for approximately 2 percent of the Coast Guard's resources. Immediately following the terrorist attacks, the Coast Guard deployed 59 percent of its resources to port security and safety missions. As a result, many of the aircraft and vessels traditionally used for search and rescue were far removed from their optimal locations for that function. Even after the immediate impact of the September 11 attacks subsided, its impact on the resources of the Coast Guard remained. Indeed, from April through June of this year, the Coast Guard devoted 9 percent fewer hours on search and rescue missions than it did in the year before.

Because of the Coast Guard's importance to coastal areas throughout our Nation, any reduction in its traditional functions is cause for great concern. Those of us who represent coastal States know how absolutely vital the mission of the Coast Guard is. Last year alone, the Coast Guard performed over 39,000 search and rescue missions and saved more than 4,000 lives. On a typical day, the Coast Guard interdicts and rescues 14 illegal immigrants, inspects and repairs 135 buoys, helps over 2,500 commercial ships navigate in and out of U.S. ports, and saves 10 lives. That is on a typical day. In short, the Coast Guard's traditional missions are of vital importance and they simply must be preserved.

Let me take a moment to talk about the Coast Guard's impact and its importance in my home State of Maine. Each year, the Coast Guard performs about 300 search and rescue missions in my State. These missions are literally a matter of life and death. Since October of 1999, 14 commercial fishermen have lost their lives at sea. Commercial fishing is one of the most dangerous of occupations, and the Coast Guard every year saves fishermen who get into trouble. How many more would have died or been injured if the nearest Coast Guard cutter had not been in port? How many more fishermen or recreational boaters will lose their lives if the local Coast Guard stations must devote the vast majority of their time to homeland security functions?

I agree that the Coast Guard must perform homeland security functions. The role the Coast Guard is playing in securing our ports is vitally important. But it is also vitally important that it not do so at the expense of its traditional missions.

To respond to this challenge, Senator STEVENS of Alaska and I teamed up to offer an amendment during the Governmental Affairs Committee markup of this legislation. We offered a successful amendment to preserve the traditional functions of the Coast Guard, even as the agency is moved into the new Department of Homeland Security. I want to recognize Senator STEVENS and thank him for his leadership on this issue, as well as recognize the support of our colleagues who voted for our amendment in committee.

Our amendment establishes the right balance between homeland security functions and the traditional missions of the Coast Guard. It ensures that the Coast Guard's non-homeland-security functions shall be maintained after its transfer into the new Department but also provides for flexibility in the event of a national emergency or an attack on our Nation.

The amendment also has the Commandant of the Coast Guard report directly to the Secretary. In the chairman's draft, he would not have done so. Thus, his role would have been devalued or demoted. Our amendment, the Stevens-Collins amendment, remedies that problem.

Our amendment will help to protect our coastal communities' economies, their way of life, and their loved ones, while Americans, wherever they live, can rest assured that the Coast Guard will perform its necessary and vital homeland security functions. I believe our language strikes the right balance.

As we craft this bill, it is also important that we never forget who is on the front lines in the event of a national emergency. We learned on September 11 who responds. It is not the response of people in Washington. The people who are on the front lines are our police officers, our firefighters, and our emergency medical personnel. That is why we need to make sure the new Department coordinates its activities and supports the activities of the local first responders.

I thank Senator FEINGOLD for his leadership in ensuring that the interests of the first responders are ever in our mind. I worked with him as well as with Senator CARPER on an amendment in committee that strengthens the role of first responders in homeland security, that recognizes their contributions.

We offered an amendment to enhance the cooperation and coordination among State and local first responders. The new Department will be required to designate an employee to be based in each and every 1 of the 50 States to be a liaison to State and local governments. I think that is so important. And it recognizes that this is a joint effort.

Similarly, an amendment Senator CARNAHAN and I offered will help our

community fire departments by expanding the current grant program known as the FIRE Program. As I am sure the Presiding Officer knows, because he represents a rural State, as I do, the FIRE Program has been so important in helping a lot of our small, rural fire departments upgrade their equipment and their training.

The amendment the Senator from Missouri and I offered in committee would expand the FIRE Program and provide fire departments with the ability over 3 years to receive maximum grants of $100,000 to hire personnel. When I talk to my fire chiefs at home, they tell me that not only do they need help with equipment and training but they need more firefighters.

For those of us who went to New York City, one of the memories I will carry with me forever was talking with the fire commissioner and learning how many firefighters lost their lives on September 11. I will never forget his telling me that more firefighters died on that day than in the previous 70 years of the New York City Fire Department. It is the firefighters, the police officers, the emergency medical personnel who are always first on the scene. We cannot forget that these brave individuals will be the first to be called upon if and when a terrorist attack again occurs.

The New Department of Homeland Security is an essential component of our response to current and future threats. As the brutal attacks of September 11 demonstrated, distance from our enemies and the barriers of oceans no longer guarantee the security of our homeland. The bill we are considering today is another important step in preserving and strengthening our homeland security. I believe this legislation will help to make our Nation more secure, and I am hopeful that we will pass it quickly after due consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I yield myself 10 minutes from the time controlled by Senator BYRD.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Without objection, it is so ordered.

Mr. REED. Mr. President, we are here today for three major reasons. The first is the obvious need to restructure our security to confront new threats that were unanticipated in the cold war. The thought is that we do need to create a Department of Homeland Security. I support that. We are also here today because of the groundbreaking work of Senator LIEBERMAN and colleagues on the Governmental Affairs Committee. Before this proposal was invoked by the administration, they were working on it. They were developing through hearings the substance to make the presentation for which we are here today. But finally, we are here today because of Senator BYRD's insistence that we consider this very significant reorganization in the context of our Constitution and of our responsibility as Members of the Senate to ensure we maintain the constitutional balance that is the heart of this Government.

It would be ironic indeed that in the name of winning the war on terror, we lost the very goal we were trying to protect, which is a constitutional government in which all of us play a significant role—the executive, the legislature, and the judiciary.

I think it is important, as we consider this legislation, to look carefully and thoughtfully at this proposed reorganization. It is an extraordinary combination of governmental entities. Approximately 170,000 employees will be combined into this new Department. It will affect 22 existing agencies. At least 11 full Senate committees have oversight responsibilities for these existing agencies.

This is an extraordinary moment, and we have to act deliberately, carefully, and thoughtfully. That is why I think it is so critical that this debate take place and why it was so important that Senator BYRD was able to indeed encourage and inspire and in many respects direct the debate we are having today.

One of the major elements within this organization—there are many, and I would like to allude to a few—is the treatment of intelligence. We understood very starkly and very tragically on September 11 that intelligence is probably the key to successful protection of the United States, our home. We understood that. And now we have to take that lesson and apply it.

One of the proposals made by the administration is to create an intelligence capacity within the new Department of Homeland Security. I agree with that. I think this new Department has to have an intelligence capacity. Unfortunately, in terms of the administration's proposal, I think there are two clear shortcomings. First, they have established the intelligence capacity in the context of the infrastructure protection responsibilities of this new Department. Clearly, intelligence has to go beyond simply protecting our infrastructure.

As Senator LIEBERMAN indicated previously in some of his comments, the World Trade Center and other targets were not properly considered critical infrastructure in the United States. But certainly on September 11 it was the target of terrorists. I think we have to disassociate the intelligence aspects of the Department in the very narrow view of infrastructure protection.

The amendment which Senator LIEBERMAN will propose once we move to the bill will effectively address the issue and the problems.

There is also another problem; that is, the administration would only allow this intelligence operation within the new Homeland Security Department to take data provided by other agencies and analyze it. It does not give that entity the right to reach out and get raw intelligence data. I think that has to be a critical responsibility and a critical authority of this new intelligence division.

Again, the bill that I believe Senator LIEBERMAN will submit at the conclusion of this debate will have that authority in the Homeland Security Department. That is critical.

The essence here is to have a place in the Government where—as said so often because it is so true—all the dots are connected. But you can't do that and rely on the intelligence products of other agencies. You can't do that if your focus is restricted to infrastructure protection.

As a result, I think this is illustrative of some of the problems of the administration's proposal, and certainly some of the problems of the House bill. I should point out, as has been pointed out before, that we are now debating whether the Senate will bring it up for consideration.

There are other areas that are of concern to me. One has just been discussed quite articulately by my colleague and friend from Maine, Senator COLLINS; that is the Coast Guard. Here is an agency which, after September 11, has been decisively engaged in port protection. Port protection by the Coast Guard has gone from a rather minor operation before September 11 to one of their major operations. We have all seen that. In my community of Providence, RI, we have the Narragansett Bay. We have the Port of Providence. For the first time in my memory—and perhaps since World War II—we are seeing Coast Guard cutters escorting LNG tankers through the Narragansett Bay while the whole waterway was shut down by police and the National Guard. That is a time-consuming operation and one which has been replicated in the 361 ports of the United States. Also adding to that is the Coast Guard's obligation to patrol about 95,000 miles of coastline.

The problem, though, is, as my colleague from Maine pointed out, that the Coast Guard has many other responsibilities. She referred to a typical day. On a typical day, the Coast Guard conducts 109 search and rescue missions, saves 10 lives, assists 92 boaters in trouble, and seizes 169 pounds of marijuana and 360 pounds of cocaine worth about $9.6 million. They intercept illegal immigrants coming into the United States. They respond to calls with respect to hazardous chemical spills. They inspect and repair boats. They assist nearly 200,000 tons of shipping just in the Great Lakes during the winter season alone. What will happen to these other responsibilities?

I know the committee has dealt with this and has tried to strike a balance. But it is an area of concern, and it is an area that illustrates the difficulty of combining all of these agencies with the mission of homeland security which might trump other legitimate missions. We have to be careful with

this. In the course of our debate and discussion, I think we have to focus on this issue and other issues.

Much can be said in a similar vein about the Immigration and Naturalization Service. Here you have an agency which has two major responsibilities: Protect the borders from illegal entry and at the same time provide assistance to those individuals who are in the United States legally who want to become citizens or who are here on some type of temporary protective status and need to be supervised by the United States. Those are diametrically opposed responsibilities.

We have to ask ourselves the question: If the INS is part of the Department of Homeland Security, will they emphasize one and de-emphasize the other? I think, frankly, most people will assume they will emphasize protecting the borders of the United States. After all, that is probably the most important issue with respect to homeland security.

What happens to the literally millions of individuals in the United States who legitimately need the services of the INS? Already today, there is a backlog of approximately 5 million cases around the country in terms of applications to the INS for clarification of status. Indeed, as the National Immigration Forum noted in their words, ''it is hard to imagine that a Federal agency whose primary issue is to deter terrorism will be able to strike and maintain an appropriate balance between admitting newcomers and deterring security threats.''

We see that these contradictions are replete throughout the reorganization. I again think a careful, thorough, and complete deliberation should be attendant to the consideration of this legislation.

I would like to mention just briefly a final area, an area which I think will come back again and again; that is, the administration's proposal—and the proposal in the House of Representatives—to put up severe barriers to the right of Federal employees to organize collectively and to exercise their rights; and, also, the protection for the Civil Service.

We have to be very conscious of this and ask the very fundamental question: Why are we attempting to undercut provisions for which no one, I think, has seriously made the case they have interfered with our ability to conduct the war on terror, to conduct intelligence operations?

As you probably realize, President Kennedy, 40 years ago, under executive order, gave Federal employees the right to organize in collective bargaining units. President Nixon expanded those rights in 1969. In 1978, the Civil Service Reform Act codified most of these executive orders.

Throughout the course of our history, these responsibilities have also given the President the authority to make exemptions for national security. And they have made those exemptions.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. REED. Mr. President, I ask unanimous consent for 1 additional minute.

Mr. BYRD. Mr. President, I yield one additional minute.

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

Mr. REED. I thank the Senator.

Over the course of our history, certainly in the 40 years, since these rights became established by executive order, there have always been appropriate exemptions in which the President could, for national security reasons, exempt individual employees or groups of employees from these rights. Our Presidents have done that. As a result, we have a situation in which I think a classic statement applies: If it is not broke, why are we trying to fix it? And it is not broken.

Again, in my final few moments, I heard from my colleague from Maine—and I have heard it again and again—those firefighters struggling up the stairs of the World Trade Center were union employees. No one checked with their bargaining agent before going up those stairs. In fact, I don't think they even checked with some of their captains and battalion commanders. They went up those upstairs because it was their job and their duty and their lives. And many of them paid with their lives.

It is that spirit that emanates from those firefighters that encourages and embraces all dedicated civil servants in our Federal Government. I think to pursue this initiative is really, in a way, a slap at them, an insult to what they bring each and every day to their jobs, to their tasks, to their duty.

So I hope we adopt provisions, which I believe the Lieberman bill has, which recognize the right to organize, the right for civil service protections, and also flexibility, for management, by the President.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, how much time does the distinguished Senator from South Carolina wish to have?

Mr. HOLLINGS. Thirty minutes.

Mr. BYRD. I ask the Senator, could you make it 20? Could we try for 20 to start with?

Mr. HOLLINGS: I will try to start with 20.

Mr. BYRD. I certainly want to be considerate with this Senator, this very senior Member of the body. And I am glad that he is a Member at this time.

Let's say 20 minutes at this point. My time is limited, but let's start with that and see how we come out.

Mr. HOLLINGS. Mr. President, right quickly, the distinguished Senator from Rhode Island was talking about the firemen running up those steps. It brings to mind 4 years ago the creation of the Office of Domestic Preparedness by this Congress.

We were confronting terrorism long before 9/11. Mr. President, 144,000 individuals have been through schools in Nevada, New Mexico, Louisiana, Texas, and Alabama. There are five big schools there to train the first responders. And that training has been really salutary in the sense that in the state of New York we have had over 17,000 first responders who were trained in the ODP program. So I say to the Senator, many who rushed up those steps had received the training and were responding in accordance with the foreseeability that we had in the congressional branch with respect to terrorism.

I jump right quickly, with my time limited, to the hearings that we had. We hear so much about Hart-Rudman. We had hearings in the Senate, not just deciding on Hart-Rudman, that large bureaucracy, but, on the contrary, after 3 days of hearings in the State-Justice-Commerce Subcommittee of Appropriations we came down with a further beefing up of the Office of Domestic Preparedness. At the present time, ODP has a budget of $1.2 billion. We already have at the desk, unanimously approved by the Appropriations Committee and ready for debate, an increase of $1 billion, some $2.2 billion.

In short, we were on the floor of the Senate on 9/11 debating terrorism. I emphasize that because they go right to the point and say they don't believe in domestic security.

We have been working on domestic security since immediately after 9/11. I got together—and I must tell this story because it has already passed me with respect to the gun crowd—but be that as it may, I sat down with the El Al chief pilot from Israel who flew over from Tel Aviv and sat down and talked with us, myself and about four other Senators.

At that seating, he emphasized the security of the cockpit door because I asked him: Sir, how is it that El Al, the airline most subject to be under the gun, where the terrorists do not even wait now, for example, to get to a plane—they shoot up the ticket counter like they did out in Los Angeles—that you have not had a hijacking in 30 years?

He said: There is one way to prevent hijackings. Secure the cockpit door, and never open that door in flight.

Let me emphasize, he said: My wife can be assaulted in the cabin. I would go straight to the ground, and law enforcement would meet me there.

In flight, you do not want to give responsibility to the pilots for law and order. You give the pilots the responsibility for flying the plane. If they have the responsibility, with a gun, for law and order, then they have made a bad mistake because the pilots cannot prevent a plane from being hijacked. The enemy is not a single hijacker. There are teams of terrorists, suicidal terrorists, who do not mind losing their lives. And, yes, you can stop one or two, maybe, but the next three will take that plane over, and you will have a 9/11.

I think our responsibility in this particular debate is—in addition to going up to New York on Friday, in addition to having the debate here, and a whole day turned over on next Wednesday, which I commend—but the main thing is for us to act and assume the responsibility that a 9/11 never happens again.

Once you secure that door—Delta Airlines has gone along with it, JetBlue is going along with it, but we are still debating it.

We immediately moved for airline security. We passed it 100–0 in a bipartisan bill. You see in the morning paper it is not turf. This Senate voted to put the Transportation Security Administration in the Justice Department. I was not trying to hold it because I am chairman of the Transportation Committee. I have commerce, science, and transportation. I was not trying to hold it in my committee. I voted to put it in Justice and defended this position on the House side arguing that Justice would get it up and going.

Instead I got a bureaucrat who was more interested in the logo and his office equipment and did not even talk to the airline managers. We confirmed—the pressure was on—before Christmas.

We voted without the committee confirming this particular gentlemen. We just reported it out and we had a vote on it without any debate whatsoever. But now we are behind the curve and we have Admiral Malloy over there, and I think he is a great man, and I think we can do a lot of repairing and we are going to be realistic about what we can accomplish. There is no use arguing about what kind of terminal dates and everything else. We live in the real world and we must work together.

We put in rail security, we put in seaport security before Christmas of last year. You don't find the administration pressuring the House to get going to pass it. They are still fussing about fees and taxes over there. They don't want to pay for it. It is domestic politics, reelection, not seaport security.

So there we are. We can go down the list of all the work we have done on it, and here comes this bill and what does it do? It organizes every entity that did not fail, like the Coast Guard, FEMA, and the Agriculture Department and everything else, and ignores the ones that did fail. 9/11 was an intelligence failure, and you will not get that out of the Select Committee on Intelligence that is investigating between the House and Senate because the entities of this administration—I am not saying the President knew anything will not be embarrassed. I am sure if the President knew anything he would have put measures in place to avoid it. But I can tell you here and now that the committee that is investigating is not going to speak out about the intelligence failure because it would reflect, if you please, poorly on the President's management of their FBI, their CIA, their National Security Agency.

I have been on the Intelligence Committee. In fact, I started in this work in 1954 on the Hoover Commission. The same problem we had almost 50 years ago with the FBI talking to the CIA, and the CIA talking to the FBI, persists today. I have gotten together with Bob Mueller, and he is a good man. He has hired some CIA officials. Last year before Thanksgiving, we gave him $750 million to clean up his computerization. He reorganized the Department and instituted a Department of Domestic Intelligence and now is talking, I understand, to George Tenet, the Director of the Central Intelligence Agency.

The CIA failed on 9/11. We already had the blowing up of the World Trade Towers almost 10 years ago. But the CIA said we didn't know a plane could be used. They did not know a plane could be used? They had the direct record in 1994.

In 1994, they had the Islamic group that was going to blow up the Eiffel Tower. Then, in 1995, they were working on a case out there in the Philippines where they uncovered a plan to blow up 12 planes at one time. The documents revealed that the terrorists, who had links to al Qaida, planned to ram a plane into the CIA building itself. But now they say they had no idea you could fly a plane into a building. Then al-Qaida blew up our embassies and blew up the USS *Cole*. They knew.

Right to the point, they had warned about this crowd so much so that the President actually had on his desk on September 10—the day before—a plan to attack Afghanistan. We had the intelligence. We just were not paying attention. The FBI also failed. There isn't any question about that. We know about the flight schools in Arizona. Agent Williams sent notice saying: There is something wrong. These people of Mideastern descent are trying to learn how to fly. We believe they are connected to fundamentalist groups, something's not right to me.

That word never did get up to the head of the FBI or the President of the United States. That was an intelligence failure. But we had the woman—Agent Coleen Rowley, I think her name was. When they arrested Moussaoui in Minnesota, they became so exercised she wrote a memo that: Look, this fellow doesn't want to learn how to take-off or land. He only wants to learn how to fly. We need to investigate him further. But the Minnesota field office was denied permission for a warrant.

Why should we investigate him further? Because he was training to run a plane into the World Trade Towers. That is the record. I am not on any Intelligence Committee. I am not giving you any security information. If you want any kind of information along that line, there is a wonderful article that appeared in Time magazine on May 27, 2002.

I ask unanimous consent that it be printed in the RECORD.

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

[From Time Magazine, May 27, 2002]

HOW THE U.S. MISSED THE CLUES

(By Michael Elliott)

None of this is pretty. In the immediate aftermath of the Sept. 11 attacks, members of the American political establishment stood together, determined to fight the war against terrorism, supporting those in military uniform and the buttoned-down bureaucrats whose job it was to make sure that something so awful would not happen again. Everyone—inside the Bush Administration as well as outside it—knew there had been massive failures of intelligence in the period before the attacks. But after Sept. 11, the Administration earned a reputation for steely-eyed competence, and its political opponents couched their legitimate criticism in language politer than that to which Washington is accustomed. That was then. In the past month, a series of disclosures have cast doubt on the most basic abilities of the national-security establishment. The Administration has looked alternately shifty and defensive; Democrats—some of them presidential candidates-in-waiting—have postured on motormouth TV. And the nation has been forced into a period of painful second-guessing, asking whether Sept. 11 could have been prevented. In August, it turns out, the President was briefed by the CIA on the possibility that al-Qaeda, the terrorist network headed by Osama bin Laden, might use hijacked airliners to win concessions from the U.S. Sources tell TIME that the briefing, which was first reported by CBS News, was in response to a request by Bush for detailed information on the kind of threat posed by al-Qaeda, not to American interests overseas—which had long preoccupied the spooks—but at home. During the period in which the brief was prepared, says a senior intelligence official, the CIA came to the conclusion that ''al-Qaeda was determined to attack the U.S.'' After the strike came, White House sources concede, the Administration made a conscious decision not to disclose the August briefing, hoping that it would be discussed ''in context''—and months later—when congressional investigations into the attacks eventually got under way. And that wasn't the only embarrassing paper kept under wraps. Earlier this month, the Associated Press reported new details from a July 2001 memo by an FBI agent in Pheonix, Ariz., who presciently noted a pattern of Arab men signing up at flight schools. The agent, Kenneth Williams, 42, has spent 11 years working in an FBI antiterrorism task force. He recommended an investigation to determine whether al-Qaeda operatives were training at the schools. He was ignored, and after the existence of the memo became known, the FBI insisted that even if it had been acted upon, it would not have led to the detention of the Sept. 11 hijackers. (Only one of them, Hani Hanjour, had trained in Arizona, and did so before Williams focused on flight school.) But sources tell TIME that at least one of the men Williams had under watch—a Muslim who has now left the U.S.—did indeed have al-Qaeda links. And Williams identified a second pair of suspected Islamic radicals now living in the U.S. as resident aliens, the sources say. They are currently under FBI surveillance. As if those missed signals weren't enough, last week it was also disclosed that in August, when the U.S. detained Zacarias

Moussaoui—a man the French government knew was associated with Islamic extremists and who apparently wanted to learn to fly

jumbo jets but not land them, and has since been charged with complicity in the Sept. 11 attacks—the FBI told nobody in the White House's Counterterrorism Security Group. But the CSG, which comes under the aegis of National Security Adviser Condoleezza Rice, is supposed to coordinate the government's response to terrorist threats.

At high levels of government, the awful possibility is dawning that things could have been different. ''If we'd had access to Moussaoui, if we'd had access to the Phoenix memo, could we have broken up the plot?'' asks a White House official who works on counterterrorism. Then he answers his own question: ''We would have taken action, and there's at least a distinct possibility that we may at the very least have delayed it.'' Bush was outraged at the suggestion that he might have been warned about impending strikes and failed to act. To ward off Democratic criticism, Vice President Dick Cheney warned against trying to ''seek political advantage'' from the new revelations; such commentary, he said, ''is thoroughly irresponsible and totally unworthy of national leaders in a time of war.'' He should have saved his breath; the blame game is under way, long before the lessons of all that happened last summer have been absorbed. And one thing we now know: there plenty of blame to go around.

George W. Bush, they say, is a quick study, and last summer he needed to be. Threats and warnings of possible terrorist outrages against American interests were howling into Washington like a dirty blizzard. Fighting terrorism hadn't been a top priority in the early months of the Administration; cutting taxes, building a missile shield and other agenda had crowded it out. Bush's national-security aides had been warned during the transition that there was an al-Qaeda presence in the U.S., but in the first months of the Administration, says one official, a sense of urgency was lacking: ''They were new to this stuff.''

By the time Bush left for a month's vacation on his ranch in Crawford, Texas, on Aug. 4, that mood had changed. Where the President goes, the responsibilities of office follow, and so, each morning, Bush sat in the ranch office and received the CIA's Presidential Daily Brief. The bried—or PDB, in Langley-speak—is the CIA's chance to mainline its priorities into the President's thinking. Each day, the PDB is winnowed to a few pages; when the President is in Washington, one of two ''briefers''—agency up-and-comers who flesh out the written text—gets to work at 2 a.m. to bone up on background material. The brief itself is delivered at 8 a.m. in front of the President's national-security team. (Sometimes CIA Director George Tenet delivers it himself.) One briefer had moved to Texas for the vacation, and the PDB was transmitted to Crawford over a secure system. At the briefing on Monday, Aug. 6—a day when the Texas heat would reach 100 [degrees]—Bush received a 1½-page document, which, according to Rice, was an ''analytic report'' on al-Qaeda. Included was a mention that al-Qaeda might be tempted to hijack airliners, perhaps so that they might use hostages to secure the release of an al-Qaeda leader or sympathizer. Rice was not present but discussed the briefing with Bush immediately after it had ended, as she always does.

They had mush to talk about. Throughout the summer, top officials had become convinced, with a growing sense of foreboding, that a major operation by al-Qaeda was in the works. For many in the loop, it seemed likely that any attack would be aimed at Americans overseas. But sources tell TIME that the Aug. 6 briefing had a very different focus; it was explicitly concerned with terrorism in the homeland. The Aug. 6 briefing had been put together, says one official, because the President had told Tenet, ''Give me a sense of what al-Qaeda can do inside the U.S.'' At a press conference last week, Rice said the brief concentrated on the history and methods of al-Qaeda. Since much of the material in it was a rehash of intelligence dating to 1997 and '98, it is doubtful that it was much use in answering Bush's question.

According to Rice, there was just a sentence or two on hijacking—and the passage did not address the possibility that a hijacked plane would ever be flown into a building. That was the first of four crucial mistakes made last summer. Administration officials insisted all last week that turning a plane into a suicide bomb was something that nobody had contemplated. But that just isn't so. In 1995, authorities in the Philippines scuppered a plan—masterminded by Ramzi Yousef, who had also plotted the 1993 World Trade Center bombing—for mass hijackings of American planes over the Pacific. Evidence developed during the investigation of Yousef and his partner, Abdul Hakim Murad, uncovered a plan to crash a plane into CIA headquarters in Langley, Va. And as long ago as 1994, in an incident that is well known among terrorism experts, French authorities foiled a plot by the Algerian Armed Islamic Group to fly an airliner into the Eiffel Tower. ''Since 1994,'' says a French investigator into al-Qaeda cases, ''we should all have been viewing kamikaze acts as a possibility for all terrorist hijackings.'' But if Rice's account is accurate, nobody significant in the Bush Administration did.

There might have been more discussion of the risks of hijackings in the President's briefing if its writers had known about the Phoenix memo. But they hadn't seen it, nor had anyone in the CIA or the White House. Yet Senator Richard Shelby, the ranking Republican on the Senate Intelligence Committee, calls the memo, which is said to contain detailed descriptions of named suspects, ''one of the most explosive documents I've seen in eight years.'' The memo, on which the Senate Intelligence Committee was briefed last November, has now become the focus of a huge political row in Washington. Members of the Senate Judiciary Committee—including Republican Arlen Specter, who had an angry exchange over the memo with FBI Director Robert Mueller on Saturday—are desperate to see it, and may yet subpoena it. ''The fact that the Phoenix memo died on Somebody's desk takes your breath away,'' says Senator Richard Durbin, a Democratic committee member from Illinois. ''They just shuffled it off.''

Agent Williams wrote the memo on July 5, detailing his suspicions about some Arabs he had been watching, who he thought were Islamic radicals. Several of the men had enrolled at Embry-Riddle Aeronautical University in Prescott, Ariz. Williams posited that bin Laden's followers might be trying to infiltrate the civil-aviation system as pilots, security guards or other personnel, and he recommended a national program to track suspicious flight-school students. The memo was sent to the counterterrorism division at FBI headquarters in Washington and to two field offices, including the counterterrorism section in New York, which has had long experience in al-Qaeda investigations.

That experience counted for nothing. In all three offices, the memo was pretty much ignored, disappearing into the black hole of bureaucratic hell that is the FBI. That was the second key mistake. Sources tell TIME that the memo was never forwarded—not even to the level of Mike Rolince, chief of the international-terrorism section. ''The thing fell into the laps of people who were grossly overtaxed,'' says a senior FBI official. The G-men claim to have been swamped by tips about coming al-Qaeda operations. But Williams was onto something. The flight students he was tracking were supporters of radical Islamic groups. Some of them, sources say, are believed to be connected to Hamas and Hizballah, terrorist organizations based in the Middle East, while at least one other—who has left the U.S.—had links to al-Qaeda. Another pair mentioned in the memo, neither of whom attended flight school, are the ones under FBI surveillance—which, sources say, is the reason Mueller won't make the memo public.

However fevered the analysis of the Williams memo is now, it didn't get much attention when it was written. Last July, FBI headquarters wasn't concentrating on an attack within the U.S. ''Nobody was looking domestically,'' says a recently retired FBI official. ''We didn't think they had the people to mount an operation here.''

That was the third huge mistake—and a somewhat baffling conclusion to draw, given the evidence at hand. In spring of 2001, Ahmed Ressam, the ''millennium bomber,'' was on trial in Los Angeles, charged with being part of a plot to bomb Los Angeles International Airport and other locations at the end of 1999. In her press conference last week, Rice conceded that in 2001 the FBI ''was involved in a number of investigations of potential al-Qaeda personnel operating in the United States.''

But investigators had some reasons for being preoccupied with attacks and threats outside the U.S. Al-Qaeda's most notorious blows against American interests had taken place in Nairobi and Dar es Salaam, the sites of the 1998 embassy bombings, and in Yemen, where the U.S.S. Cole was bombed in October 2002. And in the first half of last year, the CSG monitored information suggesting the likelihood of another attack overseas. In June 2001, the State Department issued a worldwide caution warning American citizens of possible attacks. That month, says a recently retired senior FBI official, ''we were constantly worried that something was going to happen. Our best guesstimate was something in Southeast Asia.'' A French investigator involved in al-Qaeda cases confirms the thought. ''The prevailing logic from around 1998,'' he says, ''was that al-Qaeda and bin Laden had very openly designated America as its prime target—but it was a target that it preferred to attack outside the U.S.''

By July the level of noise about terrorism from intelligence sources around the world was deafening. The CSG, then chaired by Richard Clarke, a Clinton Administration holdover who was consumed with terrorist threats to the point of obsession, was meeting almost every day. A specific threat was received on the life of Bush, who was due to visit Genoa, Italy, for a G–8 summit that month. Roland Jacquard, a leading French expert on terrorism, says that when Russian and Western intelligence agencies compared notes before the summit, they were stunned to find they all had information indicating that a strike was in the offing. When the Genoa summit passed without incident, says a French official, attention turned to the possibility of attacks on U.S. bases in Belgium and Turkey. Then, at the end of July, Djamel Beghal, a Franco-Algerian al-Qaeda associate, was picked up in Dubai on his way from Afghanistan back to Europe. Beghal started talking and implicated a network of al-Qaeda operatives in Europe, who, he said, were planning to blow up the American embassy in Paris. (Beghal, who has since been extradited to France, has said his confession was coerced.) ''We shared everything we knew with the Americans,'' says a French justice official.

They may have shared too much. At least in France, investigators now acknowledge that Al-Qaeda may have been involved in a massive feint to Europe while the real attack was always planned for the U.S. ''People were convinced that Europe remained the theater for Islamic terrorists,'' says Jacquard. ''It's anyone's guess whether that was a technique to get people looking in the wrong place. But that's what happened.''

By the beginning of August, the President had made his request for a briefing on domestic threats. One of them was about to be uncovered. And therein lay the fourth mistake. On Aug. 16, Moussaoui was arrested in Minnesota for an immigration violation, just a day after the staff at the flight school where he was training told the FBI of their suspicions about him. The Minnesotans weren't alone; when American officials checked with their French counterparts, they discovered that Moussaoui had long been suspected of mixing in extremist circles. (The Zelig of modern terrorism, Moussaoui has been associated with al-Qaeda networks everywhere from London to Malaysia.) The FBI started urgently investigating Moussaoui's past; agents in Minneapolis sought a national-security warrant to search his computer files but were turned down by lawyers at FBI headquarters who said they didn't have sufficient evidence that he belonged to a terrorist group. Immediately after Moussaoui's arrest, agents twice visited the Airman Flight School in Norman, Okla., where he had studied before heading to Minnesota; two of the Sept. 11 hijackers had visited Norman in July 2000. The FBI did inform the CIA of Moussaoui's arrest, and the CIA ran checks on him while asking foreign intelligence services for information. But neither the FBI nor the CIA ever informed the counterterrorism group in the White House. ''Do you think,'' says a White House antiterrorism official, ''that if Dick Clarke had known that the FBI had in custody a foreigner who couldn't speak English, who was trying to fly a plane in midair, he wouldn't have done something?''

Since at least two of the four failures—those involving Moussaoui and the Phoenix memo—can be laid at the door of the FBI, the bureau is feeling the heat. ''The FBI has a long pattern of not sharing information with others,'' says a former Clinton Administration official. ''Now it's not even sharing the information with itself.'' Mueller, who knew about the Phoenix memo shortly after Sept. 11, plainly did not anticipate the criticism it would engender. Since it became public, officials have defensively pointed out that if the bureau had tried to track down all Muslim flight-school attendees, it would have been accused of racial profiling. White House officials defend Mueller; he is ''tenacious about changing things,'' says one, who admits, ''You can't change a culture that's 60 years in the making overnight.'' But on Capitol Hill the bureau is running out of friends. ''I have no doubt that the FBI needs reform,'' said Senate Republican leader Trent Lott last week.

Yet when the blame gets assigned, as it will now that a joint congressional investigation into Sept. 11 is getting down to work, the FBI won't monopolize it. The ugly truth is that nine months after huge weaknesses in the national security system were revealed, they remain unaddressed. In Washington, says a senior Clinton Administration official, ''information just moves through stovepipes,'' never getting pooled by different agencies until it is too late. The intelligence services were built to fight the cold war, not an enemy that flits from Afghan caves to apartments in London. The division between domestic and international security made sense when the former was concerned with what criminals did and the latter with foreign countries. But some criminals are now as powerful as countries, and some countries are run by criminals.

Nine months ago, the appointment of Tom Ridge as Homeland Security czar was billed as the shake-up Washington needed. So far, he has been more of a mild foot stamp than an earthquake. Instead of real reform, the Administration has resorted to its usual mode: attempting to control warring satrapies from the White House. The remarkable aspect of last week's events in Washington was the unintended revelation that Rice is the true manager of counterterrorism policy. In the past, the National Security Council got into trouble when it adopted an operational role rather than one of analysis (think Oliver North), and for Bush this identification of one of his closest advisers with the operational failures of counterterrorism policy could yet be politically troubling.

Among his supporters, however, the President still rides high. Bush's simple, passionate argument—that he would never have sat idly if he had known what was coming on Sept. 11—helped stiffen spines. Republicans pointed out that members of congressional intelligence committees get the same information the President receives in his PDB and yet had not made a fuss about the Aug. 6 briefing. That claim was disputed; Tom Daschle, the Democrat's leader in the Senate, insisted the Senate and the Administration did not have ''identical information'' about al-Qaeda threats.

In a sense, the spat over who got what version of which memo epitomizes Washington at its worst. The capital at its best would appreciate that the most important question isn't what Bush (or anyone else) knew before Sept. 11; it is what the Administration and Congress have and have not done to fix a broken system. But November and the midterm elections, you may have noticed, are only six months away. Washington is reverting to form.

Mr. HOLLINGS. Time magazine got into it very thoroughly—much more so than the committee that has been leaking. I was disappointed Sunday when I heard my distinguished colleague from Tennessee say: No, he would not take a polygraph test.

I am an old trial lawyer. You are not going to convict my client on a polygraph test. We used it in the Hoover Commission 50 years ago, and it is an indicator. I wanted to make sure the staff on the Intelligence Committee—as I found out, I had been doubledealed by the CIA and was told: I cannot give you that information, Senator, because your staff does not have the appropriate clearance.

Before you serve here as a Capitol policeman, you have to take a polygraph, and also before you serve in the FBI, CIA, and Secret Service—go down the list—but not the staff of the Senate Intelligence Committee.

So I learned that in a war you never ask your man to do something you do not do yourself first. So I went over to take a polygraph test. To the very first question, I started off my answer ''in my humble opinion'' and the needle went right off the chart. I flunked. It took 2 hours and they gave me a chance again, and after that 2-hour test, I passed it and came back and I still brought it up that as a member of the Intelligence Committee, they do not have the appropriate clearance. If they want to know where the leaks are, go to the committees.

Mr. President, the National Security Agency failed. They had all kinds of warnings about al-Qaida. They had Arabic friends over there. They got the word on September 10 in Arabic that ''the match is about to begin,'' but they didn't translate the Arabic into English until September 12.

Now comes the National Security Council. It is interesting that in 1947 we had the same problem of coordination—instituting not only the CIA, but the 1947 National Security Council that the function of the Council shall be to advise the President with respect to the integration—that is joining—of domestic, foreign, and military policies relating to the national security, so as to enable the military services and the other Departments and Agencies of Government to cooperate more effectively in matters involving national security.

If you don't have a President right at the catbird seat pointing to them and saying you either talk and coordinate with each other or else you are out, it is not going to be done. You can pass all the bills you want in the U.S. Congress. You are just passing another entity for finger-pointing. They need correlation again and again.

Here is exactly what the President said in the National Security Presidential directive he made. I had a copy of it here. It is with respect to ordering the bush National Security Council. Incidentally, what I am saying I had said to him at the Cabinet table over 2 months ago. But on February 13—I ask unanimous consent that this National Security Presidential directive of February 13, 2001, be printed in the RECORD.

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

NATIONAL SECURITY PRESIDENTIAL DIRECTIVES—NSPDs, THE WHITE HOUSE, WASHINGTON, FEBRUARY 13, 2001

MEMORANDUM FOR

The Vice President
The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Health and Human Services
The Secretary of Transportation
The Secretary of Energy
Administrator, Environmental Protection Agency
Director of the Office of Management and Budget
United States Trade Representative
Chairman, Council of Economic Advisers
Director, National Drug Control Policy
Chief of Staff to the President
Director of Central Intelligence
Director, Federal Emergency Management Agency
Assistant to the President for National Security Affairs
Assistant to the President for Economic Policy
Counsel to the President
Chief of Staff and Assistant to the Vice President for National Security Affairs

Director, Office of Science and Technology Policy
Chairman, Board of Governors of the Federal Reserve
Chairman, Council on Environmental Quality
Chairman, Export-Import Bank
Chairman of the Joint Chiefs of Staff
Commandant, U.S. Coast Guard
Administrator, National Aeronautics and Space Administration
Chairman, Nuclear Regulatory Commission
Director, Peace Corps
Director, Federal Bureau of Investigation
Director, Defense Intelligence Agency
President, Overseas Private Investment Corporation
Chairman, Federal Communications Commission
Commissioner, U.S. Customs Service
Administrator, Drug Enforcement Administration
President's Foreign Intelligence Advisory Board
Archivist of the United States
Director, Information Security Oversight Office
Subject: Organization of the National Security Council System

This document is the first in a series of National Security Presidential Directives. National Security Presidential Directives shall replace both Presidential Decision Directives and Presidential Review Directives as an instrument for communicating presidential decisions about the national security policies of the United States.

National security includes the defense of the United States of America, protection of our constitutional system of government, and the advancement of United States interest around the globe. National security also depends on America's opportunity to prosper in the world economy. The National Security Act of 1947, as amended, established the National Security Council to advise the President with respect to the integration of domestic, foreign, and military policies relating to national security. That remains its purpose. The NSC shall advise and assist me in integrating all aspects of national security policy as it affects the United States—domestic, foreign, military, intelligence, and economics (in conjunction with the National Economic Council (NEC)). The National Security Council system is a process to coordinate executive departments and agencies in the effective development and implementation of those national security policies.

The National Security Council (NSC) shall have as its regular attendees (both statutory and non-statutory) the President, the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff, as statutory advisors to the NSC, shall also attend NSC meetings. The Chief of Staff to the President and the Assistant to the President for Economic Policy are invited to attend any NSC meeting. The Counsel to the President shall be consulted regarding the agenda of NSC meetings, and shall attend any meetings when, in consultation with the Assistant to the President for National Security Affairs, he deems it appropriate. The Attorney General and the Director of the Office of Management and Budget shall be invited to attend meetings pertaining to their responsibilities. For the Attorney General, this includes both those matters within the Justice Department's jurisdiction and those matters implicating the Attorney General's responsibility under 28 U.S.C. 511 to give his advice and opinion on questions of law when required by the President. The heads of other executive departments and agencies, as well as other senior officials, shall be invited to attend meetings of the NSC when appropriate.

The NSC shall meet at my direction. When I am absent from a meeting of the NSC, at my direction the Vice President may preside. The Assistant to the President for National Security Affairs shall be responsible, at my direction and in consultation with the other regular attendees of the NSC, for determining the agenda, ensuring that necessary papers are prepared, and recording NSC actions and Presidential decisions. When international economic issues are on the agenda of the NSC, the Assistant to the President for Nation Security Affairs and the Assistant to the President for Economic Policy shall perform these tasks in concert.

The NSC Principals Committee (NSC/PC) will continue to be the senior interagency forum for consideration of policy issues affecting national security, as it has since 1989. The NSC/PC shall have as its regular attendees the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Chief of Staff to the President, and the Assistant to the President for National Security Affairs (who shall serve as chair). The Director of Central Intelligence and the Chairman of the Joint Chiefs of Staff shall attend where issues pertaining to their responsibilities and expertise are to be discussed. The Attorney General and the Director of the Office of Management and Budget shall be invited to attend meetings pertaining to their responsibilities. For the Attorney General, this includes both those matters within the Justice Department's jurisdiction and those matters implicating the Attorney General's responsibility under 28 U.S.C. 511 to give his advice and opinion on questions of law when required by the President. The Counsel to the President shall be consulted regarding the agenda of NSC/PC meetings, and shall attend any meeting when, in consultation with the Assistant to the President for National Security Affairs, he deems it appropriate. When international economic issues are on the agenda of the NSC/PC, the Committee's regular attendees will include the Secretary of Commerce, the United States Trade Representative, the Assistant to the President for Economic Policy (who shall serve as chair for agenda items that principally pertain to international economics), and, when the issues pertain to her responsibilities, the Secretary of Agriculture. The Chief of Staff and National Security Adviser to the Vice President shall attend all meetings of the NSC/PC, as shall the Assistant to the President and Deputy National Security Advisor (who shall serve as Executive Secretary of the NSC/PC). Other heads of departments and agencies, along with additional senior officials, shall be invited where appropriate.

The NSC/PC shall meet at the call of the Assistant to the President for National Security Affairs in consultation with the regular attendees of the NSC/PC. The Assistant to the President for National Security Affairs shall determine the agenda in consultation with the foregoing, and ensure that necessary papers are prepared. When international economic issues are on the agenda of the NSC/PC, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy shall perform these tasks in concert.

The NSC Deputies Committee (NSC/DC) will also continue to serve as the senior sub-Cabinet interagency forum for consideration of policy issues affecting national security. The NSC/DC can prescribe and review the work of the NSC interagency groups discussed later in this directive. The NSC/DC shall also help ensure that issues being brought before the NSC/PC or the NSC have been properly analyzed and prepared for decision. The NSC/DC shall have as its regular members the Deputy Secretary of State or Under Secretary of the Treasury or Under Secretary of the Treasury for International Affairs, the Deputy Secretary of Defense or Under Secretary of Defense for Policy, the Deputy Attorney General, the Deputy Director of the Office of Management and Budget, the Deputy Director of Central Intelligence, the Vice Chairman of the Joint Chiefs of Staff, the Deputy Chief of Staff to the President for Policy, the Chief of Staff and National Security Adviser to the Vice President, the Deputy Assistant to the President for International Economic Affairs, and the Assistant to the President and Deputy National Security Advisor (who shall serve as chair). When international economic issues are on the agenda, the NSC/DC's regular membership will include the Deputy Secretary of Commerce, A Deputy United States Trade Representative, and, when the issues pertain to his responsibilities, the Deputy Secretary of Agriculture, and the NSC/DC shall be chaired by the Deputy Assistant to the President for International Economic Affairs for agenda items that principally pertain to international economics. Other senior officials shall be invited where appropriate.

The NSC/DC shall meet at the call of its chair, in consultation with the other regular members of the NSC/DC. Any regular member of the NSC/DC may also request a meeting of the Committee for prompt crisis management. For all meetings the chair shall determine the agenda in consultation with the foregoing, and ensure that necessary papers are prepared.

The Vice President and I may attend any and all meetings of any entity established by or under this directive.

Management of the development and implementation of national security policies by multiple agencies of the United States Government shall usually be accomplished by the NSC Policy Coordination Committees (NSC/PCCs). The NSC/PCCs shall be the main day-to-day fora for interagency coordination of national security policy. They shall provide policy analysis for consideration by the more senior committees of the NSC system and ensure timely responses to decisions made by the President. Each NSC/PCC shall include representatives from the executive departments, offices, and agencies represented in the NSC/DC.

Six NSC/PCCs are hereby established for the following regions: Europe and Eurasia, Western Hemisphere, East Asia, South Asia, Near East and North Africa, and Africa. Each of the NSC/PCCs shall be chaired by an official of Under Secretary or Assistant Secretary rank to be designated by the Secretary of State.

Eleven NSC/PCCs are hereby also established for the following functional topics, each to be chaired by a person of Under Secretary or Assistant Secretary rank designated by the indicated authority:

Democracy, Human Rights, and International Operations (by the Assistant to the President for National Security Affairs);

International Development and Humanitarian Assistance (by the Secretary of State);

Global Environment (by the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy in concert);

International Finance (by the Secretary of the Treasury);

Transnational Economic Issues (by the Assistant to the President for Economic Policy);

Counter-Terrorism and National Preparedness (by the Assistant to the President for National Security Affairs);

Defense Strategy, Force Structure, and Planning (by the Secretary of Defense);

Arms Control (by the Assistant to the President for National Security Affairs);

Proliferation, Counterproliferation, and Homeland Defense (by the Assistant to the President for National Security Affairs);

Intelligence and Counterintelligence (by the Assistant to the President for National Security Affairs); and

Records Access and Information Security (by the Assistant to the President for National Security Affairs).

The Trade Policy Review Group (TPRG) will continue to function as an interagency coordinator of trade policy. Issues considered within the TPRG, as with the PCCs, will flow through the NSC and/or NEC process as appropriate.

Each NSC/PCC shall also have an Executive Secretary from the staff of the NSC, to be designated by the Assistant to the President for National Security Affairs. The Executive Secretary shall assist the Chairman in scheduling the meetings of the NSC/PCC, determining the agenda, recording the actions taken and tasks assigned, and ensuring timely responses to the central policymaking committees of the NSC system. The Chairman of each NSC/PCC, in consultation with the Executive Secretary, may invite representatives of other executive departments and agencies to attend meetings of the NSC/PCC where appropriate.

The Assistant to the President for National Security Affairs, at my direction and in consultation with the Vice President and the Secretaries of State, Treasury, and Defense, may establish additional NSC/PCCs as appropriate.

The Chairman of each NSC/PCC, with the agreements of the Executive Secretary, may establish subordinate working groups to assist the PCC in the performance of its duties.

The existing system of Interagency Working Groups is abolished.

The oversight of ongoing operations assigned in PDD/NSC-56 to Executive Committees of the Deputies Committee will be performed by the appropriate regional NSC/PCCs, which may create subordinate working groups to provide coordination for ongoing operations.

The Counter-Terrorism Security Group, Critical Infrastructure Coordination Group, Weapons of Mass Destruction Preparedness, Consequences Management and Protection Group, and the interagency working group on Enduring Constitutional Government are reconstituted as various forms of NSC/PCC on Counter-Terrorism and National Preparedness.

The duties assigned in PDD/NSC-75 to the National Counterintelligence Policy Group will be performed in the NSC/PCC on Intelligence and Counterintelligence, meeting with appropriate attendees.

The duties assigned to the Security Policy Board and other entities established in PDD/NSC-29 will be transferred to various NSC/PCCs, depending on the particular security problem being addressed.

The duties assigned in PDD/NSC-41 to the Standing Committee on Nonproliferation will be transferred to the PCC on Proliferation, Counterproliferation, and Homeland Defense.

The duties assigned in PDD/NSC-36 to the Interagency Working Group for Intelligence Priorities will be transferred to the PCC on Intelligence and Counterintelligence.

The duties of the Human Rights Treaties Interagency Working Group established in E.O. 13107 are transferred to the PCC on Democracy, Human Rights, and International Operations.

The Nazi War Criminal Records Interagency Working Group established in E.O. 13110 shall be reconstituted, under the terms of that order and until its work ends in January 2002, as a Working Group of the NSC/PCC for Records Access and Information Security.

Except for those established by statute, other existing NSC interagency groups, ad hoc bodies, and executive committees are also abolished as of March 1, 2001, unless they are specifically reestablished as subordinate working groups within the new NSC system as of that date. Cabinet officers, the heads of other executive agencies, and the directors of offices within the Executive Office of the President shall advise the Assistant to the President for National Security Affairs of those specific NSC interagency groups chaired by their respective departments or agencies that are either mandated by statute or are otherwise of sufficient importance and vitality as to warrant being reestablished. In each case the Cabinet officer, agency head, or office director should describe the scope of the activities proposed for or now carried out by the interagency group, the relevant statutory mandate if any, and the particular NSC/PCC that should coordinate this work. The Trade Promotion Coordinating Committee established in E.O. 12870 shall continue its work, however, in the manner specified in that order. As to those committees expressly established in the National Security Act, the NSC/PC and/or NSC/DC shall serve as those committees and perform the functions assigned to those committees by the Act.

To further clarify responsibilities and effective accountability within the NSC system, those positions relating to foreign policy that are designated as special presidential emissaries, special envoys for the President, senior advisors to the President and the Secretary of State, and special advisors to the President and the Secretary of State are also abolished as of March 1, 2001, unless they are specifically redesignated or reestablished by the Secretary of State as positions in that Department.

This Directive shall supersede all other existing presidential guidance on the organization of the National Security Council system. With regard to application of this document to economic matters, this document shall be interpreted in concert with any Executive Order governing the National Economic Council and with presidential decision documents signed hereafter that implement either this directive or that Executive Order.

[signed: George W. Bush]

Mr. HOLLINGS. You will find in there that 11 functional coordinating committees within the council itself, chaired by the National Security Council. Among them are committees on counterterrorism and national preparedness, chaired by Condoleezza Rice, to Advisor to the President for National Security Affairs. You have another committee on counterproliferation and homeland defense, which the President of the United States thought was necessary in February of last year, chaired by Condoleezza Rice. There is another one on intelligence and counterintelligence, again chaired by Condoleezza Rice.

Later we see President's National Security Advisor on the TV saying: We did not get anything specific. In fairness to her, she is an expert in foreign policy. She used to instruct a course, I understand, at Stanford. She has never served in law enforcement or counterterrorism. But it is time to get real. This bill does not directly deal with the entities that failed. It is about running around, like my Navy friend used to say, ''when in danger, when in doubt, run in circles scream and shout.''

The administration propose this big bureaucracy. I have 110,000 of them already at DOT. I have been working on transportation security of the airlines, the rails, and the seaports. How are you going to get a department full of midlevel personnel in charge if you cannot get the Executive level, the Presidential level, engaged in active management. I told the President of the United States: Mr. President, I want you to get hourly reports on the homeland security intelligence as you receive those hourly political reports from Carl Rove. He knows what is going on politically in this country. I want him to know what is going on intelligence-wise with respect to homeland security, but we do not have that.

What we have is another finger-pointing agency. As Harry Truman said: The buck stops here. He is the one who brought in the 1947 initiative to reorganize for national security. He did not mind assuming that responsibility.

Mr. President, do you think if you were President that you would depend on the Department of Homeland Security for your intelligence analysis? No, no, that is not going to ever happen. One, that Department is only going to be fed what the President says to feed them. The FBI is not going to tell them everything. The CIA is not going to tell them everything. It is a culture. We have to break down that culture, but the only place we know they are not afraid to tell is the National Security Council of the President of the United States.

The Secretary of the Homeland Defense Department would not even know what to ask for. They do not have any kind of intelligence collection. They do not have the authority or resources to do that. They would create another analysis department, but it will not function properly unless it is fused. There has to be a fusion, an integration, as they said in 1947, of domestic and foreign intelligence so they know where to act. We have read in the newspapers where they are getting their money for terrorism, outfitting Canada and so on.

The PRESIDING OFFICER. The Senator's time has expired.

My time is limited, so I will close with the idea that, we can pass this bill ipso facto, word for word—either bill—this afternoon, and 4 or 5 years from now after they have had a chance to organize, we can have another 9–11. We are not going to prevent it with this particular measure.

Mr. BYRD. Mr. President, I yield 5 additional minutes to the Senator.

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

Mr. HOLLINGS. That is all right, Mr. President. I will yield the time back and come back in on the debate. This is

only a motion to proceed. I work with them. I can tell you the resistance of the FBI talking to the CIA—that is not in this bill—but we have to have a President get them together and make sure information is fused. There is a resistance. We have had meetings on port security. I cannot get the FBI to attend those meetings. I am going to get on Bob Mueller about that because I have his appropriation, but they do not want to get together. They are looking for crime. They are not looking for prevention. They want to catch somebody. When crimes are committed they are called into action. While we hope crimes are never committed, the FBI serves the nation by responding when crimes are committed. We must work to prevent terrorist attacks. That is the new culture, the new role to be taken on.

The President has to play the game of President, be the chief executive. Mr. President, I say to Senator BYRD, in his mind, does he think he would depend on the Department of Domestic Security for making a decision? He is not going to depend on that Department or any other, except for the National Security Council.

There is no substitute for the CIA being on the Council or for the FBI being on the Council, the Attorney General, or the Secretary of Homeland Security. Put him on the National Security Council. Let's begin to emphasize the domestic side of foreign policy and international threats.

That is what has to be done, and it has to be done at the White House. You cannot run all over the country fundraising; you have to go to work. That is one fault with this particular President. I cannot put him to work. I see him out with flags, military people, policemen, firemen, and others. Carl Rove has him. I would like to get hold of him, and we could get this Government going. He has to go to work and bring them in and say: I want to make sure I know what I am doing. And this Department does not help him know what he is doing.

I yield the floor.

Mr. BYRD. Mr. President, how much time does the Senator from New York wish?

Mrs. CLINTON. Ten minutes.

Mr. BYRD. I yield 10 minutes to the distinguished Senator from New York, Mrs. CLINTON.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank the Senator. I rise to join Senator BYRD in speaking about our homeland security needs. Our colleague from South Carolina always teaches me something whenever I have the pleasure and privilege of hearing him speak in this Chamber.

New Yorkers particularly owe Senator BYRD a great debt of gratitude because he and his very worthy staff have done a tremendous amount of work to help New York recover and rebuild from the tragedy of September 11.

As we appear today in this Chamber, I cannot help but remark that Senator BYRD has been focused on homeland security from the moment I first spoke with him on September 12 around 7 a.m. after we knew the full extent of the damage, and I was going up to see what had happened in New York for myself. He has been extremely understanding and also very knowledgeable about what it was going to take to make us more secure.

I also thank Senator LIEBERMAN for his tremendous efforts in trying to craft legislation that will make us safer. We are not just doing this for a political exercise or just to reorganize for the sake of reorganizing, but we know there are serious issues to be addressed, some of which Senator HOLLINGS spoke about.

I do support the idea of a Homeland Security Department, but I come today to recognize the seriousness of the issues that should be addressed while we are trying to determine what it is we need to do to make our Government more prepared.

There are a number of issues, and my colleagues have raised quite a few of them, but I want to focus on one particular aspect of our homeland security, and that is the resources that our frontline firefighters, police officers, and emergency responders need to be the soldiers to defend our homeland security. Just as we support our men and women in uniform who are doing a very important job extremely well, from Afghanistan to the Middle East to the Far East, we have to do the same for our local homeland defenders.

I have been disappointed in the disconnect between rhetoric and resources from the administration. We certainly have had many heartfelt and moving moments where words have captured our feelings.

When it comes to providing the resources that our police, our firefighters, and our emergency responders need, I think the administration has fallen short. That was certainly clear over the August recess when the President chose not to sign the emergency designation for the $5.1 billion supplemental appropriations bill, which included $2.5 billion for improving our homeland security.

That number did not come out of thin air. It was the result of hearings, testimony, and evidence presented by people on the front lines. A number of people from New York who were in our police department and our fire department, who had been there on September 11, who understood what we needed to be well prepared, came down to set forth a very clear agenda that they hoped the Federal Government would help them meet.

The supplemental appropriations bill, for example, would have given our first responders $100 million so that police and firefighters would have communications systems that could talk to each other. We found out, tragically, on September 11 that we did not have that, and New York is not alone in not having what is called interoperability between the police and firefighter radio systems.

There would have been $150 million in additional FIRE Act grant funding to help fire departments improve their emergency preparedness, and there would have been $90 million to track the long-term health care of those who responded at Ground Zero, not just so we fulfill our obligation to take care of these brave men and women but also so we can be better prepared to take care of all of our first responders.

I am not alone in thinking the President's refusal to sign the emergency designation was a terrible mistake. The International Association of Firefighters has voiced its concern in very clear, unmistakable language. I know they are particularly passionate about this issue because they lost so many of their colleagues.

In his August 20 letter to President Bush, the International Association of Firefighters general president, Harold Schaitberger, had this to say:

> I would be dishonest if I did not convey our anger, concern and growing doubt about your commitment to us . . . No one, not even the President, has the right to pontificate about his or her commitment and respect for firefighters while ignoring our legitimate needs.
>
> With all due respect, support entails more than kind words.

The President said he was exercising fiscal discipline by not making the emergency designation and said that this was, in his view, wasteful congressional spending; that $5 billion was not an emergency even if it went to the kind of emergency needs and services that we know we are lacking.

I have to respectfully disagree. I think we do face an emergency. We are rushing through this legislation because clearly we think we face an emergency. But the real emergency is not in Washington to reorganize a huge Government department. The real emergency is in the police stations and the firehouses and the emergency rooms of America. That is why I am concerned that when the Congress goes through the kind of process it did to arrive at a need for $5.1 billion and it is totally disregarded, then why on Earth would we want to give up congressional oversight and authority in setting the agenda to protect our country?

I believe it is imperative we do everything we can in setting up this Department to get the money to where it needs to go. We have to get the dollars where the responsibility rests.

When a disaster occurs, whether it is man-made or accidental, we do not call the White House. We do not even call the Senate or the Congress or the Governor's office. In most instances, we call 911.

It is clear the kind of support we need for direct Federal homeland security funding needs to be a part of any homeland security defense program.

We have a heavy responsibility in Washington, not just to talk the talk

but to walk the walk with our first responders. We have to give them the equipment and the resources and the training they need. According to the U.S. Conference of Mayors, since September 11 cities have invested almost $3 billion in added security costs for equipment, overtime, and training. As of this date, with the exceptions of New York and Washington, DC, which suffered so grievously on September 11, not one city has received a single dime to cover these additional costs.

Some bioterrorism funding—about $1.1 billion—has been dispersed to the States, and that helps, but that does not answer the need that our firefighters, police officers, and emergency responders have.

I think it is clear, if we are going to be debating this Department, let us talk about the real needs that are out there. We have to be sure we follow the clear example that has been set by communities in trying to shift funds to meet their emergency needs. We have to help them shoulder these additional burdens. Clearly, the Federal, State, and local governments are at partnership in preparing, in being responsible, and then finally in responding. But if they do not have the resources, they cannot do the job.

So as we debate this Department, let us join with the people on our front lines who understand what they really need—groups such as the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties. Let us support direct Federal funding to local communities. Let us do it in the form of a community development block grant. Let us follow the money where it needs to go.

From my perspective, it is imperative we debate resources, not just reorganization. It would be a cruel deception to pass something called Homeland Security Department reorganization, which we all know is going to take years to untangle to try to get focused and to be effective, and not provide the dollars that our frontline defenders need.

I ask unanimous consent for 2 additional minutes.

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

Mrs. CLINTON. This is compounded because the administration's budget calls for eliminating money that would go to our police, firefighters, and local law enforcement; eliminating more than $500 million from the COPS program; eliminating entirely Federal funding for hiring new so-called COPS officers; eliminating and cutting other essential programs such as the local law enforcement block grant. This makes no sense to me.

It is fine to have this abstract, theoretical, philosophical, even constitutional debate, as important as it is—and I believe with all my heart it is a critical debate—but let us not kid ourselves: If we do not get resources where it counts, we are not going to be better prepared, we are not going to be better defended. I hope as we debate homeland defense, we also recognize the obligation we owe to those men and women who would answer the call today when it is sent out.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank Mrs. CLINTON, the distinguished Senator from New York, for her very appropriate, meaningful, and forceful remarks in connection with this matter and in connection with other matters she has addressed. And I thank Senator HOLLINGS, the chairman of the committee which has jurisdiction over transportation, the chairman of the appropriations subcommittee which has jurisdiction over the State, Justice, and Commerce Departments and other agencies; and thanks to Senator REED for his excellent presentation.

This time is going on my time, which is all right. I am prepared to yield to the distinguished senior Senator from Washington, who sits on the Appropriations Committee and who presides over the Transportation Subcommittee of that committee with a high degree of dignity and poise, and someone who always brings to the committee's attention and to the Senate's attention the length and breadth of her great knowledge that she acquires through the holding of hearings, through the study she gives to the budget requests that come before the committee. I yield 15 minutes to the Senator.

The PRESIDING OFFICER (Mr. JOHNSON). The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank the Senator from West Virginia for his leadership on this issue and for yielding me the time today.

On June 6, President Bush addressed the American public, informing the public he had changed his mind. After months of rejecting just such a proposal, he now saw the benefit of organizing a new Department of Homeland Security. His aides had handed him a plan. To his eyes, it was a good plan and one that should be implemented.

However, something else happened that week as well that happens all too frequently in America. The Coast Guard, one of the agencies that would be merged into the President's new Department of Homeland Security, was performing search and rescue operations across the Nation.

In my home State of Washington, the Coast Guard was dispatching helicopters and motorboats throughout Willapa Bay to search for three missing Fort Lewis soldiers. On the evening of June 1, their 20-foot pleasure craft washed ashore in Bay Center, WA. Unfortunately, those soldier's bodies were recovered the next morning.

As I look today at the President's request, I am very mindful of the impact it could have on the Coast Guard's ability to carry out other missions like search and rescue.

We need to be responsive to the President's request. We need to give this and future administrations the tools they need to better secure America. However, we cannot sacrifice the critical safety work of the Coast Guard for the incomplete plan the President's aides drew up in the basement of the White House.

I rise today because I am deeply concerned that in our rush to do something about homeland security, we may well overlook the consequences it will have on the safety and security of all Americans. Frankly, given what I have seen so far, I have very real reasons for concern. Of course, I believe, like all my colleagues, that we need to do everything we can to make sure our Government and our military can meet the challenges since September 11. We have to focus considerable energy and resources on addressing those challenges.

Those who want to harm us will look for new ways to exploit our weaknesses. We have to do better. The world has changed. We must adapt. But we must balance the needs of our country.

In my role as chairman of the Appropriations Transportation Subcommittee, I have worked very hard to provide the resources to meet our needs at our borders, at our seaports, airports, and throughout our Nation's transportation infrastructure. Often, that has meant pushing this administration to support the necessary funding, sometimes without success.

We are moving forward, and we are making America more secure. The Senate has followed a deliberate process, and the leadership of Senator BYRD has been critical to this endeavor. He has made sure that we move forward responsibly to meet the new challenges facing our Nation. But let's face it, it takes a while to get even the simple things right. I have been working with the Transportation Security Administration for months on airline security, and even the smallest things have taken a while to work out.

Look at what we face at our northern border. It took many months and we had to put a lot of pressure on this administration just to get the National Guard deployed at the northern border to fill the gaping holes in our border security left by years of negligence. It then took many more weeks to get our guardsmen armed, secure. Securing our border is essential, but so is ensuring the efficient flow of people, goods, and services across our border with our friends in Canada. Canada is our Nation's largest trading partner. Many millions of people in both countries depend on that trade for their livelihoods. If we do the wrong thing, the loss of jobs in our border communities will be devastating.

How will the Department of Homeland Security, envisioned by the President, balance the complexity of those competing needs of the American people? We do not know. We are supposed to trust this administration.

Now the administration wants to rush through a homeland security bill which was drawn up by a handful of White House aides. It is the largest Government reorganization since 1947. Look at what has happened in the House since the President submitted his proposal. The standing committees looked at the proposal and saw major problems. The House Transportation and Infrastructure Subcommittee unanimously voted to keep the Coast Guard out of that new Department. Based on their expertise and their research, the standing committee saw the clear need to maintain the Coast Guard outside of the new Department.

What happened? The select committee ignored that recommendation and put a rubber stamp on the President's original proposal. In fact, several times the standing committees made constructive improvements to bills, only to see their recommendations rejected by the select committee.

The administration wants to rush this proposal through Congress. Anyone who raises a legitimate question is immediately derided as ''trying to reserve turf.''

This is not about turf. It is about safety. It is about a young Coast Guardsmen who climbed aboard foreign vessels in the open seas, not knowing what they may find. It is about TSA security agents who are trying to make sure that passengers attempting to board our planes do not pose a security threat. I am proud to work to try to provide them with some job security just as they work hard to protect our Nation's security.

These are real questions that need to be answered. This afternoon, I raise some of those questions because there is a lot at stake for the people I represent and for every American. I want to make sure we do this right. So far, I have not gotten the answers I need.

I have two major concerns. First, we have not yet figured out how to fulfill our traditional missions and the new security missions at the same time. If we combined all these various agencies into one massive Department with a primary mission of homeland security, how are we going to meet the traditional needs across the board?

Let's look at the Coast Guard, just one agency. Since September 11, the Coast Guard has shifted resources away from traditional missions to homeland events. That is an appropriate response, but it comes at a cost. Unfortunately, it means the Coast Guard is spending less time interdicting drugs and illegal migrants, enforcing fishery and marine safety laws, and protecting our marine environment.

But the traditional missions have not disappeared. We still need the Coast Guard to keep drugs and the illegal migrants off our shores. We need them to protect our environment. And we need them to protect the lives of our fishermen and the integrity of our fishing grounds. Frankly, even without the new security needs, we have a long way to go to meet even those basic missions.

I am concerned we are rushing into a new organization that could compromise our ability to meet all the challenges we are facing. What will be the commitment from the Department of Homeland Security to protecting our marine environment or enforcing our fisheries laws or conducting search and rescue operations? If the administration continues to play budget games and underfund the Department, as it has done so far with the TSA, will the scarce dollars go only to security and not to traditional missions?

Right now, we cannot even get the basic facts. I would like to know how much of the current Coast Guard budget is going toward homeland security. On July 9, the Coast Guard Commandant said 40 percent of the Coast Guard's operating budget goes to the missions of the new Department. A few weeks later, on July 30, the Commandant said almost 50 percent of the Coast Guard's budget went to homeland security. That is a difference of at least $350 million. That number matters because the boats and resources used for homeland defense are often the very same ones needed for search and rescue and other missions.

I am not raising this to criticize Admiral Collins. He is doing an excellent job. I work closely with him. But it shows how difficult it is to get even the most basic questions answered as we look at this new Department. The answers matter because the vast majority of Americans live in coastal States or along the Great Lakes or inland waterways, and every American is impacted when the Coast Guard slows down its work stopping illegal drugs. To include the Coast Guard in the new Department will impact the lives of millions of people. I think we need to explore these questions closely. Simply put, we have not done a good job meeting our traditional missions and security missions at the same time. I would like to know how one massive Department, focused primarily on security, will help us meet the needs out there.

Second, I am very concerned about accountability and authority over everything from the staff of the new Department to its budget. The administration has asked for unprecedented power and control over this proposed Department. Some of the demands for power over workers really trouble me. The President wants changes in the personnel rules so he can have flexibility. Is the President suggesting that today's unionized border agents are not doing an adequate job or that today's unionized Customs officials are not responding to new mission requirements in a timely manner? If that is what he is suggesting, then he is wrong.

I have been on the border. I have met with the Border Patrol and Customs agents. These professionals are our sons and daughters, they are our neighbors, they are our friends, they are our husbands, and they are our wives. They serve the American people selflessly, often jeopardizing their own health and safety. I do not think those who serve in the Department of Homeland Security should be second-class citizens, given a lower level of rights and respect.

In addition to dramatic new control over workers, the administration wants the power to move the money around without congressional input. Let me tell you, given what I have seen so far, this is pretty scary news for families in Washington State. Right now, as a United States Senator, I can fight to make sure the needs in my State are being met. As elected Members of Congress, we know the needs in our communities and we are accountable to our voters. But the administration now wants accountants in the Office of Management and Budget to decide what is important to the people of my home State of Washington. If that happens, my constituents will lose out at a cost to their safety and security.

Let's just look at what happened with the supplemental appropriations bill. Under the leadership of Chairman BYRD, the Appropriations Committee held unprecedented and comprehensive hearings on how to best meet our obligations to the American people. We spent countless hours hearing from national and local experts. We passed the funding to meet the needs before us. Congress passed that funding, but then the President eliminated more than $5 billion of it. With a wave of his hand, over the August break, the President eliminated funding that we here in Congress considered critical, after many hours of hearings, to protecting the American public.

He eliminated $11 million from Coast Guard operations. The President eliminated, with a wave of his hand, $262 million for critical Coast Guard procurement, including funding for coastal patrol boats for our security. The President eliminated $150 million for our Nation's airports, as they are working so hard to meet the December deadline for installing explosive detection devices. And the President eliminated $480 million from its already shortchanged Transportation and Security Administration.

The Office of Management and Budget has not been a good advocate for the people of my home State of Washington. Given that record, I am very reluctant to give OMB dramatic new power over the safety and security of my constituents. The OMB originally blocked the Coast Guard's desperately needed improvements to the marine 911 system. When they brought it to their attention, the OMB changed its policy, but under the President's plan there is no way for us in Congress to address the arbitrary decision made by the OMB. Granting the President dramatic new authority is not just a bureaucratic exercise. It has real consequences for the people I represent. I take that responsibility very seriously.

If we are not going to figure out how all the functions are going to be performed and we can't tie money to functions, this reorganization may consign many functions to death, as we saw when the President eliminated $5.1 billion in homeland security funding.

In closing, we need to better define the missions of the various agencies, and we need to make sure they continue to fulfill their traditional missions. It is essential for our economic security and our physical safety. The House bill does not strike a balance, and we have to do better. We need to really understand the consequences of this proposal and ensure that it will actually increase our homeland security and not jeopardize our citizens in other ways.

I believe this has not been thought out enough and we should certainly not race to put a rubberstamp on such an incomplete proposal. I think every Senator feels pressure to do something, anything, about homeland security. But it is much more important to do the right thing.

I look forward to having a good debate about the new Department of Homeland Security. There are a lot of serious questions, and I look forward to hearing some serious answers.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I thank the very distinguished Senator who is a member of the Senate Appropriations Committee, as I have already indicated, for her exceedingly incisive remarks which reflect the high dedication that this Senator always brings to her work. I personally appreciate it, as the chairman of the committee. She is a fine member of that committee, and she has lived up to those—and far better—encomiums than I have been able to deliver today.

How much time does the distinguished senior Senator from New York wish to have?

Mr. SCHUMER. Will 15 minutes be all right?

Mr. BYRD. Let's try 15 minutes and hope that will do the job.

Mr. SCHUMER. I thank the Senator. Before my friend from Washington State leaves the floor, I want to thank her for her leadership on this issue. I particularly thank our distinguished leader, the senior Senator from West Virginia, for his leadership on this issue.

The Senate, at certain times, has an important role—at all times it has important roles, but there is an important role that it has now, and that is for the Senate to be, of course, what one of the Founding Fathers called the cooling saucer. If there was ever a time where there was a need for that cooling saucer that the Senate should be and has been through its history in its finest moments, it is now. That is because we face a whole new challenge in these United States, a challenge that says every one of our citizens is on the front line.

This new war on terrorism means that small groups of bad people can do real damage in our homeland. Until 9/11, this was something that was unknown to us. There were battlefronts and there was the homefront, but now the homefront is the battlefront, and the battlefront is the homefront and that demands dramatic and significant changes in our Government.

If the senior Senator from West Virginia were not here, we probably would have just rolled over and we would not have had the kind of debate we are having.

He knows his history, whether it be of the Roman Senate or of the U.S. Senate or all the various Senates in between. I was going to ask him—because my family and I just visited Venice—about the Venetian Senate, to see how that compared. I didn't even know Venice had a Senate until I visited, but we will get that history lesson at another time. We have more pressing issues now.

The Senator from West Virginia is bringing the Senate to its best. He is not being obstructionist. He is not saying no. He is simply saying not to rush on such a major piece of legislation that is going to involve the most dramatic reorganization of the Government in history, on a major piece of legislation that is called on to defend us in brand-new ways.

We no longer just have the battlefront, but we have the homefront. My citizens from New York believe they are on the battlefront. They walk into a subway car and they worry what might happen. A plane flies overhead and they worry what might happen. They look at a reservoir or powerplant and they worry what might happen. This is not a time to rush things through because the very safety of our citizens is at stake.

When government was founded, when men and women got off their knees and founded government, it had two purposes: To protect from foreign invasion and keep the domestic tranquility. For the first time, those two issues were combined.

A lengthy and worthy debate of the Senate is what is called for and the senior Senator from West Virginia, Mr. BYRD, whom we all admire so, has summoned the best in us and asked us to do that. I am proud to get up here and ask for that.

I would also like to praise my good friend from Connecticut. He has put together an excellent piece of legislation that talks about the Senate's prerogatives, not just today but as we go forward. It says a single man, albeit elected, the only man elected by all the people—the only person elected by all the people, so far, the President of the United States—should have some power. But this is not what the Founding Fathers intended. He should not be allowed to take one from one agency and put it in another. He should not be allowed to move employees from one place to another without the approval of the Congress.

I regret to say that the House moved all too quickly. I am glad Senator LIEBERMAN and his committee have had a chance to improve on the House legislation, and to improve on it in a very significant way in major areas that the Senator from Connecticut has outlined.

What I am saying today is that we have to go beyond that as well and address some of the substantive areas of security—not simply how we reorder the Government and rearrange it, and not simply the balance of power between the President, the Senate, and the House, which is very important and worthy of debate—Senator LIEBERMAN has put his oar in the water on that one and given it a powerful stroke, if we pass his proposal—but also to debate some of the substance of homeland security. I fear that if we simply rearrange the agencies and run away from spending the extra dollars we have to spend to make our homeland more secure, we will have not done the full job. That is why I feel so strongly about having a continued debate.

Let me mention a few areas where I have had some expertise in that substantive area. No matter what you do about rearranging and putting a department here and a department there, we will still not be secure unless we delve into those departments.

One which I am going to touch on briefly is a computer system throughout the Justice Department. Recognizing that we are not reorganizing the FBI or the CIA, let me focus on the areas where we are, such as the INS. Our computer systems are totally backward. We had a hearing in my Judiciary subcommittee which has oversight over the FBI where we showed that the computer systems of the FBI cannot search for two words. They can search for the word ''flight'' and for the word ''school,'' but they cannot search for the words ''flight school.'' Something is dramatically the matter. The INS computers—we are moving the INS around—are just as bad, and maybe worse. Until we update those computers, all sorts of bad people with bad intentions will be able to get into this country even though another part of the Government knows they are bad. We should be addressing that problem when we are doing a homeland security bill.

Then let me talk about the issue that is of greatest concern to me, which is, frankly, the issue that seems to be of great concern to our President, and rightfully so. To me, the worst danger I can conceive of that could befall us in this war on terrorism is that a terrorist group could smuggle a nuclear weapon, or a few, into this country and detonate them. As horrible as 9/11 was, as aching as my city and State are, it would pale before the damage of a nuclear explosion in downtown New York, or downtown Chicago, or downtown Houston, or downtown Los Angeles, San Francisco, Boston, Kansas City, or anywhere else.

Yet right now, if, God forbid, a terrorist group should get hold of such a nuclear weapon either by purchasing it from the few powers that have them that we are worried about—Pakistan, Russia, and, down the road, Iraq, if they develop enough U–238—that weapon could be smuggled into this country, say, on one of the large containers that are unloaded from our ships or brought through the borders—Canadian and Mexican—on trucks, with virtually no detection. What a surprising thought. It is no longer that a missile would deliver such a bomb or that a plane would deliver such a bomb but, rather, that it would come across our border at ground or water level. That is a frightening thought.

The good news is we can do something about it. The good news, when you talk to the scientists at Brookhaven National Lab out on Long Island or Argonne Lab in the suburbs of Chicago, is they say we could develop a device that could at a distance of 40 or 50 feet detect nuclear weapons, if they, God forbid, should be smuggled into this country, because nuclear radioactivity involves gamma rays which can pierce all but lead. To deal with surrounding the bomb in lead, you can just use an x-ray detection device. The x ray would detect the lead. The problem is, they have the technology to do this, but it is only done in lab conditions in cyclotrons and atom smashers.

We need it to go through every container that comes into America. Right now, the only way you can detect radiation is through a Geiger counter. Unfortunately, a Geiger counter has to be placed maybe 3 feet from the radioactive source. You can't go into every one of these big containers with a Geiger counter and push it up against every crate—There are probably 30, 40, or 50 crates in each container; there are hundreds of containers on these ships and thousands that come across by truck—without bringing commerce to a standstill.

The alternative is to develop a device that would do this 40 or 50 feet away, and then install it on every crane that either loads or unloads a container bound for the United States, or that is here in the United States, and put it on every toll booth for a truck that goes over the Canadian border or Mexican border. The cost of developing this device is probably about $500 million, and then probably another $1 billion to install it.

The good senior Senator from Virginia, Mr. WARNER—obviously not of my party—and I have legislation that would begin to do this, that would start the research.

For the love of me, why can't we get support for this? Why isn't the White House supporting this? We are very worried about Iraq producing nuclear weapons. We should be. But why aren't we making our homeland secure from the delivery of those nuclear weapons? Maybe it won't be Iraq. Maybe it will be Iran. Maybe it will be North Korea. Maybe it will be someone else we can't even think about.

I think we should be able to debate that proposal on the floor of this Senate—not a year from now but now. I feel the urgency of this. The safety of our citizens is at stake. If it takes an extra day or two, so be it. That is the role of the Senate.

Why doesn't the White House get behind this kind of proposal? For some reason, they won't. I think it is because they don't want to spend the money, as amplified by the recent almost virtual pocket veto of the $5 billion that was part of the appropriations bill. But I will bet if you ask each American if they would spend $1 billion to prevent nuclear weapons from being smuggled into our country and the worst kind of catastrophe imaginable to befall us, they would all say yes. If asked, my 99 colleagues would say yes.

That is the kind of thing we are trying to do here—not be obstructionists. The Senator from West Virginia, as the leader of our band here, has made it clear he doesn't want to be an obstructionist. The Senator from Connecticut has made it clear he believes we have to do things to improve the legislation.

I ask that we continue to debate this legislation. I understand we have time constraints. Those are real. I understand that. I understand we cannot debate this bill for 3 or 4 months right now. But we don't have to have an artificial deadline that it must be finished by next week. If we think that deadline is needed, let us stay in session, go in early, and stay in late until the major amendments are dealt with. I am confident my colleagues from Connecticut and Tennessee will deal with those amendments in a fair way. They are not trying to say it is their way or no way. In fact, that is why we have bills, and that is why we have them debated. But the reorganization of Government agencies is an important issue. I agree with it. I am supportive of it. But I do not think it is the only issue facing homeland security.

And for our President—and I respect him and repeat that every New Yorker owes him a debt of gratitude for being so helpful in the $21 billion this Senate so generously voted for and the House voted for—but when he says the Senate is getting in the way, that the Senate better pass his bill his way, not the way I would want or the Senator from Connecticut would want or, in fact, the Senator from Tennessee would want, he is not being fair, not just to the Senate but to the American people because we do have a crisis. It is a slow crisis; it is an insidious crisis.

Unfortunately, for politicians, the incentives are backward; in other words, we all love to allocate money, build a school, and get up there and say: Here is a school. But what is our goal with homeland security? What do we want to happen? Nothing. We are very successful if nothing happens. And that provides negative incentives or perverse incentives for the political process. That is the real worry.

If we were to put $3 billion into the northern border, if we were to put $1 billion into the INS computer system, if we were to spend $1 billion to——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. Mr. President, I ask unanimous consent for 30 additional seconds to finish my thought.

Mr. BYRD. Mr. President, I yield the Senator 1 additional minute.

Mr. SCHUMER. I thank the Senator.

If we were to spend another $1 billion on nuclear weapons, I think it would be worth it. I think the American people would be for us. I may be wrong, but at least I would like the chance to debate and vote on issues I consider to be urgent, pressing needs for my constituency in my State that I love so, and for the people of the United States, for the country I love so.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Senator from New York for a very thoughtful statement.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from California, Mrs. BOXER, be recognized at 5 p.m. for a period of 10 minutes, out of my time.

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

Mr. BYRD. Mr. President, the President wants the Congress to grant the administration the authority to write its own civil service system, regardless of what has been written in current law, that would apply only to Federal workers within a new Department of Homeland Security.

As I have expressed before on this floor, I am concerned that these changes mask the administration's larger hidden agenda, an agenda that would have the Federal Government function more like a big corporation. We all certainly ought to be concerned about that idea, given our recent experience with the inner workings of big corporations.

I come, Mr. President, from the coalfields of southern West Virginia, not from a corporate boardroom. So I approach this with a different perspective than the administration, quite obviously. Before I would ever vote to approve a homeland security measure, I would want to know more about the working conditions of its prospective employees. Will the employees who currently enjoy collective bargaining rights continue to enjoy those same rights at the new Department? Will these employees have complete whistleblower protections?

Before I vote to approve a homeland security measure, I want to know about the pay system. How will the payroll systems and personnel systems be merged into the new Department? How would the special pay rates, already in existence at the separate

agencies, coordinate or be replaced by a pay system if one were to be implemented? What will be the hiring procedures? What will be the firing procedures in this vast new order?

Presidential spokesman Ari Fleischer says these new procedures are needed to enable managers to fire workers who drink on the job. Would they also be able to fire workers because they join a union, because they vote Democratic, because they have red hair or no hair or lots of hair or white hair?

The administration argues that the Secretary for Homeland Security will require significant flexibility in the hiring and firing process because, for example, according to the administration, existing due process and appeal rights make it impossible to fire or demote Federal employees who are poor performers.

But this and other claims are simply not true. A report by the nonpartisan Partnership for Public Service recently stated:

> [W]hat is missing from the current debate . . . is the institutional experience government has accumulated with Title 5 modifications that have already successfully allowed government agencies to emulate high-performing workplaces—without compromising merit principles, including protections against politicized personnel decisions.

Mr. President, the fact is, the administration currently enjoys broad flexibilities when it comes to the Federal workforce. A report by the Congressional Research Service points out:

> Executive branch departments and agencies currently have considerable flexibility to perform personnel functions in such areas as recruiting, hiring, compensation, promotion, training, and retention. The extent to which the departments and agencies are using the flexibilities is unknown.

''Unknown.''

One of the most important protections granted by the civil service system, that could be eliminated under the President's proposal, is for whistleblowers. Remember Franklin's whistle? Remember the story about Benjamin Franklin's whistle, that he paid too much for his whistle? I am talking about whistleblowers, just now.

The day the President made the announcement of his newfound support for a Department of Homeland Security was the very day that an FBI whistleblower, Coleen Rowley, was to testify before Congress on the embarrassing failures of that agency leading up to the September 11 tragedy. It is clear the administration hoped to limit coverage of that hearing by offering its secret plan that was hatched in the bowels of the White House to establish a new Department of Homeland Security, on the same day—a plan, I might add, that would not provide its employees the same level of protection with regard to whistleblowers as that FBI agent enjoyed that day.

Whistleblower protections are essential to protect Federal employees against managerial reprisals for lawfully disclosing information they believe demonstrates a violation of law or mismanagement of authority.

The President seemed to agree with this principle when he issued an executive order on January 20, 2001, that required all Federal workers to obey their duty and report fraud, waste, and abuse.

Excessive secrecy enforced by repression can threaten national security by covering up Government breakdowns that sustain unnecessary vulnerability to terrorism. An example from the post-September 11 period provided by the American Federation of Government employees is illuminating. In testimony before the House Select Committee on Homeland Security, American Federation for Government Employees President, Bobby L. Harnage, Sr., provided the following story, and I quote from his testimony:

> In the aftermath of the September 11 terrorist attacks, two union officers of the National Border Patrol Council—border agents Mark Hall and Mark Lindenmann—went on the NBC Today Show and testified before Congress to speak out against security on the United States northern border. They said that despite all the talk, no new agents had been placed on the northern border and that agents were not making criminal background checks on people caught entering the United States illegally. These statements prompted the Immigration and Naturalization Service supervisors to propose to summarily fire the agents, stating in internal e-mails that ''the President of the local union deemed it necessary to independently question our readiness in a public forum,'' that ''managers must take a stance which bears no tolerance of dissent,'' and that managers must ''view resistance from rank and file as insubordination.''

Well, this is what employees are often up against when they speak out against the company line, even when the company line involves the security of the United States.

Without knowledge that the union would represent them and that an impartial whistleblower hearing process was in place to review subsequent INS actions against them, we can be sure that they never would have said a word and Congress would never have heard the truth of what was really happening on the northern border of the United States.

Before the August recess, Congress overwhelmingly approved state-of-the-art corporate whistleblower protection as an encouragement for private sector workers to defend America's financial markets. Our homeland security requires similar rights for Government workers to make disclosures in defending American families against terrorism. Without full whistleblower protections in place, Congress would have had a difficult time in the past learning of the problems associated with governmental reorganizations, and there have been some serious problems in our recent history.

As a rule of thumb, it is important to remember that Federal Government reorganizations have been difficult to accomplish. As James M. Lindsay, a senior fellow at the Brookings Institute, recently said:

> History suggests we never get reorganizations right the first time, and this is an especially ambitious proposal. A lot of follow-through will be needed to make it work.

Recent experience in providing the executive branch with flexibility in establishing a new Government agency holds great lessons for what we are being asked to do today. This flexibility failed in an identical experiment at the Federal Aviation Administration in which Congress gave the flexibility to replace merit system and collective bargaining procedures with so-called superior management alternatives. The result was chaos. Personnel disputes rose sharply, morale plummeted, and the mishmash of employee organizations sprang up to replace coherent labor-management dialog in disputes from all directions.

In the year 2000, Congress learned the obvious lesson and restored the merit system's due process procedures and remedies. What about the new Transportation Security Agency that was created last year? Congress reluctantly agreed to the administration's request for exceptions to the civil service system for employees at the new agency because they wanted to streamline personnel procedures to allow faster hiring and provide for flexibility and shifting people among jobs as the new agency was established. That sounds familiar, doesn't it?

The results have been mixed at best. Recall that just a few short weeks ago the administration fired its handpicked director of the new Transportation Safety Administration, John W. McGaw, only 6 months after the agency was established. Creating an effective and efficient Department of Homeland Security and retaining the basic rights of Federal workers are not mutually exclusive.

I am not here to say our civil service system is perfect, but I do say that using the security of the United States and the rights of Federal workers as a bargaining chip to further a political agendum is simply unacceptable. What an irony that this administration is using an attack by terrorists who have no respect for the rule of law or the rights of workers as a justification for us not to respect our own laws or the rights of workers.

So I am grateful for this opportunity today to speak on this issue. I am grateful for the opportunity for the Senate to address the issue. I ask the distinguished Senator from Wyoming if he wishes to speak.

Mr. THOMAS. I do.

Mr. BYRD. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I want to comment for a few minutes on the subject that is before the Senate. I am not a member of the committee. I have not spent as much time on it as have others. But I think there are probably different views and we have heard the same views now for quite a long time. Perhaps it would be well to talk a little bit about some of the other points of view that might be available and might be discussed later. I understand this is not actually on the issue but, rather, on a motion to proceed thereto. It is a very important issue, of course.

Nothing could be more important than homeland security. We have talked about it and we continue to talk about it at great length. The fact is, it is a high priority, certainly, for all of us to protect the homeland. In order to do that, we need to have a homeland security department with the most effective management that we can have, the most effective employees, and a system that works as effectively as possible. So we support plans that protect workers through civil rights, equal opportunity guarantees, whistleblower protections, and all those fundamental rights which will be kept. Accountability is also a must, and giving the department flexibility in hiring and firing and creating a powerful deterrent for others to ensure they don't engage in behavior that would endanger homeland protection.

The bill now before us will compromise national security and place more importance, frankly, on bureaucracy and bureaucratic security than on national security. That really is not the issue here.

This is not a new issue. The President has the authority in every other agency, but there seems to be an inclination to be able to roll it back for the Department of Homeland Security. Under this bill, the President would have more flexibility to make decisions—or should have—for reasons of national security, and for HUD, for the Department of Education, he would have more than he does under this proposal. That seems strange to me. This is a proposal that deals with those kinds of emergencies—the things that are changeable—and flexibility needs to be there.

So it seems to me that without some basic flexibility to manage, freedom to hire the right people, fire the wrong people, that national security would be at risk and not be secure. Here are some examples. The Senate bill prevents the President from holding services accountable. Last month, two America West pilots showed up to work drunk. They showed up on Monday and were fired on Tuesday. If they had been INS personnel, it would have taken 18 months—540 days—to be held accountable. These are the kinds of issues with which we have to deal. This is not the normal effort. There is a bottom line that the President does need to have sufficient flexibility. After all, it is the President and the people in the executive branch who are going to do the job. What we do is give them the opportunity and the flexibility to do it.

Certainly there are controls. These controls will not be gone. But we have to provide the opportunity to the person who will be responsible for carrying out this role. It is easy to sit here and talk about all the restraints we should have because we do not have to do that job; someone else does.

The Senate bill does not provide the new Department budget transfer authority. Without transfer authority, if intelligence indicated terrorists were developing a new type of biological weapon, the Secretary would be unable to transfer funds from one division to another to acquire additional medicines or vaccines or improve detection equipment. It does not provide the flexibility to attract, hire, and reward good performance or hold poor performers accountable. That is what we need to do in all of Government, but more particularly in this Department where they are going to face issues they have never before faced.

The Office of Personnel Management reports it can take up to 5 months or more to hire a new Federal employee and 18 months to terminate. If one is not getting the job done, is this what we want in homeland defense? I do not think so.

The bill does not provide for reorganization authority. The Senate bill will prevent the new Secretary from consolidating inspection work of the Customs Service, Border Patrol, and Agriculture inspectors at our ports of entry, leaving the current seam between these activities. Frankly, that has been the weakness in our system since September 11—there is information here, there is information there, and we need to bring it together in a seamless way, and that is one of the strengths and one of the purposes of this whole operation. Yet this bill will not allow that to happen.

It will strip the President of existing authority to act to preserve national security. The Senate would take away the President's existing authority to exempt agencies in the new Department of collective bargaining requirements where national security requires it. Ever since President Jimmy Carter used this important national security authority in time of war—we are in a war of terrorism. To weaken the President's authority seems to be contradictory of where we are or where we need to go.

Certainly, there needs to be great discussion, and I admire the emphasis and effort that has been made. I certainly respect the judgment everyone brings to this Chamber, but there are differences of view, and they ought to be reflected, and they will be reflected, in the bill. We are getting the impression today, however, that there is nothing right about the bill, that the way the President has requested it is all wrong, and that cannot be the case. There has to be a balance, and I am sure there will be an effort to strike a balance.

Of course, we have to recognize rules that do protect Federal workers. And, indeed, there should be rules. They represent the best in America, and they deserve strong civil service protections under the President's plan. Employees of the new Department will continue to be protected by important civil service laws, rules, and regulations that protect them against discrimination on the basis of age, disability, race, color, or religion. Those protections will be there, protected by the Fair Labor Standards Act, the Equal Employment Opportunity Commission, the Social Security Act, the Civil Rights Act, the Hatch Act, Government ethical standards, and they should continue, and indeed they will.

I know this is a very important issue. I know also that many Senators have worked very hard and are seeking to do what they believe is best to put together this homeland defense bill. But I do believe there has to be some recognition that this is different, that we are asking the executive branch to carry out a job that is unusual in a different time. It has to have some flexibility so that the decisions to accomplish what it is all about can be made. That is what the President and those who have put together this original proposition are for.

A letter has been written by the former Governor of Pennsylvania that lays out the need for these flexibilities very persuasively. I happen to agree. Certainly there are limits to what we want to do, but we do want to make this a successful effort and give those who are in charge of handling it the flexibility to make it work. I hope we will balance this bill.

Mr. President, I appreciate the time. I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I know Senator BOXER is expected around 5. I would like to speak for a few moments until then.

I thank my colleague from Wyoming for his statement. To pick up on what he said, that one might get the impression listening to the debate that there was not anything good in this bill—specifically in the President's proposal on homeland security—there is a natural way, when amendments are filed, to focus on where we disagree, where the amendment disagrees with the underlying bill. But there is a big iceberg under the surface on which there seems to be disagreement. On that there is great agreement. In fact, I believe, though it is hard to quantify this, that more than 90 percent of the bill the Governmental Affairs Committee approved in late July is exactly the same as what President Bush desires. It is quite similar to the bill the Democratic majority on the committee adopted by a 9-to-7 vote in May which, in turn, is similar to the proposal of

the commission headed by our colleagues, former Senators Gary Hart and Warren Rudman.

There is enormous agreement on what I would say are the guts of this bill and the guts of a new Department of Homeland Security: Coordinate the disparate agencies that are now disorganized, overlapping, creating gaps and vulnerabilities that terrorists took advantage of on September 11 and will again unless we close those gaps and eliminate those vulnerabilities. We cannot let that happen. Border security agencies are being brought together; emergency response is being centralized, working much more closely with State and local officials; infrastructure protection; intelligence, most important, to create that one place where all the dots come together so that we can see the terrorist plots before they are carried out and stop them; science and technology. Let's use the brain power, the innovation, as the Defense Department has, to make us as successful in the battle to defend the American people at home as those technological innovations have made us abroad in the fight in pursuit of our principles and our national interest.

Most of this proposal enjoys broad bipartisan support. There are a few parts of the proposal right at the center which are in dispute. I understand the President does not support our proposal for a strong intelligence division in the new Department. It is critically important to break down the barriers that existed and still exist, to some degree, between the FBI, the CIA, local law enforcement, and State and local law enforcement as opposed to Federal law enforcement; bring all those dots together on one table so they can see the outline of what is coming and stop it before it happens.

There is dispute from the White House on our national office to combat terrorism because we want the nomination of the director of that office to be approved by the Senate. So these are real disputes related to homeland security.

The dispute that is going on now and the question of civil service rights is not relevant. I hate to see it stand as an obstacle in the path to adopting legislation creating a Department of Homeland Security which, as I say, will give the President at least 90 percent of what he wants in this new Department. In fact, far from limiting the authority of the new Secretary of Homeland Security with regard to the management flexibility that that Secretary has, our legislation protects the existing flexibility in law.

The new Secretary would be able to remove employees for poor performance, transfer employees as needed, reward and give bonuses to those who perform ably. In fact, we add by this legislation to the existing management flexibility that the new Secretary would have because of a bipartisan amendment worked on very hard and thoughtfully by Senator VOINOVICH and Senator AKAKA which would give the President and the Secretary of Homeland Security new powers to reward employees, attract top talent and reshape the workforce. It is quite an advance.

So far from limiting the management flexibility of the new Secretary, we are increasing it beyond what any other Secretary has today, and we give the administration an open invitation, specifically in the letter in regard to the legislation we are proposing, by requiring the Secretary to come back every 6 months and to offer legislative recommendations.

We specifically enumerate this again on personnel management that emerges from the experience the Secretary has over those 6 months.

We have to remember that the civil service system evolved for a reason. It was designed to create some accountability, to protect the Federal workforce from favoritism, from patronage, from politicization, by creating a transparent framework for a merit-based personnel system. Obviously, it is not perfect. That is why we included these major reforms in the bill we reported out of our committee. But to essentially discard it, as the President's proposal would do, to give the Secretary and the President effectively unlimited authority to rewrite the civil service rules, would be a real step backward.

A lot of this has to do with accountability. Accountability is an important goal in our public life and our public service. When people are being taken from the place where they work now—28 different agencies and offices, the Customs Service, the Coast Guard, the Transportation Security Agency, FEMA—and they are brought into this new Department, I think most managers in the private sector would want to do it in a way that would encourage those employees to believe we are all on the same team and we expect the most from them, we are going to work with them.

By pulling away these civil service protections, I think we are going to have exactly the opposite effect. At a time when the average worker would naturally be anxious about a change of office or status, we are going to hang a sword over their heads that says no more civil service protection; they will lose their rights and, at worst, their job without the right to protest and seek review.

Responding to the Senator from Wyoming, I say he is right, that some of our colleagues have not said enough positively either about the President's proposal particularly, because it is embraced in so much of what the committee will bring to the floor.

There are these disagreements. I hope we can work them out. I hope where they are fundamental, we can put them off for 6 months and do the urgent work, which is to get this bill done.

Let me say a word while I am speaking about items in dispute that I hope can be put off. This is the question of collective bargaining. I must say I have learned a lot about this. I have not been involved in some of these questions for a while, and I learned that collective bargaining rights were extended to Federal employees for the first time in 1962 by Executive order of President Kennedy and then were embraced in statute in 1978 under President Carter. In both the Executive order and the statute, there was a provision made that reflected, I think, special concerns during the cold war which said that if the President determined that union membership in a given agency or office was inconsistent with national security, the President could remove the right to collectively bargain without giving a reason other than to say it was inconsistent with national security, without any right of review or appeal by the employees who were therefore losing a basic right, which is to join a union.

I do point out that Federal employees can neither strike nor in most cases do they negotiate for their salaries, which are usually set by statute.

I am going to stop for a moment and ask my friend and colleague from Pennsylvania whether he would like to address the Senate on the motion before us.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I had not expected to address the Senate on this issue, but I never turn down an invitation.

Mr. LIEBERMAN. Should I rescind my offer?

Mr. SPECTER. The Senator could, but not after it has been accepted.

Mr. LIEBERMAN. Go right ahead. We both learned that at the same law school.

Mr. SPECTER. Senator LIEBERMAN and I went to the same law school, and I think he knows one can rescind an offer, but not after it is accepted. At that point, it is too late.

Mr. LIEBERMAN. I am pleased to have the Senator have the floor.

Mr. SPECTER. I am glad to see the legislation on homeland security on the floor. This is historic legislation. As the distinguished Senator from Connecticut has said, this is maybe the most important bill that will come out of his committee during his tenure. It is my hope we can move through the bill, go to conference, and have legislation on the President's desk which the President can accept.

One of the key points at issue is the way the analysis of intelligence is going to be structured, and it is my hope that we will be able to take a step at this time on reforms which have long been in the making.

When I chaired the Intelligence Committee in the 104th Congress, I proposed legislation which would have brought under one umbrella the CIA and all of the intelligence agencies. There is on the President's desk now a similar proposal. It would be acceptable to this Senator to have that umbrella control really anywhere, but the

turf wars which are well-known to be endemic and epidemic in this city have prevented that kind of umbrella or overview.

The proposal which I think is indispensable is not to change the operation of the CIA or the FBI or the Defense Intelligence Agency or National Security, but when it comes to analysis, to bring it all together so that the analysts are under one umbrella. I believe that had there been an umbrella prior to September 11, 2001, there is a good chance that 9/11 could have been prevented.

We know by hindsight about the FBI report out of Phoenix, and about the young man who had Osama bin Laden's picture on his wall while studying flight training, as well as other indicia of connections to Osama bin Laden. We know about the application for a warrant under the Foreign Intelligence Surveillance Act of Zacarias Moussaoui, which would have yielded very substantial information about his connections to al-Qaeda. We know about the two at Kuala Lumpur, known to the CIA, but not communicated to the FBI or Immigration and Naturalization Service in a timely way. We know of the information from the National Security Agency on September 10, a threat, that was not translated until September 12. There are other factors at issue here where we could have connected the dots, as the metaphor is used.

This bill is a very substantial undertaking. I discussed the matter on a number of occasions with the distinguished Senator from Tennessee who raises a valid consideration that this bill may be going too far in the sense that it takes in a great deal of territory. It does that. However, the question is, When will it be done, if not now?

The business of consolidating Federal agencies is a Herculean task facing all sorts of obstacles, and it is only the event of 9/11 and the threat of another 9/11 which is a motivating factor to make these enormous changes.

Earlier today I heard the Senator from Tennessee say next year would be time enough to study the intelligence agencies. There is one big problem with that: The Senator from Tennessee will not be here next year. We need to take advantage of his skill this year.

Perhaps almost as important as the skill of the Senator from Tennessee is the momentum which we have. I have offered to give him some tips on his new job. I saw a headline in the paper the other day, ''Senator Thompson Demoted to District Attorney.'' First of all, I do not know that it is a demotion because I have held that position. However, that is what the headline said, Senator THOMPSON demoted.

I was surfing on Sunday. It is hard to surf and not see Senator THOMPSON or Senator LIEBERMAN, or both of them. Senator THOMPSON was in a heated exchange with former Secretary Eagleburger, and then the program was interrupted for some entertainment. I thought Secretary Eagleburger and Senator THOMPSON were entertaining. They put on a portion of this television show. I wonder how many ex-district attorneys in the Senate turned down that television contract before Senator THOMPSON got it?

At any rate, Senator THOMPSON was sitting behind a big desk in a dimly lit room and two assistant district attorneys approach him. I could not get the gist of it entirely, but I guess the thrust of it was someone in the room was in favor of legalizing drugs. The comment was made: What about our war on drugs? This District Attorney Thompson said: We have to have a war on something in Congress for people to be elected.

It seemed a little cynical for him to turn on his colleagues even before he is on his new payroll. I trust the Ethics Committee would not let him be on the payroll yet, although he is doing those shows.

Back to a serious vein, this is the time to do it. I talked to Governor Ridge after a meeting he had with the President today. I have supplied him with language and I sent a copy of it to Senator LIEBERMAN and a copy to Senator THOMPSON. The President wants to be sure that the President has the authority to continue to work with the CIA as he always has. Absolutely, he should have that authority. He does have that authority. There is nothing we can do in legislation that would change it. The change in the language was made to have the analysis groups under one umbrella, subject to the President's direction to the contrary.

An earlier draft stated the reverse, that the President can direct all of these intelligence agencies to coordinate. You cannot wait for the President to make a direction. He is too busy to do it. The generalization has to be that they will be working together under one umbrella, and they will be coordinating the analysis, but this must be made explicit in statute. If the President wants to change that, of course he can. I do not think he needs that authority in the statute, but I am pleased to eliminate any question about it. It is my hope we can find some common ground on that question.

Washington, DC, has a way of having matters slide if we do not strike while the iron is hot. It is hard to get anything done in Washington, DC, while the iron is hot. However, when it cools off, it is extraordinarily difficult. It has been a long time and many efforts have been made to bring these agencies together. It is a limited juncture to call on the analytical sections to be under one umbrella.

Homeland security will do a lot in response to another 9/11, but if that happens, it is really a very sad situation. Ninety-nine percent of our effort needs to be made to prevent it. If we have to respond to another 9/11, we are in deep trouble. Maybe something even more serious may occur—not that 9/11 was not serious enough, but it may involve weapons of mass destruction. Who knows what it may involve. We have a very heavy responsibility to do everything we can to prevent it. When we look at what was known before, with the dots there, and the possibility of putting them together, that is what we have to work toward.

I have worked a lot with the principals on this issue. I had the opportunity to serve on the Governmental Affairs Committee. I know the work of Senator THOMPSON, who was chairman, and Senator LIEBERMAN, who is now chairman. We have structured this to accommodate all of the competing interests.

I think it will probably be a long day before Senator LIEBERMAN will make an ex parte invitation for me to speak again. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I do not regret the acceptance by the Senator from Pennsylvania, and I thank him very much for his remarks. He went right to the heart of one of the most important debates we will have on the bill, which is how do we structure the intelligence division of this new Department to make sure that we never again look back, as we have now after September 11, and say these barriers to communication between the FBI, the CIA, a whole bunch of people, if those barriers had been broken, and all the information was in one place, we might well have been able to prevent September 11. We have to have it within our power to do that.

I understand some of the concerns of the White House, but I do think the phrasing that Senator SPECTER has talked about is just right. I hope he may play a role in bringing us all together on this. I thank him, also, for the fact that he was my lead cosponsor; I was his lead cosponsor in October of last year when we introduced the original version of the bill creating the Department of Homeland Security which, in fairness, was based in good measure on the recommendation of the Hart-Rudman Commission. I look forward to his active participation in this debate and the days ahead.

Under a previous order, I believe Senator BOXER was to be recognized next, with the time to be taken from Senator BYRD.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank Senator LIEBERMAN for all his hard work on this bill, and Senator THOMPSON as well. I thank Senator BYRD because in his 50 years in Congress, he has seen a lot and he has raised some very important issues at which this Senate ought to look. I rise to say thank you to him and to make note that when Senator LIEBERMAN first brought the concept of Homeland Security and a Cabinet-level position for Tom Ridge, this administration was not for that in any way, shape, or form.

It is my understanding not having been on the committee, to my sadness—maybe if I was, I would have had more to say in how this bill would come about—my understanding is that not one Republican voted for the first version of that bill in the committee itself.

So we see a real transition from something that was an idea Senator LIEBERMAN had, the Democrats supported, to one that has been embraced, with some very important differences that will come out on this floor. I want to talk to some of those, as well as some of my own concerns.

I have been in elected life now for 26 years—not as long as Senator BYRD, but long enough to know that reshuffling a structure doesn't necessarily mean you are going to solve your problem. As a matter of fact, it could in many ways make people less accountable, hiding under more layers of bureaucracy. So I approach this debate with an attitude that basically says I am not so sure about this.

I think what Senator BYRD is trying to do here by speaking with some of us who have some of these problems with the bill is to try to see if we can let the Senate work its will and shape this so it does not become an unwieldy bureaucracy that will be not more accountable but less accountable.

We all know what brought us together as a country was what happened on September 11. We will never forget it, and we will commemorate it. But I agree with those who say we have to do this right. It would be a disservice to those who were so adversely impacted if we were to set some artificial deadline for restructuring of the Government, a restructuring which is so huge that a Brookings Institution scholar, Paul Light, said:

> I would rank it the No. 1 reorganization in American history in terms of difficulty.

My view is this should be done right. We should keep congressional accountability in the process and not give up the very important powers we have under the Constitution, the checks and balances, not just for this administration but for any administration.

It is interesting to hear President Bush's own words. He says it is the most extensive reorganization of the Federal Government since the 1940s.

The amendment is 350 pages. I say to Senator LIEBERMAN, I believe he has done an incredible job of improving the bill from the House version, and I certainly shudder to think if that House version were to become law because it has a lot of serious problems. So I say straight out to Senator LIEBERMAN, thank you for your work in this regard.

Senator CONRAD made a point today to some of us, stating he had heard from the OMB Director way before September 11 that changing the civil service protections was one of the things this administration has always wanted to do and that all the things that are contained in the House bill, as they would pertain to the employees of this new organization, are not new things to this administration. They have wanted to break the back, if you will, of whistleblower protection in other cases. They have wanted to break the back of any type of collective bargaining.

As we know, Federal employees cannot strike, nor should they. That is not an issue. But this administration would like to weaken the protections that do belong to Federal employees.

I think Senator LIEBERMAN made a very good point when he said, in a conversation with some of us in leadership, that the protections in his bill that are afforded to the Federal employees who would work in homeland defense are the very same protections that are afforded to the Department of Defense civilian employees.

So it seems to me a rather cruel thing to say you are creating a Department that, next to the Department of Defense—and maybe even in some cases, in some circumstances, even more—for these people who would be put in the line of fire, that we would, as one of the first things, look at weakening the rights they are afforded and make them second-class citizens. This is very disturbing to me.

Think back to September 11, to the heroes of September 11. They were not anyone in this Chamber. They were not anyone in the back room writing this bill. They were working people. They were people, yes, who were afforded the protections of collective bargaining; yes, afforded the protections of union membership. They never looked at their watch and said: Oh, gee, I have been on the 74th floor of the World Trade Center, and now I have worked 8 hours and I am coming down.

I just think it is most unfortunate that the President would not take this opportunity to keep us together here, focused on protecting our magnificent country and the people who reside therein, and instead use it as an opportunity to get through some of the things he was unable to get through in other bills. It is very disturbing to me.

I think Senator LIEBERMAN has shown tremendous leadership in standing strong for those protections. Again, the heroes of September 11 were union members. The heroes of September 11 never let us down. How do you create a new Department such as this and undercut these employees when they need to be at their top performance level, where they need to have the best morale, where they need to believe they are not treated worse, certainly, than any other Federal employee?

There are other things Senator LIEBERMAN did in this bill that I applaud. A weakening of the Freedom Of Information Act that is in the House bill—that would have been a mess for us. Many of our communities want to know what chemicals are polluting their air, ground, and water. Again, some in the House use this as a way to weaken that act and say: We cannot give out that information; the terrorists may get it. A mother of little children needs to know if there is arsenic in a plant, if there is a harmful pollutant at a plant. Therefore, I am very pleased that, with Senator LEAHY's help, where he was able to fix this, that is not a problem.

For the remainder of my remarks, I focus on the Federal Emergency Management Administration and a couple of other agencies that were just lifted and taken lock, stock, and barrel into this new, enormous creation called the Department of Homeland Security. In California, we suffer from every kind of natural disaster you can imagine, from earthquakes to fire, to flood, to drought, to pestilence. We see it all. Unfortunately, we see it often.

People sometimes say to me: Senator, why do people want to stay in California? Every other month, you are having another crisis.

I guess you have to just be there to understand. You are living in an area that is God's gift to the world. With that beauty come all these problems.

The bottom line of it is, we, unfortunately, have a terrible share of these disasters. Putting the Federal Emergency Management Administration, lock, stock and barrel, into this new Department I just think is going to be a real problem for us. Why not just take those folks in the Department who would work on homeland security but leave the others in place?

It took many years to straighten out the problems of FEMA. I have gone through the worst of it. Under President Clinton and under James Lee Witt, we saw a tremendous uplifting of FEMA's morale. They know what they are doing now. All of us, Democrats and Republicans, have benefited from that. Our people have benefited from that. Now we are moving this, lock, stock and barrel, and I am very worried about accountability.

Others have spoken of the Coast Guard. I feel the same way about that. Search and rescue—last year, the Coast Guard saved 530 lives in California. I know how important they are to homeland security, but the same thing should apply here. You do not have to lift the whole thing up, lock, stock, and barrel.

We also have the INS situation, where the immigration and naturalization services are very far behind.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I ask for 2 additional minutes.

Mr. BYRD. I yield 2 additional minutes to the distinguished Senator from California.

Mrs. BOXER. I thank Senator BYRD. Now that he is here, I can tell him how much I appreciate his raising the red flags.

The INS, backlogged with processing immigration—good people, kind people, family people. It seems to me, again, we should have done this in a little bit of a different way.

If we really want to do something for homeland security, I would rather see

us spend the $5 billion that we passed in this Senate that spoke to the need of homeland security and aviation security. We need more machines to check bags for bombs. We know the things we need to do at our ports. We lack the infrastructure. Instead of spending time moving pegs on a board and lifting agencies from one desk to another, I would rather go back and send the President that $5 billion and say to him that we don't understand why he refused to spend this money. If he is so concerned about homeland security, why did he say he wasn't going to spend this? He said it was bad for the economy because of the deficit.

I was an economics major. One thing we know is that if the Government spends and invests in the needs of the people, such as homeland security, it is going to create thousands of jobs, and it would do something that is important. It doesn't help the economy to sit on that money. Frankly, it does not help the economy or homeland security if you create a big bureaucracy and they have no place to even put these people. And, by the way, if they are just going to be changed in name only, it is very confusing to me why we are doing this.

From all of my years in public life, I think we could have done this in a very lean and mean way. We could have made this a Cabinet-level position, which most of us supported. If the President wanted it to happen, he could have said we are going to have people dispatched who report to Tom Ridge and to each of these agencies and start to bring back and forth to him what we need to do in those agencies.

I thank you very much, Mr. President. I have a lot of serious questions about this.

I thank my colleagues for their consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, we have had a good discussion on this motion to proceed.

I thank Senator BYRD for doing what he has done. I will say publicly what I told him privately before the recess: I thought he was doing all of us a favor by slowing us down a little bit. There was an awful lot of talk about we must get this done by September 11 for symbolic reasons, and symbolism is important. But it is not nearly as important as it is to get this right. We will not get it right forever. We will be dealing with it probably for some time to come. But it is important to get it as right as we can. I think it is very important that we take the time necessary to do that. We can disagree as to how long is enough time. But I do think we can all agree that in retrospect, we were kind of headed toward a stampede there for a little while where we wanted to get something passed so we could say we got something passed. That receives short-term benefits maybe to us but it doesn't do much in terms of long-term benefits to the country. I think we are where we need to be now. We have come back. We have had a chance to digest this, discuss it, debate it in a public forum, and now to discuss it here on the floor.

Senator BYRD made some very interesting and valid points about things that we need to consider. He, I think rightfully, pointed out that the NSA creation was probably the model that not only the President is going by, but the model that we all can have in terms of importance and in terms of how long it takes to put these things together. It took a good while to put the National Security Agency together. I believe it took 6 months between the time the bill was introduced and the time that it was passed. I point out that it was after a war. I do think probably Congress had a little more leisure during those days than we have. It was 2 years after the war. Of course, we are just beginning our endeavor. We don't have quite the leisure that perhaps the Congress did at that time.

We have been considering the overall concept one way or another, formally or informally, for some time. The Gilmore Commission came in December of 2000 with a recommendation for a Homeland Security Department. The Hart-Rudman Commission came out in February, I believe, of last year, with a recommendation. We didn't pay enough attention to it soon enough. But it was out there. It was discussed and considered at that time. Congress, from time to time, has certainly considered many of the component problems that have led to this bill.

For example, the problems with the INS are certainly no secret. We have been dealing with that. We have been dealing with other problems the Government has.

I suggest the time is ripe, and there is no reason now for us not to address this issue after we have had a full-fledged discussion. I think the analogy to the Transportation Security Administration that was referred to and that was referred to in the newspaper today is a good one. I think it shows the difficulty that we have when we establish an agency that is having to recreate itself on the one hand and do the job on the other simultaneously. That is a very good point. What we are doing here in terms of the Department of Homeland Security is TSA enlarged in many respects.

That leads me to perhaps a slightly different conclusion. That leads me to the conclusion that what we need to do to avoid that problem is to give the people who are in charge and have the responsibility for making sure this works the tools they can use to make it work. We had a civil service organization system, and we had a management system, the paradigm for which was established many years ago. We live in a different world now. That is what the President is talking about when he is talking about managerial flexibility and having the tools with which to manage this thing.

If you talk to corporate leaders who have undergone transitions that are much less complicated than what we are doing, they talk about how difficult it is and how important it is to have the right kind of culture but also to have the managerial talent, the managerial wherewithal and flexibility to address those thousands of problems and difficulties that you are going to have in trying to pull all these factors together. These corporate managers don't even have Congress to answer to or deal with or worry about. Certainly, when it comes to Government, Congress cannot deal with each of these issues.

We have to either trust our leadership to the point of giving them some managerial flexibility or not. I think that is what we are doing here. That is what this is all about. It is not a major grant of new power; it is a granting of power by Congress after thorough deliberation to better manage what Congress is establishing within the discretion of Congress, and having the annual appropriations process, among other hearings and considerations, in which to evaluate what is going on. I think we have to give that kind of authority if we are going to place on these people the kinds of responsibilities that we are placing on them.

There has been a concern expressed about personal liberties. Democracy always has to—especially a democracy under attack—balance the national security of the country with the personal liberties that we hold so dear. I think we have done a pretty good job of that. Some of the things that the administration has done have been somewhat controversial. They are not really reflected in this bill. This bill really doesn't deal with any of those things. But I do think it is appropriate to point out that in other times President Lincoln instituted habeas corpus. President Roosevelt had internments, and things of that nature. Other Presidents have taken rather severe action when they deemed it necessary in times of war and in times of national security. We are not even approaching things of that nature. And we are not really even approaching the subject matter in this bill.

So I respectfully suggest that there is no danger here of giving the President too much power. The danger, quite frankly, is that we are establishing a new Department that is complex, multifaceted, and is going to be difficult to organize without giving the President some authority that several other Government agencies already have, that the Congress has already given them.

We will have an opportunity to discuss this later when appropriate amendments come up. But in the area of national security, and in the area of flexibility with regard to some of these agencies, what the President is basically asking for is the same authority that prior Presidents have had in the national security area, and the same

authority for this new Department that other Department heads already have. So I do not think we need to concern ourselves overly about that. But I will say that it is refreshing to stand on this floor, to sit and listen to someone such as Senator BYRD talk about first principles, talk about the basic function of government, talk about the things the forefathers concerned themselves with, and the things we should concern ourselves with as we go forward with this bill. But I suggest that it is time we go forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty-four minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I begin my closing remarks where I should begin, by thanking Senator LIEBERMAN and Senator THOMPSON for the leadership they have demonstrated in holding hearings, in holding the markups, in exploring the questions that were asked, in attempting to find solutions to questions and concerns and problems that occurred to them through others and sometimes not through others. I thank these two Senators who represent, I believe, the finest.

I have been a Member of the body now 44 years next January 3, the Lord willing. The fine old woman who raised me taught me to say that: I will do thus and so or so and so, the Lord willing. Of course, that comes from the Book of James, the 4th chapter, and the 14th and 15th verses: Don't say that you will go to a city tomorrow and that you will purchase thus and so and that you will do thus and so, but say, the Lord willing, you will go and do thus and so.

And I thank these Senators. I am glad that the Good Lord has permitted me to live in this age when we can have Senators who acquire the high qualities of the two Senators who are about to manage the legislation that will create a Homeland Security Department.

I favor the creation of a Homeland Security Department. And I think that the Senate within the next few minutes should vote unanimously to proceed to take up this legislation. That is the way it should be done. Let's take it up, and then let the Senate work its will.

I thank the two leaders for their cooperation in helping to bring this about and in providing a time and an opportunity when we can mull over and talk about and decide these great questions that confront us.

I would have resisted going to the bill had the motion been made prior to the August recess. I would have resisted with all of my heart and all of my strength. But I do not resist going to the bill now. With the Senate in recess, we have had a month in which to read the House bill, which largely reflects the administration's position, to read also the legislation that has been reported from Senator LIEBERMAN's and Senator THOMPSON's committee. And I have taken occasion to do just that.

Now, when we proceed to take up the House bill, it will be done, and then, at some point, presumably early on, Senator LIEBERMAN will offer his substitute. He will offer the committee of the committee which he chairs. And the Senate will then have both bills before it. The underlying measure will be the House bill. And then there will be the substitute, which will be a clean bill reported by Senator LIEBERMAN's committee. So the Senate will have before it both bills. Senators may proceed to amend the underlying bill. They may proceed to amend Senator LIEBERMAN's bill, the substitute. We will have both bills before us.

I call to the attention of Senators that once we pass this bill, whatever the bill is that the Senate passes—I am not saying I am going to vote for it; I may—but whenever the Senate passes legislation dealing with the creation of a Department of Homeland Security, then that is the last time the Senate will visit the matter until the legislation comes back from the committee of conference. And that legislation will be in the form of a conference report, which cannot be amended. Senators will have to take that measure, then, up or down.

So this is it. This is our chance, and our only chance, to fully discuss and amend the legislation. And I hope Senators will approach the matter in that vein, realizing that the product that emanates from this Senate, after whatever time we take to debate and vote on it, will be the final product the Senate itself will have had an opportunity to mold and to amend. That is it.

We are going to have to live with that. I have been greatly concerned about the legislation, as I have read it, that the House has passed, and with particular reference to title VIII of that bill, which I will not go into now.

But I have been greatly concerned. I am concerned that the Constitution and its principles and the rights and privileges that flow from that great document—which has no equal in the world as far as governmental, organic documents are concerned, no equal——

I am concerned that those rights and prerogatives that flow from that document will have been impinged upon. I am greatly concerned about the constitutionality, in whole or in part, of some of the things that we are about to do—if we do them—that are particularly contained in the House bill.

Now, we may pass legislation that is unconstitutional, and if it is never tried out in courts, it may be out there and there may not come an occasion where there is a case or controversy which goes to court. But I say that we have a responsibility.

I used to hear Sam Ervin, that eminent jurist and great late Senator from North Carolina, say that we in the Senate have a duty to determine in our own minds the constitutionality of measures that we pass.

That is why I joined with Senators on both sides of the aisle in bringing the line-item veto and pushing that matter to a decision by the U.S. Supreme Court. Of course, we didn't have standing, as the Court determined, but we did proceed; but those who did have standing were pursuing it. Thank God, somebody pursued it, and I say thank God to the Supreme Court of the United States for throwing out that bad legislation. I said it was bad and the Court agreed.

Here we are today with legislation that can certainly be dangerous in many ways. I have talked about some of those things, and I will have a further opportunity. But before I proceed with my final prepared remarks, let me thank Senator THOMPSON and Senator LIEBERMAN. I thank Senator THOMPSON for his closing remarks today, and I also thank Senator LIEBERMAN. These are gentlemen and I respect them as gentlemen. They have high and noble principles. That cannot be said of all men, of course.

We are here today because nearly 11 months ago, 19 men commandeered 4 aircraft. Their goal we know all too well. They crashed one aircraft into the Pentagon. One hurtled into the north tower of the World Trade Center. Another tore into the south tower a few minutes later. The men and women aboard the final plane, after learning of the fate of the others, decided to resist the hijackers. They knew that, in all likelihood, they were about to die. But they entered into the embrace of death willingly after having decided to do what they could do to prevent the untimely and abrupt death of other men and women.

I have no doubt, as we were taken out of this Capitol that day, ushered out by the policemen here, that that last plane was coming to hit this Capitol or the White House—one or the other. I just know in my own mind that it was headed here. But those men and women on that plane died for us. Their plane crashed in rural Pennsylvania. If not for the heroic efforts of those men and women, we would have scores of additional names to remember as victims of the worse terrorist attack in the history of our country.

We are here today debating because of those 19 hijackers. We are here because of the rescue workers who moved so quickly, so selflessly, so valiantly to save lives, only to lose their own while carrying out their duty. We are here because of those thousands of men and women who, on September 11, 1 year ago, were sitting at the desks, walking through the halls, doing their jobs, only to have such brutality bring to an end their precious lives, and so abruptly. They never had time to say goodbye to their loved ones. We are here, Senators, because we can never forget that day and because we never want this Nation to have to go through and experience the horrors of that day again.

In many ways, the creation of a new Department of Homeland Security will serve as a legacy to those more than 3,000 men and women who had lost their lives on that clear fall day 1 year ago. We must not rush to create a department in the memory of those who lost their lives on September 11. If that Homeland Security Department does not better prevent another attack, what becomes of the sacrifice of those lives almost 1 year ago? If in the rush to create a new department we make Americans more vulnerable to attack while the transition is going forward rather than less, what kind of a legacy does that leave? What tribute does this Congress and this President pay to the victims of September 11 if we only tangle the lines of homeland security rather than straighten them and strengthen them?

I believe that much is to be said in gratitude to Senator LIEBERMAN and Senator THOMPSON and their committee for their efforts to straighten the lines. I honor and respect and pay tribute to these Senators and to the product which they have given this Senate and which we will soon be discussing. But having been in various and sundry legislative branches at the State and local levels and at the Federal level, I know there is no committee, including the one I chair, that can be perfect.

As an experienced legislator, I look at this product in that fashion. It is a good product. It is a much better product than that which the House has sent us after 2 days of floor debate. But I think the full Senate can do better.

I believe that if we act in haste to pass this legislation, then we pay no tribute, we honor, no memory.

The legislation creates a new Department of Homeland Security. It is originally based on the plan of four men—not exactly the committee of five which wrote the Declaration of Independence. It is quite a different group. I don't say that disparagingly of the four fine men who came up with this idea in the bowels of the White House. But the legislation to create a new Department is based on the plan that originally was hatched in the subterranean caverns of the White House—four men, fine men, sitting in the depths of the White House, trying to counter mounting political pressures. These four men have done nothing more, really, than shuffle boxes on a piece of paper.

The administration calls this the largest reorganization of Government since World War II. I say it is the largest reorganization of Government since our constitutional Framers sat at the Convention in 1787. They reorganized the Government under the Articles of Confederation. Under that Government, under the Articles of Confederation, the Congress was the legislative, the executive, and the judicial. So those men reorganized the Government and gave to the various States, to vote on in their ratifying conventions, this product that was signed by those men in Philadelphia on September 17, 1787.

That was the first reorganization. That was the greatest reorganization because no longer do we operate under the Articles of Confederation but we operate under the Constitution of the United States. So now we have come to another reorganization proposal, the one we have been discussing.

Terrorists have the advantage of knowing when they will strike, where they will strike, and how they will strike. Law-abiding men and women do not know when the terrorists will attack, where they will attack, or how they will attack. If the truth be told, there is no department that this Congress can conceive that alone can save Americans from terrorist attacks. Moving a few squares on a flowchart will not, on its own, save lives.

I remain suspicious about a complex, extensive reorganization plan originally authored only by a group of four men in absolute secret, a plan which we are told was not revealed until the day the President revealed it, at which time several of the Department heads, whose Departments would be affected by the plan, had not been contacted and not been consulted. That is what I understand from reading the press. So I remain suspicious about a complex, extensive reorganization plan authored only by a group of four men in absolute secret. I believe such a plan is likely—likely—to be politically motivated somewhere along the line. There is an old fiddle tune I used to play, ''Somewhere Along the Line.''

I hope that is not true. I hope the motivations were pure, but should we not all be a little suspicious of this process? Congress should be especially careful, given the way this plan was formulated. We ought to consider our actions thoroughly and realize that the steps we take in the next few weeks will have ramifications for decades to come.

In the past few weeks, as the House select committee has held its hearings and the Senate Governmental Affairs Committee has drafted its plan, the focus has not been on how to best save lives. Rather, the focus, in part at least, has been on the ''bureaucratic turf wars'' that have developed. Should Secret Service be in, or should Secret Service be out?

The PRESIDING OFFICER (Mr. DAYTON). The time under the Senator's control has expired.

Mr. BYRD. Mr. President, I have need for a few more minutes. May I call upon the mercy of the distinguished Senator who chairs this committee, if he has time, if he would let this poor Senator from the hills of West Virginia have a few more minutes?

Mr. LIEBERMAN. The Senator is moving me. I say to Senator BYRD, obviously I do not want to cut him off. I guess in return I ask for a certain amount of mercy because I hope to leave in an hour to attend an event at my daughter's school. The Senator may proceed as he will. I do not intend to use the rest of my time, and I hope Senator BYRD will finish with as much dispatch as he can and still make his points.

Mr. REID. Will my friend from West Virginia yield for a question?

Mr. BYRD. Yes.

Mr. REID. I am wondering, with the three managers of the bill here on this phase of the debate, if we can agree on what time we are going to vote today. The time runs out at 6:37 p.m. It is my understanding that Senators THOMPSON and LIEBERMAN will be willing to give back some of their time.

Mr. LIEBERMAN. Yes, Senator THOMPSON has concluded his remarks. When Senator BYRD has finished, I will have concluding remarks that will go no longer than 5 minutes.

Mr. REID. Is Senator BYRD going to speak for 10 minutes?

Mr. BYRD. Well, let me put it this way. As far as I am concerned, we can vote now. As far as I am concerned, we can vote by voice. I intend to vote to proceed to take up this measure, but Senators have been told we would vote. I will stop editorializing on my own remarks and read what I have prepared and sit down.

Mr. LIEBERMAN. Fine. I thank the Senator.

Mr. REID. So the answer is we do not have a time certain.

Mr. LIEBERMAN. But no later than 6:36 p.m.

Mr. BYRD. Mr. President, I thank the distinguished chairman, Senator LIEBERMAN, for his generosity.

What about the Secret Service, should it be in or out? What about the Coast Guard? Why is the Bureau of Alcohol, Tobacco, and Firearms left out? While the 170,000 men and women targeted to move into this new Department try to figure out where the desks and telephones will be, the Nation's homeland defense system may be far less effective, not more.

We in the Congress must insist on more information about the fine details, such as what this plan means for the separation of powers, why one agency was selected while others were left out. We must take time to determine if this approach is the best approach or if it is little more than cherry-picking the best agencies while leaving others behind.

There will be those who charge that by moving to slow this legislation, I and others are endangering the lives of Americans and that we are thinking about our pet projects in our own States. What a sorry, empty claim to make. This Congress, at the urging of the Senate Appropriations Committee which I chair, has added $15 billion for homeland security over the course of the past 8 months. That funding has helped us to take immediate steps to make Americans safer from attack and to better prepare our response efforts should another attack occur.

That funding paid for more than 2,200 agents and inspectors to guard our

long, porous borders with Canada and Mexico. The foreign student visa program, which has been identified as one of the Immigration and Naturalization Service's chief loopholes, is undergoing a tighter tracking system because of funding that Congress included in its first homeland security funding package within 3 days after the tragedy occurred in New York City.

Across this country, local police officers, firefighters, and emergency medical teams are receiving new training and equipment to handle threats that before last fall they hardly considered possible. Federal law enforcement also benefited from the work of this Congress. Because of the funding initiated by the Appropriations Committee, the FBI started to hire hundreds of new agents. More than 300 additional protective personnel were hired to protect the Nation's nuclear weapons complex. Air marshals have been hired to protect our planes. Seven hundred and fifty food inspectors were hired to ensure the safety of the meals served at America's kitchen tables. We have paid for smallpox vaccines and health department training. We are tightening security at our seaports and purchasing new bomb-detecting equipment at our airports. We are taking steps to protect American lives now, today, and not just waiting for a bureaucratic shuffle to protect us.

Congress, the elected representatives of the people, have done this. Congress also acted to provide additional emergency funding to strengthen terrorism prevention and to give much-needed aid to first responders at the local level. But President Bush has refused to spend some of these critical funds because he and OMB Director Mitch Daniels want to make a point about budget discipline.

If the President is really serious about preventing terror, as he says he is, he should not play politics with this important funding, which by the signature of his name could have been released to the people at the local levels, throughout the land, for the protection of the people and the protection of the infrastructure of our country.

Members of Congress and the President would like to be able to tell the public that they honored the victims of September 11 by creating a new Department for Homeland Security on the anniversary of the tragedy. That is understandable for politicians. But as Senator THOMPSON pointed out, we want the right product. We want to take the time and do the job right.

In a few days, Americans will pause to remember the moment when the airplanes struck the World Trade Center, the Pentagon, and the Pennsylvania field. We will remember the mothers and fathers, the brothers and sisters, the firefighters, the police officers, the ambulance drivers. We will remember all of those who lost their lives in those tragic moments. But as we craft this legacy to their lives, we owe them more than a press release. We owe them our best judgment. We owe them rational, responsible action. We owe them a legacy that may truly save other lives, the lives of the people and the families of those who died, the progeny of those fathers whose lives were wiped out in the batting of an eye.

Based on what we know about the legislative proposals before us, there can be no assurance that such a legacy will ever result. I am concerned that the monument that will result from this effort may be one of weakened protections for America's civil servants, one that may allow the security that is our goal to buckle under the weight of an administration's untold agenda. What will this legislation do to the people's rights, to the first amendment, to the second amendment, the third or fourth? Do we know what this bill does to the fundamental protections embodied in the Constitution?

I am concerned about what we do not know about what has been kept from us by an administration adept at dealing in the shadows. I am concerned that this bill goes too far to protect the privacy of the White House and not far enough to protect the privacy of law-abiding citizens outside the White House.

We are being pressed to pass this legislation to protect American lives, but we must not allow ourselves to be blinded to the new threats it may present to our laws and our constitutional system if we pass the legislation for which the administration has asked.

Each of us has an obligation not just to put a new banner over a collection of agencies but to ensure that those agencies work together to protect the American people. Reorganizations of any size have a tendency to drift, to veer off course. A reorganization of the magnitude envisioned is likely to careen out of our control if we do not take the necessary steps to keep it on track. We cannot throw up our arms in celebration at the moment a bill is signed into law and walk away wrapped in the folds of glory. If that is all we do, we will surely drop the reins.

This Senate must do everything within its power now to ensure that the promise embodied in this proposed reorganization is kept. We must focus beyond the mere creation of a new Department and grapple with the details of its implementation. We should insist on a clear understanding of the mission of the new Department. We should know the criteria that are used to determine which agencies will be part of it. We should insist that the constitutional rights of the people are protected. We should insist on assurances that this administration will not use this reorganization as a cover to dismantle worker protections. We should insist that the important non-homeland-security work of the transferred agencies is not sacrificed as those agencies assume new missions.

Senators know of my great respect and fondness for history of the ancient Romans. Montesquieu first pointed the way, and having read a great deal of Montesquieu's work, I came to the conclusion that Montesquieu must have been right because he loved the history of the ancient Romans. As a matter of fact, he wrote a history of the ancient Romans. So I decided I would do some of that reading, too.

I close with a quotation. Gaius Petronius Arbiter, a Roman poet and advisor to Nero, is reported to have said:

> We trained hard . . . but it seemed that every time we were beginning to form into teams we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralization.

What a quotation from a Roman 2,000 years ago, and more. Before we rush ahead with so many questions unanswered, let us ensure that the product of our work is not just an illusion but substance. If it is a monument we are building, let it be one that will endure.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I simply thank the very able Senator from West Virginia for once again calling on the Senate to face these very fundamental questions that are involved and which he has been speaking to in the course of the day. I think it behooves all of our colleagues not only to have listened to the able Senator but to go back and read his remarks and to consider them carefully and thoughtfully as we address this major legislation.

Now we are embarked, of course, on creating a new Department, but we need to be very careful in how we do it. We need to be very thorough in how we do it. We need to be very thoughtful in how we do it.

I commend the chairman of the committee, the able Senator from Connecticut, because I think he has brought all of those qualities to this legislation that he has now brought forth in the Senate.

There are very important questions involved here in terms of how the political system works and how the checks and balances work and what the allocation of powers is. Some say this is a fight over turf or over prerogatives. It is no such thing. This is trying to resolve the most basic questions about how our system of self-government is to work and what the balance is to be between the legislative and the executive branches; indeed, the judicial branch is drawn into this, as well.

I hope as we address this legislation in the days to come, my colleagues keep in mind the analysis and the history which the Senator from West Virginia has brought to the floor today. I express my deep appreciation once again. He reminds us of the fundamental questions we confront and of the importance of rising to this occasion.

Mr. BYRD. I thank the Senator for the generous remarks.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I agree with my friend from Maryland: The Senator from West Virginia has made a contribution here with his thoughtful leadership over the years, of course, and his thoughtful statements today. Even when I do not meet the statements with personal agreement, I know he forces me to think about fixed premises that I may bring to the debate, as well as everyone in this case, and that will make the product of our deliberations better than it would otherwise be.

I was thinking about the quote at the end of Senator BYRD's remarks. It is true that reorganization or reform can sometimes not be in the interest of progress and can be a cover for disorganization and an excuse for inaction more broadly.

I do want to argue that this proposal that has come out of the Senate Governmental Affairs Committee, which builds on work that had been done by the Hart-Rudman Commission, which meshed with recommendations from the White House, is a necessary reorganization.

The current state of reality in our Federal Government is that we are disorganized. It is in some ways dysfunctional as it comes to protecting the security of the American people from a threat we have imagined, we have seen some small evidence of over the years. But on September 11 we were shocked from our lethargy and our apathy and our tolerance of disorganization, seeing the painful personal consequences of that disorganization—almost 3,000 Americans dead only because they were Americans, struck in a vicious and savage and cunning way only because they were Americans. They did not have the courage to take us on on a conventional field of battle but struck an undefended target full of innocent Americans.

That disorganization can no longer be tolerated. I have a sense of urgency about this. I look at the evidence we have accumulated about the various ways in which our intelligence and law enforcement personnel could have cooperated, could have shared information prior to September 11. I wonder, could we have prevented this from happening? I look at the way in which we have tolerated disorganization and overlap at our borders with failures of the various Federal agencies there and inability even to communicate with one another. I look at our ports, with 95 percent of the goods coming into the United States of America. Most people are shocked by this number: 95 percent come in by ship, yet the Customs Service is able to truly inspect only 1 percent of the containers coming in.

I could go on and on about airport security pre-September 11 and security of our financial systems, cybersystems, and all the rest. We are just not organized to prevent what happened on September 11 from ever happening again.

In this regard, I have the echo in my mind of a meeting I attended some months ago with families of victims of September 11, mostly families of victims because most of them were from Connecticut, some from New York, who died in the World Trade Center. The plaintive question they asked me was, how could this have happened? I do not want to ever be in a position to face another group of fellow Americans who ask me again, how could this have happened?

I make no claims that adoption of the bill that our committee has reported on will be a guarantee against terrorism. I suppose if someone has so little regard for their own life and other lives that they are prepared to strap bombs around themselves and walk into a crowd, that is not easy to stop. But something as well planned, as comprehensive, with as many contacts with private sector bodies, including flight training schools and public agencies, we should be able to prevent. The only way to begin to do it is to create a structure that is accountable, that has a uniform chain of command, and that will put people in place to overcome the gaps the terrorists took advantage of on September 11.

That is why I have urgently brought this matter to the floor, with the wonderful bipartisan group of members of the Governmental Affairs Committee who contributed substantially to the product on the floor, and the various Members of the Senate on both sides with whom we have worked on parts of this proposal. There were 18 hearings, 3 or 4 days of committee meetings and markup. A lot of work has been done on this, building on work that had been done years before by others, as to how we can best protect the American people from terrorism.

It is time to proceed. We have had a very good opening day of debate. Obviously, there are some differences of opinion regarding the pace of action in Congress or whether the executive branch is seeking or being given too much authority, whether one or another agency that is consolidated by this bill should be consolidated, how strong our intelligence division should be in this Department, how much should we bring matters together. Should we give this President and his successors unprecedented authority over civil service and Federal employees?

All of these matters, I know, will be directly discussed in the days ahead. And many of them, if not all of them, will be subjects of amendment before this Chamber. This is a big bill. It is a big proposal which responds to an urgent problem. As others have said, it would be the largest reorganization of the Federal Government in 50 years, since the post-World War II reorganization of our national security apparatus. That is what the reality of our times requires. It is why we need the debate we will have in the days, and perhaps weeks, ahead.

In the paper today, there is a story that our intelligence service is working with foreign intelligence services and has tracked the movement of gold, substantial amounts of gold, apparently owned by al-Qaida, from Pakistan through Iran, the United Arab Emirates, into Sudan, where it may be in Khartoum now. What does this tell us? That the enemy is out there, that we won a victory, a great victory, in Afghanistan, but that was only the first battle of the war.

Again, the enemy is not out there on a field of battle where we can see them, or in ships at sea. They are in the shadows. They have not diminished their intention to strike at America, and Americans only, because we are America and Americans. Now we, as the representatives of the American people here in Congress, we draw ourselves together, to have our debate, have our discussion, but in the end, to do what we must do to create a Department of Homeland Security that will be a strong line of defense against al-Qaida and anyone else out there intending to strike at the American people here at home.

One thing I do know, in the midst of all the debate, is we are ready to proceed. We have had a good opening day. Many more days of debate will come. But on the specific motion before us now, the motion to proceed, I am sure we are ready to vote.

I yield whatever remaining time I have and I ask for the yeas and nays on the motion to proceed.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is on agreeing to the motion to proceed. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), and the Senator from Delaware (Mr. BIDEN), are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mr. GRAMM), the Senator from Arkansas (Mr. MURKOWSKI), and the Senator from Pennsylvania (Mr. SANTORUM), are necessarily absent.

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

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—94

Allard	Cantwell	DeWine
Allen	Carnahan	Dodd
Baucus	Carper	Domenici
Bayh	Chafee	Dorgan
Bennett	Cleland	Durbin
Bingaman	Clinton	Edwards
Bond	Cochran	Ensign
Boxer	Collins	Enzi
Breaux	Conrad	Feingold
Brownback	Corzine	Feinstein
Bunning	Craig	Fitzgerald
Burns	Crapo	Frist
Byrd	Daschle	Graham
Campbell	Dayton	Grassley

Gregg	Lieberman	Sessions
Hagel	Lincoln	Shelby
Harkin	Lott	Smith (NH)
Hatch	Lugar	Smith (OR)
Hollings	McCain	Snowe
Hutchinson	McConnell	Specter
Hutchison	Mikulski	Stabenow
Inhofe	Miller	Stevens
Inouye	Murray	Thomas
Jeffords	Nelson (FL)	Thompson
Johnson	Nelson (NE)	Thurmond
Kennedy	Nickles	Torricelli
Kerry	Reed	Voinovich
Kohl	Reid	Warner
Kyl	Roberts	Wellstone
Landrieu	Rockefeller	Wyden
Leahy	Sarbanes	
Levin	Schumer	

NOT VOTING—6

Akaka	Gramm	Murkowski
Biden	Helms	Santorum

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

The PRESIDING OFFICER (Mrs. CANTWELL). The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

THE NOMINATION OF JUSTICE PRISCILLA OWEN OF TEXAS TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Mr. HATCH. Madam President, I would like to make some brief remarks about the nomination of Justice Priscilla Owen of Texas who has been scheduled for a vote in the Judiciary Committee as early as this Thursday. I cannot say strongly enough how important this vote is for the future of the Judiciary and this Senate.

With the attempt by some to introduce ideology and base politics into the confirmations process, today a sword of Damocles hangs over the future of nominations and our constitutional role and no vote will hint the future more than this upcoming vote on Justice Owen.

Justice Owen has been attacked with orchestrated deceptions, distortions and demagoguery, yet she has the American Bar Association's unanimous rating of well qualified.''

In preparing for Justice Owen's vote, I again commend to my colleagues the words of Senator BIDEN when he said some years ago that:

[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third co-equal branch of the Government.

Allow me to make just some brief remarks on the allegations made against Justice Owen which she clarified both in the hearing and in answers to written questions since then.

First, and most outrageously, it was said that she delayed in issuing an opinion in a car accident case involving a boy who subsequently died and that he died while waiting for her decision. And that she raised an issue, court venue, not previously raised by the lawyers.

The truth is that Justice Owen wrote an opinion for the majority in that case just 5 days after the majority reached a decision. The boy died 3 years later. And venue is automatically at issue when the petition is for a new trial and it was both briefed and argued by the lawyers, as was the case. That's the truth.

There is no use in holding hearings and asking written questions if we ignore the answers.

Second, she has been accused of being a '' judicial activist'' who pursues an outcome-based result.

The truth is that she is a judicious judge who never digresses from the rules of precedent and legal construction. She always grounds her decision in binding authority or judicial rules of decision. The charge that she is a judicial activist is a cynical trick of words from Washington lobbyists who have made their careers defending court decisions of real judicial activists who never let the words of the Constitution stand between them and their social engineering.

Another falsehood is that she is anti-abortion and is out to defeat abortion rights.

The truth is that Owen has never stated her personal views and has ruled in one case for Planned Parenthood and against Operation Rescue pro-life protestors. In the parental involvement cases, Owen repeatedly applied Roe v Wade and the Supreme Court cases and used them to interpret the legislature's choice of words in the statute.

It is said that in her parental notice cases, Owen sought to limit abortion rights.

The truth is that no abortion right is affected by giving mere notice to parents. And over 600 bypasses of notice have been granted by the courts under the standards Owen and her court established. The Texas Supreme Court merely debated the guidelines for lower courts to apply on a brand new law. The Court sought to effect the legislature's intent: to protect parental involvement rights, the right of parents to guide their children and protect them from harm was at stake, not abortion.

Justice Owen has been called an ideologue who is out of the mainstream.

The truth is that Owen was twice elected in Texas, the last time with 83 percent of the vote. She is a quiet, modest person, who leads her Church choir, and had to be convinced to leave a lucrative law practice to become a judge. She was unanimously rated well-qualified, the highest rating of the ABA, despite the ABA's pro-abortion stance.

It was noted that Justice Owen dissents too often and rules in favor of corporations and big money.

The truth is that she has dissented fewer than 10 percent of the time, that's half the average for any current U.S. Supreme Court justice. She is an umpire who calls the balls and the strikes as they are. It is silly to suggest that she is pro-bat or pro-ball, pro-batter or pro-pitcher.

Let's speak truth to power.

The main reason Justice Owen is being opposed, is not that personal views are being falsely ascribed to her, they are, but rather because she is a woman in public life who is believed to have personal views that some maintain are unacceptable for a woman in public life to have.

Such penalization is a matter of the greatest concern to me because it represents a new glass ceiling for women jurists just as they approach the tables of our high courts after long-struggling careers. Such treatment will have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation and their perspectives as women.

On abortion, the truth is that, rather than being an activist foe of Roe, Justice Owen repeatedly cites and follows Roe and its progeny as authority.

Moreover, her opponents portray her as a pro-life activist, when all she has ever done is rule on a parental involvement law, popular with over 80 percent of the American people. The bottom line is that they are blinded to anyone who will not abide by abortion on demand even for little girls, without parents ever knowing.

I hope my colleagues will treat Justice Owen fairly when the vote comes. As they say back home in Utah, I hope they will choose the right.

But I warn them, the American people will hear of the result, and I warn them also, a sword of Damocles will hang over the Senate and the future of the Judiciary Committee when that vote comes.

THE HONORABLE JESSE BROWN

Mr. CONRAD. Mr. President, I was deeply saddened to learn of the untimely death of Jesse Brown on August 15, 2002. I was aware of Jesse's struggle with Lou Gehrig's disease, and know that friends, veterans and government officials across the Nation had Jesse and his family in their thoughts and prayers.

Jesse was an individual for whom I had the highest regard. He was truly a

distinguished American who not only made considerable sacrifices for his country as a Marine in Vietnam, but continued to serve our country, especially the veterans of our Nation through his service as Executive Director of the Disabled American Veterans and later as Secretary of Veterans Affairs for 5 years in the cabinet of President Clinton.

It was during his tenure as VA Secretary that I worked more closely with Jesse and had the opportunity to learn of his commitment to our nation's veterans particularly to improve the medical care services to veterans. During a visit to the community of Grafton, ND for the dedication of an outpatient clinic, I had the opportunity to see first hand Jesse's concern and compassion for our veterans and their families. I was particularly impressed with his commitment to make certain that our veterans living in the rural and more remote areas of our country had the resources and access to the best VA medical care possible.

Jesse Brown represents the very best of America, he was a U.S. Marine with a distinguished service record in Vietnam, a disabled veteran, a devoted family member, a distinguished public servant, and an individual that represented the very best qualities and character in America. He is a role model for the coming generations and for us all. I hope our younger Americans will have an opportunity to know Jesse over time, to learn of his sacrifices and accomplishments on behalf of all Americans. Jesse deserves our highest respect and admiration.

My prayers and thoughts are with the Brown family members at this time.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam 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 Aug. 3, 1997 in Fort Worth, TX. Two gay men were physically assaulted after leaving a gay bar. The assailants, two men, were heard to yell anti-gay epithets during the attack.

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.

TRIBUTE TO ANGELA MARSHALL-HOFMANN

Mr. BAUCUS. Madam President, I rise today to thank Angela Marshall-Hofmann, who has worked on my staff for more than a decade.

I first met Angela in 1990. She was a reporter for the school newspaper at Eastern Montana College during her freshman year. Angela met me at the Billings airport to do an interview, and after the interview was over, she indicated she would like to be an intern in my Billings office.

I told her to come in—and she did such a great job that when a part-time position opened up, we hired her. She continued to work in the Billings office until she graduated from college.

During her time in the Billings office, Angela began to develop an interest in trade issues. She worked on setting up a state visit by several Ambassadors, and helped draft an export manual for Montana's small businesses.

During her senior year of college, she was encouraged to apply for the Rotary Club's International Scholarship. There is always a talented pool of students in Montana that applies for that prestigious scholarship—and Angela won it. She used it to study in France for a year, and continued to focus on international trade.

When she came back from France she went to law school in Missoula and began work in our Missoula office. During her time there she got involved with the Mansfield Center and helped to plan their international conferences, including one in China.

In 1997, Angela finally came east to work in our Washington, DC office, with a portfolio that included both agriculture and trade issues. During that time, she organized and traveled on trade missions to Asia and to South America.

Angela has always been one of the best multitaskers I know. When she worked in the Missoula office, she was going to law school and teaching dance classes—and doing great at all three.

These days, I think she has taken multitasking to a new level. With twin babies Marshall and Stephen at home and all of her responsibilities at work, she still manages to thrive.

And not only does Angela thrive, she does so with a positive attitude that makes her one of the most pleasant people to work with. I doubt there is anyone who has a bad thing to say about her. And after all her years on Capitol Hill—that is really saying something.

I was perhaps most proud of Angela, however, when she was asked this year to be the commencement speaker at Montana State University in Billings—formerly Eastern. She spoke as one of MSU's most distinguished alumni. I believe she inspired the graduating students to achieve and accomplish many great things—as Angela has.

Angela has truly done it all—from intern, part-time staffer, and receptionist, to legislative assistant, and now international trade counsel to the Senate Finance Committee. She has worked on issues that are vital to Montana, including softwood lumber an agriculture. She has helped pass historic legislation, including Permanent Normal Trade Relations for China and this year's Trade Act.

Angela—thank you for your years of hard work, for your dedication to the State of Montana, and for the service to your country. You will truly be missed.

Mr. President, I yield the floor.

ADDITIONAL STATEMENTS

IN RECOGNITION OF THE CENTENNIAL OF BIG BASIN REDWOODS STATE PARK

• Mrs. BOXER. Mr. President, I take this opportunity to recognize the 100th anniversary of the creation of California's oldest State park, Big Basin Redwoods State Park, located 25 miles northwest of Santa Cruz. Big Basin holds the distinction of being home to the largest continuous stand of Ancient Coast Redwoods south of San Francisco.

Big Basin Redwoods State Park was the first of California's 269 State parks to be set aside by the State legislature in September, 1902. Its creation was the result of a turn of the century community organizing campaign. San Jose photographer Andrew P. Hill gathered a group of writers, educators and women's club members for an exploratory expedition to the Santa Cruz Mountains, the area we know today as Big Basin. They formed the Sempervirens Club and began lobbying for preservation of the area as a public park. Their intention was to save these trees for posterity.

Today we celebrate the foresight and dedication of Andrew P. Hill and his friends. Big Basin Redwoods State Park is seen as the birthplace of the movement to save California's coastal redwoods and the birthplace of the entire State park system.

This system contains magnificent diversity and beauty ranging from the majestic forests of Northern California to the sun-baked deserts of Southern California and from the vibrant blue surf of the Pacific shoreline to the glorious peaks of the Sierra Nevada Mountain Range. It includes cultural and historical sites of national importance, wildlife habitats and natural preserves that are critical to the ecological health of thousands of plants and animals and a vast array of recreational opportunities for all citizens.

Big Basin Redwoods State Park incorporates 18,000 acres of old growth and recovering redwood forest, mixed with conifer, oaks, chaparral and riparian habitats. The park encompasses 80 miles of trails that include numerous waterfalls, lush canyons and chaparral-covered slopes. Other features of the park are family and group camping facilities, tent cabins, backpacking

camps, hiking, mountain biking and equestrian trails.

On the 100th anniversary of the founding of Big Basin Redwoods State Park by the California legislature, I wish to recognize it as an enduring and unique place of historical and environmental importance. Today we celebrate the spirit and determination of a group of people that resulted in the preservation of a beautiful primeval forest that we enjoy today.●

TRIBUTE TO SAMUEL ''SKIP'' KEESAL, JR.

● Mrs. BOXER. Mr. President, I pay tribute to a great Californian, Samuel ''Skip'' Keesal, Jr. Skip will be honored by Leadership Long Beach with its prestigious Excellence in Leadership Award on October 3, 2002.

''Excellence in Leadership'' aptly describes Skip Keesal and his long and distinguished career. Since founding the law firm of Keesal, Young and Logan in 1970, he has tried more than 250 cases, has been named a ''Best Lawyer in America'' for both his civil and maritime work, and was invited to join the distinguished International Academy of Trial Lawyers. The awards and acknowledgments he has won are too numerous to fully review and place him among the most honored lawyers in America. Indeed, Skip's career is worthy of an award for ''Excellence in Leadership.''

Skip Keesal could easily win a second ''Excellence in Leadership'' award for his exemplary community work. He serves on the boards of directors for many community organizations that serve children, provide community healthcare and educate young people. His work has helped the City of Long Beach prosper and its residents to live better, healthier lives.

Skip and his wife, Beth, have three adult children. I know all will join Skip in celebrating this award. I congratulate Skip Keesal and encourage him to keep up his very good work.●

INLAND AGENCY'S 33D ANNIVERSARY

● Mrs. BOXER. Mr. President, on October 12, 2002, the Inland Agency will celebrate 33 years of outstanding service to Riverside, San Bernardino, Inyo and Mono Counties. I would like to take a moment to acquaint my colleagues with this organization's exceptional record of service to the community.

Since 1969, Inland Agency has provided a wealth of programs and services for the community's diverse populations. It serves more than 132,000 individuals through its health, youth violence prevention and community strengthening programs.

In the area of health care, the agency has a caregivers' program, a health insurance counseling program geared toward seniors, and a program called the Desert Sierra Breast Cancer Partnership that has provided education and free breast cancer screenings to thousands of people.

In efforts to reduce youth violence and make sure children are led in the right direction, Inland Agency provides education, violence prevention training for children and their parents, and administers after-school programs so that students have a safe, nurturing place to go after the school bell rings. I am proud to note that the Community Peace Program, through its education to thousands of children this year, has helped reduce crime in the community. In addition, the agency takes a step further with its Project YES program, which strengthens children's academic and leadership abilities so they can be well prepared for a bright future ahead.

Not only does the Inland Agency reach out to individuals, but it also seeks to make a difference in the communities it serves. Through its Community Tool Box program in Adelanto, the agency gives community members the tools they need to strengthen and improve their neighborhoods and make them better places to live.

It is clear that Inland Agency exemplifies the best in American community spirit in all it does. I extend my very best wishes to each staff member and volunteer for improving the quality of life for thousands of people, and I wish them all many more years of continued success.●

IN MEMORIAM: DANIEL LEE

● Mrs. BOXER. Mr. President, I would like to take this opportunity to share with the Senate the memory of one of my constituents, Daniel Lee, who lost his life on September 11, 2001. Mr. Lee was 34 years old when the plane he 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.

Daniel Lee grew up in Palm Desert, CA. He was a carpenter and a drummer in a local southern California band. He met his wife, Kellie, in 1991 at a rock concert in which he was playing the drums. They were married October 7, 1995 and their first child, Amanda Beth, was born December 11, 1998.

Mr. Lee was a dedicated and successful set carpenter in the music industry, known to work 20 hour days when necessary. He worked with many talented musicians including Neil Diamond, Barbra Streisand, N'Sync, Aerosmith and Yanni. He was touring with the Backstreet Boys when, on September 11, 2001, he left to fly home to be with his wife as she was a about to give birth to their second child. Allison Danielle Lee was born September 13, 2001.

Kellie Lee recalls Dan's bright, relaxed and charming smile. ''He was caring, loving, funny and romantic. He loved being a dad and was so excited about having another child on the way,'' she says. One of his special joys was getting friends together for barbeques and pool parties,'' Kellie remembers.

Dan Lee is survived by his wife, Kellie Lee, his daughters, Amanda and Allison, mother and stepfather Elaine and John Sussino, brothers Jack Fleishman and Stuart Lee and sister, Randi Kaye.

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 51 Californians who perished on that awful morning. I want to assure the family of Daniel Lee, and the families of all the victims, that their fathers and mothers, sons and daughters, aunts, uncles, brothers and sisters will not be forgotten.●

SOUTH DAKOTA DEVELOPMENTAL CENTER CELEBRATES 100 YEARS OF SERVICE

● Mr. JOHNSON. Madam President, it is with great honor that I rise today to congratulate the South Dakota Developmental Center, SDDC, for its 100 years of service.

The SDDC was established in 1899 by the South Dakota State Legislature as the Northern Hospital for the Insane. The Center accepted its first admissions in 1902 to meet the needs of individuals with developmental disabilities for the State of South Dakota. One Hundred years later, the Center continues to serve South Dakota and the needs of its citizens.

Over the last century, the South Dakota Developmental Center in Redfield, SD has provided quality services to individuals with developmental disabilities who do not have the option of receiving care from a community-based center. To meet the needs of its patients, services are provided by specialists from many areas of health care, including Audiology, Optometry, Chemical Dependency Counseling, Dentistry, Nutrition, Teaching, Physical Therapy, Pharmacy, Nursing, Psychiatry, Speech Pathology, Vocational Instruction, Mental Health Therapy, and Occupational Therapy. These staff members enable the SDDC to meet the needs of its diverse population, and help them reach their ultimate goal, a higher level of independence.

This year also marks 100 years of partnership between the local community and the SDDC. Currently, the SDDC employs more than 400 staff, making them a major employer in the Redfield area. The impact of SDDC on the local economy cannot be overstated. The SDDC not only provides quality jobs to more than 400 individuals, but indirectly helps sustain numerous community businesses, organizations, and public services.

I am pleased to announce that the South Dakota Development Center is planning a centennial celebration on September 20, 2002. The centennial celebration includes a rededication of several buildings on campus, an award ceremony, a luncheon, special afternoon activities, and an evening social at the local VFW for returning former employees, dignitaries, special guests and friends.

I am proud to have this opportunity to honor the South Dakota Development Center for its 100 years of outstanding service. It is an honor for me to share with my colleagues the exemplary leadership and strong commitment to individuals with developmental disabilities that the South Dakota Development Center has provided. I strongly commend their years of hard work and dedication, and I am very pleased that their substantial efforts are being publicly honored and celebrated.●

TRIBUTE TO NORMAN TATE: DELAWARE'S FIREMAN OF THE YEAR

● Mr. BIDEN. Madam President, over the past year, our Nation has endured heartbreak and celebrated heroes, especially the members of the fire service who, in a very profound sense, became the face of America on that fateful day last September.

In my State of Delaware, we celebrate a very special hero of our fire service, Norman Tate, who has been chosen as the 2002 Delaware Volunteer Fireman's Association Fireman of the Year.

The truth is, Norm Tate has earned this award—and could have received it deservedly—in any number of years. He has been a firefighter with the Seaford Volunteer Fire Department since 1959, and now holds Life Member status. He has served in, literally, every administrative office of his department, and on the ambulance squad; he has twice been named Seaford's Fireman of the Year—the only member ever, in a century-long history, to receive the award more than once, and again, he could have received it, and deserved it, just about any year.

Norm has also been the Fireman of the Year for Sussex County and for the Delmarva Volunteer Fireman's Association, and was instrumental in setting up the Delaware Volunteer Fireman's Association, DVFA, State Conference. He did the hard organizational and persuasive work of committee chairman, and has been honored with the title of President Emeritus of DVFA.

Beyond the fire service, Norm Tate has been a leader in the Seaford Lions Club, and received the Lion of the Year Award. He also received the ''Voice of the Blue Jays'' award for outstanding service to the Seaford School District, and the Distinguished Service Award from the City of Seaford.

In short, Norman Tate defines citizen-leadership. He is the extraordinary ordinary American who becomes a hero, not by ambition but in response to the needs of his community and his country. He has a deep sense of responsibility, as well as pride, arising from his citizenship; he looks for opportunities to help; he undertakes service as a privilege.

Norm Tate is being honored as Delaware's Volunteer Fireman of the Year, as his beloved Seaford Volunteer Fire Department celebrates 100 years of service to the community. There could not be—at Seaford or in any fire company a more appropriate honoree in such a meaningful anniversary year.

Norm Tate is, quite simply, the best, and as the fellow citizens he has served so well, we in Delaware are proud to honor him; as his friend, I am privileged to know him, and blessed by the influence of his generous and gracious spirit.●

MOREHOUSE SCHOOL OF MEDICINE, ATLANTA, GEORGIA

● Mr. CLELAND. Madam President, 27 years ago the National Medical Association and other prominent organizations endorsed the development of the Medical School at Morehouse College in Atlanta, GA. This came in light of studies that revealed, first, a severe shortage of African-American and other minority physicians in the United States, particularly in Georgia, and, second, that African-Americans suffered disproportionately from major diseases. Since its inception, Morehouse School of Medicine has worked to help solve our Nation's healthcare crisis by graduating top-quality physicians who dedicate themselves to serving the more than 32 million people in this country who live in medically neglected communities. Seventy percent of Morehouse School of Medicine graduates practice in underserved communities.

The entering M.D. class has grown from 24 students in 1978 to its current 44. Each year, more than 20,000 Georgians who are disadvantaged are served by approximately 30 community health promotion projects sponsored by Morehouse School of Medicine. These projects include prevention initiatives associated with substance abuse, teen pregnancy, geriatric services, cancer, lead poisoning, and violence prevention. In addition, Morehouse School of Medicine faculty provides about 75,000 patient encounters per year in community clinics throughout metropolitan Atlanta. The student body of Morehouse School of Medicine continues to excel. For the past few years, 100 percent of the school's family medicine residents have passed their board exams in their first sitting.

These accomplishments grow out of strong leadership, beginning with the vision of Dr. Hugh M. Gloster of Morehouse College and Morehouse School of Medicine's founding dean and first president, Dr. Louis W. Sullivan, and continuing with Dr. James R. Gavin, the current president. Since its inception in 1975, Morehouse School of Medicine has established a four-year medical education program, a master of public health program, a Ph.D. program in the biomedical sciences, seven residency programs, and several centers of excellence. These centers include the Neuroscience Institute, the Cardiovascular Research Institute, and the NASA/Space Medicine and Life Science Research Center, the first of its kind at a minority medical institution.

Today we celebrate the new home of one of those centers of excellence, the National Center for Primary Care. This state-of-the-art facility will house an exceptional team of administrators, educators, and researchers devoted to eliminating health disparities in this country.

Georgia should, indeed, be grateful for this new jewel in our crown. Under the guidance of former Surgeon General David Satcher, Director of the National Center for Primary Care, this healthcare think tank is poised to educate and illuminate for decades to come.●

ON THE DEDICATION OF THE YSMAEL R. VILLEGAS MIDDLE SCHOOL, RIVERSIDE, CALIFORNIA

● Mrs. BOXER. Madam President, on September 6, the new Ysmael R. Villegas Middle School will be dedicated in Riverside, CA. This day will hold a particularly special meaning for the people of Riverside, as this new school is named for one of the community's most distinguished military heroes, Staff Sgt. Ysmael R. Villegas, an Hispanic-American killed in the line of duty during World War II. He died only one day before his 21st birthday and received the Congressional Medal of Honor for his bravery.

Sergeant Villegas, a resident of Casa Blanca in the Riverside community, received the prestigious Congressional Medal of Honor for his valiant bravery while defending our country in the Philippines. His citation, in part, reads:

> He moved boldly from man to man, in the face of bursting grenades and demolition charges, through heavy machinegun and rifle fire, to bolster the spirit of his comrades. As he neared his goal, he was hit and killed by enemy fire. Through his heroism and indomitable fighting spirit, Staff Sergeant Villegas, at the cost of his life, inspired his men to a determined attack in which they swept the enemy from the field.

It is clear from these words that Sergeant Villegas was truly a great American war hero. The people of Riverside have every reason to memorialize him and I am pleased that the Alvord Unified School District will give him this lasting legacy.

As the Alvord Unified School District and the City of Riverside celebrate the dedication of the Ysmael R. Villegas Middle School, I extend my best wishes

to all those who made this important day possible. As students enter the classrooms of this institution, they can hold their heads high knowing that their school bears the name of such a wonderful model of courage, dignity and integrity.●

CONGRATULATING THE STATE OF OHIO ATTORNEY GENERAL'S OFFICE

● Mr. VOINOVICH. Madam President, I rise today on behalf of the people of the State of Ohio to congratulate Ohio Attorney General Betty Montgomery and her staff for being selected to receive the 2002 American Bar Association, ABA, Pro Bono Publico Award.

In May 2000, Betty Montgomery unveiled an office-wide Pro Bono Initiative to provide legal assistance for low-income seniors and hospice patients across Ohio. Through this program, participating staff attorneys offer their time and talents to provide legal assistance to those who can't afford it. Once training is completed, attorneys are allowed to provide their services at no charge for up to 40 hours a year. Services provided by assistant attorneys general include wills, general powers of attorney, durable powers of attorney for health care, and other ''end-of-life'' legal issues.

Since the program's inception, 125 assistant attorneys general, 20 paralegals, and 15 secretaries have answered the call to help underserved Ohioans handle their legal matters. To date, the office has served 625 clients by providing them with 1,235 healthcare powers of attorney, living wills, powers of attorney, and wills.

This year, the Attorney General's office is one of five recipients of the ABA Pro Bono Publico Awards. The Pro Bono Publico Awards were established by the ABA in 1984 and are presented annually by the ABA Standing Committee on Pro Bono and Public Service to recognize lawyers, law firms and corporate law departments for extraordinarily noteworthy contributions in extending legal services to the poor and disadvantaged.

This is not the first time that the Attorney General's office has been honored for these services. In 2001, the Columbia Bar Foundation and Association recognized the program with its award for Outstanding Pro Bono Service by a Governmental Agency. In addition, the Ohio Legal assistance Foundation and the Ohio Bar Association presented the Attorney General's office with the 2001 Presidential Award for Pro Bono Service.

I am proud to have worked with my friend, Betty Montgomery, when I was Governor of Ohio. Her unwavering commitment to serving the people of Ohio through pro bono services is vital towards maintaining a justice system that is meaningful to all segments of society. This program serves as a testament to our founding fathers' belief in a system of equal justice for all.

I believe that every lawyer has an ethical and professional obligation to provide pro bono services. It is my hope that this sets a challenge for lawyers statewide and sends the message that participating in pro bono programs is an ideal that is embraced by leaders in the legal community. Betty Montgomery has certainly led the way in this endeavor. I am proud of her accomplishment and I congratulate Attorney General Montgomery and her staff on their dedication to providing pro bono services to all of Ohio's citizens.●

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 and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

Under the authority of the Senate of January 3, 2001, the Secretary of the Senate, on August 2, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 3009. An act to extend the Andean Trade Preference Act, to grant additional trade benefits under that act, and for other purposes.

Under the authority of the Senate of January 3, 2001, the enrolled bills were signed by the President pro tempore (Mr. BYRD) on August 2, 2002.

ENROLLED BILLS SIGNED

Under the authority of the Senate of January 3, 2001, the Secretary of the Senate, on August 7, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 223. An act 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.

H.R. 309. An act to provide for the determination of withholding tax rates under the Guam income tax.

H.R. 601. An act to redesignate certain lands within Craters of the Moon National Monument, and for other purposes.

H.R. 1384. An act 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.

H.R. 1456. An act to expand the boundary of the Booker T. Washington National Monument, and for other purposes.

H.R. 1576. An act 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.

H.R. 2068. An act 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.''

H.R. 2234. An act to revise the boundary of the Tumacacori National Historical Park in the State of Arizona.

H.R. 2440. An act to rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts,'' and for other purposes.

H.R. 2441. An act to amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes.

H.R. 2643. An act to authorize the acquisition of additional lands for inclusion in the Fort Clatsop National Memorial in the State of Oregon, and for other purposes.

H.R. 3343. An act to amend title X of the Energy Policy Act of 1992, and for other purposes.

H.R. 3380. An act to authorize the Secretary of the Interior to issue right-of-way permits for natural gap pipelines within the boundary of Great Smoky Mountains National Park.

Under the authority of the Senate of January 3, 2001, the enrolled bills were signed by the President pro tempore (Mr. BYRD) on August 8, 2002.

MEASURE REFERRED

The following measure, having been reported from the Committee on Indian Affairs, was referred to the Committee on Banking, Housing, and Urban Affairs, pursuant to the order of May 27, 1988, for a period of not to exceed 60 days:

S. 1210. A bill to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.

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–8413. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, a report concerning U.S. General Accounting Office (GAO) employees who were assigned to congressional committees as of July 22, 2002; to the Committee on Governmental Affairs.

EC–8414. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, a draft of proposed legislation entitled ''Fort Sumter and Fort Moultrie National Historical Park Act of 2002''; to the Committee on Energy and Natural Resources.

EC–8415. A communication from the General Counsel, Department of the Treasury,

transmitting, a draft of proposed legislation to amend the Customs user fee statute, and for other purposes; to the Committee on Finance.

EC–8416. A communication from the Acting Chief of Staff, National Indian Gaming Commission, transmitting, a draft of proposed legislation to amend the Indian Gaming Regulatory Act of 1988 to revise the fee cap on National Indian Gaming Commission funding and to make such other technical amendments as are required; to the Committee on Indian Affairs.

EC–8417. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Certification of Size and Weight Enforcement'' (RIN2125–AC60) received on July 30, 2002; to the Committee on Environment and Public Works.

EC–8418. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area'' (FRL7252–8) received on July 31, 2002; to the Committee on Environment and Public Works.

EC–8419. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans: North Carolina: Permitting, Rules and Other Miscellaneous Revisions'' (FRL7254–2) received on July 31, 2002; to the Committee on Environment and Public Works.

EC–8420. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Completeness Status of Oxides of Nitrogen Regulations Submission of a Complete Plan by the State of Ohio'' (FRL7255–3) received on July 31, 2002; to the Committee on Environment and Public Works.

EC–8421. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Michigan: Final Authorization of State Hazardous Waste Management Program Revision'' (FRL7252–4) received on July 31, 2002; to the Committee on Environment and Public Works.

EC–8422. A communication from the General Counsel of the Department of Commerce, transmitting, a draft of proposed legislation entitled ''Hague Agreement Implementation Act''; to the Committee on the Judiciary.

EC–8423. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, a draft of proposed legislation entitled ''Anti-Drug Smuggling Concealment Act''; to the Committee on the Judiciary.

EC–8424. A communication from the Director, National Science Foundation, transmitting, a draft of proposed legislation entitled ''National Science Foundation Authorization Act for Fiscal Year 2003 and 2004''; to the Committee on Health, Education, Labor, and Pensions.

EC–8425. A communication from the Secretary of Labor, transmitting, a draft of proposed legislation entitled ''Federal Employees''; to the Committee on Health, Education, Labor, and Pensions.

EC–8426. A communication from the General Counsel, Department of the Treasury, transmitting, a draft of proposed legislation to authorize the United States participation in and appropriations for the United States contribution to the thirteenth replenishment of the resources of the International Development Association; to the Committee on Foreign Relations.

EC–8427. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, a draft of proposed legislation to authorize the President to agree to amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; to the Committee on Foreign Relations.

EC–8428. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''Federal Railroad Safety Improvement Act''; to the Committee on Commerce, Science, and Transportation.

EC–8429. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Hackensack River, NJ'' ((RIN2115–AE47)(2002–0073)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8430. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Port Valdez and Valdez Narrows, Valdez, Alaska (COTP Prince Williams Sound 02–011)'' ((RIN2115–AA97)(2002–0171)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8431. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine'' ((RIN2115–AA97)(2002–0169)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8432. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Captain of the Port of Milwaukee None, Lake Michigan'' ((RIN2115–AA97)(2002–0170)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8433. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; North Pacific Ocean, Gulf of Farallones, Offshore of San Francisco, CA'' ((RIN2115–AA97)(2002–0168)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8434. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Flagler Memorial, Atlantic Intracoastal Waterway, Palm Beach, Palm Beach County, FL'' ((RIN2115–AE47)(2002–0074)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8435. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Fireworks Display, Columbia River, Astoria, Oregon'' ((RIN2115–AA97)(2002–0165)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8436. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; Prospect Bay, Kent Island Narrows'' ((RIN2115–AE46)(2002–0027)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8437. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Areas; Lower Mississippi River Mile 529.8 to 532.3, Greenville, Mississippi'' ((RIN2115–AE84)(2002–0011)) received on July 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8438. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (33); Amendment No. 3014'' ((RIN2120–AA65)(2002–0041)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8439. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia'' (RIN2120–AH41) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8440. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc. Tay Model 650–15 and 651–54 Turbofan Engines; Correction'' ((RIN2120–AA64)(2002–0321)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8441. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Air Tractor Inc. Models AT–300, 3001, 302, 400, and 400A'' ((RIN2120–AA64)(2002–0324)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8442. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Honeywell International Inc., TPE331–11U, –12B, –12UA, –12UAR, and –12UHR Series Turboprop Engines'' ((RIN2120–AA64)(2002–0322)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8443. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200 Series Airplanes'' ((RIN2120–AA64)(2002–0323)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8444. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directive: Boeing Model 737–600, 700, 700C and 800 Series Airplanes'' ((RIN2120–AA64)(2002–0319)) received

on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8445. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Rotax GmbH 914 F Series Reciprocating Engines'' ((RIN2120–AA64)(2002–0320)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8446. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL600–2C10 Series Airplanes'' ((RIN2120–AA64)(2002–0318)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8447. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL 215 1A10 and CL 215 6B11 Series Airplanes'' ((RIN2120–AA64)(2002–0327)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8448. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Teledyne Continental C–1215, C–145, O–300, IO–360, and LTSIO–520 A Series Engines'' ((RIN2120–AA64)(2002–0326)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8449. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model SA330F, G, J, and AS332C, L, and L1 Helicopters'' ((RIN2120–AA64)(2002–0325)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8450. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter Deutschland GmbH Model BO–105A, 105 C2, 105 CB4, 105S, 105 CS–2, 105 CBS 2, 105 CBS 4, and 105LS A–1 Helicopters'' ((RIN2120–AA64)(2002–0328)) received on July 23, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8451. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Chester and Westwood, California)'' (MM Docket No. 02–42) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8452. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mason, Texas)'' (MM Docket No. 01–133) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8453. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fremont and Sunnyvale, California)'' (MM Docket No. 01–322) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8454. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Alberta, Virginia; Whitakers, North Carolina; Dinwiddie, Virginia; and Garysburge, North Carolina)'' (MM Docket No. 00–245) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8455. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotment, FM Broadcast Stations (Memphis, Tennessee; Olive Branch and Horn Lake, Mississippi'' (MM Doc. No. 02–31) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8456. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Custer, Michigan)'' (MM Docket No. 01–186) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8457. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Paducah, Texas; Paulden, Arizona)'' (MM Doc. No. 01–156) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8458. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Parker, Arizona)'' (MM Docket No. 01–69) received on July 29, 2002; to the Committee on Commerce, Science, and Transportation.

EC–8459. A communication from the Secretary of the Federal Trade Commission, Bureau of Consumer Protection, transmitting, pursuant to law, the report of a rule entitled ''Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')—Dishwater Ranges'' (RIN3084–AA74) received on July 31, 2002; to the Committee on Commerce, Science, and Transportation.

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–279. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to designating the September 11, 2001, United Airlines Flight 93 crash site in Somerset County, Pennsylvania, as a National Historic Battlefield; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION NO. 455

Whereas, The 40 innocent civilian passengers and crew of United Airlines Flight 93 were viciously attacked by hostile foreign terrorists; and

Whereas, Suicide hijackers used the airliner as an instrument of terror and mass destruction against the people and property of the United States; and

Whereas, Certain passengers and crew, after communicating with loved ones and authorities on the ground, heroically resisted the terrorists in an effort to regain control of United Airlines Flight 93; and

Whereas, The insurrection by these innocents and their ultimate sacrifice preempted further catastrophic destruction and loss of life on September 11, 2001; and

Whereas, Pennsylvania soil was again consecrated that day as our nation entered the war against terrorism; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania petition the Congress of the United States to enact legislation designating the September 11, 2001, United Airlines Flight 93 crash site in Somerest County, Pennsylvania, as a National Historic Battlefield; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each House of Congress, to the members of Congress from Pennsylvania and to Governor Mark S. Schweiker.

POM–280. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to Yucca Mountain, Nevada; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION NO. 454

Whereas, In order to secure a safe and prosperous future for its citizens, the Commonwealth of Pennsylvania must maintain a broad portfolio of energy supply options to hedge against fuel price fluctuations, fuel shortages and import disruptions; and

Whereas, Pennsylvania's nine nuclear power reactors have proven to be reliable sources of electricity to Pennsylvania citizens and businesses, producing 36% of the electricity generated in the Commonwealth of Pennsylvania; and

Whereas, Nuclear power prevents the release of millions of tons of air pollutants and greenhouse gasses, thus being critical for compliance with air quality laws and regulations; and

Whereas, Congress enacted the Nuclear Waste Policy Act of 1982 and directed the Department of Energy to establish a program for the management of the nation's high-level waste, including used nuclear fuel, and for its permanent disposal in a deep geologic repository; and

Whereas, More than $7 billion has been spent on scientific testing and studies of Yucca-Mountain, Nevada, showing that the proposed site is an ideal repository to safely contain the nation's used nuclear fuel, with a capacity sufficient to meet all foreseeable storage needs; and

Whereas, Studies of Yucca Mountain have yielded the scientific information necessary for a decision by the United States Secretary of Energy that there are no technical or scientific issues to prevent Yucca Mountain from serving as a permanent repository and clearly support the recommendation by the Secretary to the President of the United States to proceed on licensing a permanent repository at Yucca Mountain; and

Whereas, Since 1983, consumers of electricity from the Commonwealth of Pennsylvania have committed nearly $1.5 billion to the Federal Nuclear Waste Fund to finance site assessment and nuclear waste management; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge Congress to sustain the President's affirmative decision on Yucca Mountain's suitability as a permanent Federal repository for used nuclear fuel; and be it further

Resolved, That copies of this resolution be transmitted to the President and Vice President of the United States, to be Speaker of the United States House of Representatives, to each member of Congress from Pennsylvania and to the United States Secretary of Energy.

POM–281. A resolution adopted by the East Hampton Town Board, East Hampton, New York Relative to Millstone II nuclear power facility in Connecticut; to the Committee on Environment and Public Works.

POM–282. A resolution adopted by the Town Board of New Castle, New York relative to Indian Point Nuclear Power Station; to the Committee on Environment and Public Works.

POM–283. A resolution adopted by the Town Board of New Castle, New York relative to converting Indian Points II and III from nuclear energy to natural gas or other non-nuclear fuel; to the Committee on Environment and Public Works.

POM–284. A resolution adopted by the Town Board of New Castle, New York relative to Indian Point Power Station; to the Committee on Environment and Public Works.

POM–285. A Senate joint resolution adopted by the General Assembly of the State of Tennessee relative to the Y–12 National Security Complex in Oak Ridge, Tennessee; to the Committee on Armed Services.

Whereas, the Y–12 National Security Complex in Oak Ridge, Tennessee is a highly valuable resource to this state and the nation, performing work of a delicate nature with extreme precision and employing uniquely skilled and dedicated professionals who have committed themselves to important national security and scientific endeavors; and

Whereas, the Y–12 Plant, in conjunction with the Oak Ridge National Laboratory and other federal facilities in Oak Ridge, has developed into an economic development engine, spinning off new businesses and serving as a testing ground for new technologies; and

Whereas, the Work for Others Program has brought many federal contracts to Oak Ridge, allowing Y–12 employees to update and hone their skills while producing materials for the U.S. Department of Defense and the U.S. Navy, among others; and

Whereas, the nation's nuclear defense policy is dependent upon Y–12's ability to safely and securely maintain the stockpile of nuclear materials and to preserve the now fragile capabilities of the plant; and

Whereas, Y–12 employees have skills in the safe management and handling of nuclear materials that are unduplicated anywhere in the world; these skills have been gained over long periods of employment and training and must be passed on to a new generation of highly educated and skilled workers; and

Whereas, while the site managers have been able to restart many operations that had previously been suspended, the continued safe disarmament and storage of weapons being removed from the national nuclear stockpile depend upon Y–12's revitalization; and

Whereas, many of the facilities at the plant were built during the development of the Manhattan Project, and much of the equipment is more expensive to maintain than operate; the employees of the 21st century require advanced machinery; and

Whereas, modernizing facilities and equipment will better equip the plant's employees to meet and adjust to the demands of the 21st century and the U.S. Department of Energy, to attract more and different kinds of private-sector work, and to support and encourage new, private-sector economic development and scientific advancement; and

Whereas, the safety of Y–12's employees and the environmental security of the region depend on Y–12's having facilities that meet the current safety requirements of the federal government; Now, therefore,

Be it resolved by the Senate of the One Hundred Second General Assembly of the State of Tennessee, the House of Representatives Concurring, That this General Assembly hereby urges the United States Congress and the President of the United States to fully fund the facilities modernization of the Y–12 Plant in the Fiscal Year 2003 federal budget; and be it further

Resolved, That enrolled copies of this resolution be transmitted to the Honorable George W. Bush, President of the United States of America; the President and the Secretary of the United States Senate; the Speaker and the Clerk of the United States House of Representatives; and to each member of Tennessee's Congressional Delegation.

POM–286. A joint resolution adopted by the Assembly of the State of California relative to social health maintenance organizations; to the Committee on Finance.

ASSEMBLY JOINT RESOLUTION NO. 27

Whereas, Government spending for nursing homes, home health care, and prescription drugs is rising at a rate of almost 10 percent a year, faster than the overall medical health care inflation rate of 4.3 percent for November 2000; and

Whereas, the growth of long-term care expenditures, estimated at 2.6 percent nationally on an annual basis coupled with the growing number of older Americans, will significantly increase costs to the nation's Medicaid and Medicare programs; and

Whereas, innovative and cost-effective models of care are needed to address the needs of aging Americans; and

Whereas, in the federal Deficit Reduction Act of 1984, Congress mandated the social health maintenance organization (social HMO) demonstration, which has since benefited over 125,000 individuals; and

Whereas, the social HMO demonstration has been reinforced and expanded by Congress in 1987, 1990, 1993, 1997, and 1999; and

Whereas, the social HMO is a community-based appraoch to integrating acute and long-term care for older Americans; and

Whereas, the primary purpose of the social HMO is to finance, provide, and coordinate additional services as an extension of benefits covered by Medicare and Medicaid, thereby helping frail seniors live safely in their own homes and avoid costly skilled nursing home placement; and

Whereas, the social HMO targets individuals at risk for nursing home placement and chronic illnesses; and

Whereas, the social HMO supplements the standard benefits required of Medicare+Choice with essential benefits, including geriatric-specific case management, adult day care, personal care, homemaker services, nutrition support, and medication management; and

Whereas, sixty-eight percent of nursing home costs are financed by Medicaid, avoiding or delaying longer nursing home stays and directly saving federal and state funds, by reducing Medicaid nursing home expenditures; and

Whereas, California has 3.3 million residents aged 65 years and older, and is home to the largest elderly population in the country; and

Whereas, the number of California aged 60 years and older is projected to grow 154 percent over the next 40 years; and

Whereas, the fastest growing population group in California is aged 85 years and older; and

Whereas, only one social HMO exists in California, serving over 48,000 seniors, of which 10,300 are eligible for nursing home placement; and

Whereas, the Senior Care Action Network (SCAN), the only social HMO in California, has been able to maintain these skilled nursing home-certifiable seniors in their own homes by providing home and community-based programs and services; and

Whereas, SCAN members are 53 percent less likely than their counterparts in other health care programs to have a long nursing home stay; and

Whereas, SCAN offers financial savings and security to older adults, their families, and taxpayers by alleviating anxiety about exhausting personal savings for long-term care by providing a benefit package that includes in-home services; and

Whereas, the permanency of the social HMO as a benefit option under the Medicare+Choice program will allow organizations like SCAN to provide comprehensive services to seniors anywhere in the nation; and

Whereas, the social HMO will serve as a national model of cost-effective care that provides older Americans with greater health, independence, and dignity; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby urges the President and Congress of the United States, the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services to do all of the following:

(a) Affirm the intent of the social HMO program to provide services for frail and chronically ill seniors.

(b) Fully support the transition of the social HMO demonstration into a permanent benefit option as part of Medicare+Choice.

(c) Include Medicaid beneficiaries in the social HMO Medicare+Choice option.

(d) Allow the social HMO option to offer comprehensive services in addition to fundamental Medicare benefits.

(e) Approve and support a payment methodology needed for the advanced care for the nation's frail and chronically ill elderly; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the United States Secretary of Health and Human Services, the Administrator of the Centers for Medicare and Medicaid Services, and to each Senator and Representative from California in the Congress of the United States.

POM–287. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to asbestos; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 58

Whereas, asbestos, a mineral processed and used in thousands of construction and consumer products, is a dangerous substance and has caused thousands of people to develop serious and often fatal diseases and cancers; and

Whereas, millions of workers have been exposed to asbestos, and the economic toll resulting from litigation related to exposure to asbestos could run into the hundreds of billions of dollars; and

Whereas, many companies, in order to avoid bankruptcy and to compensate victims with manifest injuries, have attempted to set aside sufficient resources to compensate the victims with manifest injuries from exposure to asbestos; and

Whereas, the new claims brought are resulting in a depletion of the funds available to compensate those victims who have manifested serious injuries and who are in desperate need of compensation; and

Whereas, the United States Supreme Court noted in *Ortiz* v. *Fibreboard Corp.,* 527 U.S.

815, 144 L Ed 2nd 715, 110 S Ct 2295 (1999) and *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 138 L Ed 2d, 117 S Ct 2231 (1997) that federal and state courts have been inundated by an elephantine mass of asbestos cases that defies customary judicial administration and calls for national legislation; and

Whereas, as the United States Supreme Court noted in Amchem, the United States Judicial Conference Ad Hoc Committee on Asbestos Litigation in its report of March, 1991 specifically concluded that real reform to the asbestos-litigation problem required federal legislation creating a national asbestos dispute-resolution scheme and, as recommended by the Ad Hoc Committee, the Judicial Conference of the United States urged Congress to act: Therefore, be it

Resolved, That the Senate of the Legislature of Louisiana does hereby memorialize the United States Congress to enact legislation to ensure that deserving victims of asbestos exposure receive compensation for their injuries; be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–288. A resolution adopted by the Legislature of the State of Louisiana relative to constructing a long range economic development for Louisiana focused on the utility, communications, and transportation; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 62

Whereas, the recently completed 2002 First Extraordinary Session of the legislature focused on various improvements to spur economic development in Louisiana; and

Whereas, the special session successfully integrated the state's economic development blueprint, Vision: 2020, with the recent reorganization of the Department of Economic Development; and

Whereas, despite the many accomplishments of the special session, there remain many areas that should be examined to ensure continued economic development in the state; and

Whereas, there has been demonstrated a need to construct a long range, strategic plan for future economic development of the utility communication, and transportation industry in Louisiana; and

Whereas, it is necessary to blend this long range, strategic plan for future economic development of the utility, communication, and transportation industry into the state's overall economic development plan, Vision: 2020, along with federal initiatives in this area; and

Whereas, in order to accomplish this significant goal, it will be necessary to convene a summit meeting of the governor, the Louisiana congressional delegation, the president of the Senate, the speaker of the House of Representatives, the members of the Public Service Commission, and the secretary of the Department of Economic Development to coordinate a strategic plan for future economic development of the utility, communication, and transportation industry in Louisiana.

Therefore, be it resolved, That the Senate of Legislature of Louisiana hereby urges and requests the governor, the Louisiana congressional delegation, the president of the Senate, the speaker of the House of Representatives, the members of the Public Service Commission, and the secretary of the Department of Economic Development to convene a summit meeting to discuss a long range, strategic plan for future economic development of the utility, communication, and transportation industry in Louisiana.

Be it further resolved, That a copy of this Resolution be transmitted to the governor, the Louisiana congressional delegation, the president of the Senate, the speaker of the House of Representatives, the members of the Public Service Commission, and the secretary of the Department of Economic Department.

POM–289. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to the Delaware River Channel Deepening Project; to the Committee on Environment and Public Works.

RESOLUTION

Whereas, The Delaware River has, since the inception of the Commonwealth of Pennsylvania, been a vital artery of commerce and trade; and

Whereas, It is the longstanding policy of the Commonwealth of Pennsylvania to encourage waterborne commerce and to support the development and competitiveness of the Port of Philadelphia; and

Whereas, It is essential that the Delaware River navigation channel be deepened to 45 feet in order to accommodate larger steamship vessels and future growth; and

Whereas, The United States Government, acting through the Congress of the United States and the Army Corps of Engineers, has authorized a public works project that will deepen the navigation channel of the Delaware River to 45 feet; and

Whereas, The Delaware River Channel Deepening Project is enthusiastically supported by every organization and labor union whose livelihood depends on a healthy and vibrant seaport; and

Whereas, It is essential that this extraordinarily important public works project proceed without interruption; Therefore be it

Resolved, (the House of Representatives concurring), That the General Assembly of the Commonwealth of Pennsylvania reaffirm its support for the Delaware River Channel Deepening Project and urge the Congress and the Army Corps of Engineers to take all necessary steps to assure its successful and prompt completion; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–290. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative natural gas; to the Committee on Finance.

RESOLUTION

Whereas, In 1979 total United States energy consumption increased steadily from the end of World War II, reaching 81 quadrillion Btu's (quads); and

Whereas, After the oil shocks of the 1970s, energy consumption declined to 73 quads by 1983; and

Whereas, Reasonably priced natural gas and other forms of energy played a crucial role in expanding our economy and will be critical for future economic growth; and

Whereas, The Gas Technology Institute (GTI) projects total energy demand growing to 118 quads annually during the next 15 years; and

Whereas, Natural gas currently provides approximately 23% of our nation's energy needs; and

Whereas, Gas use must increase continually to meet an expanding economy; and

Whereas, Increased use of natural gas can decrease our dependence on foreign energy, mitigate greenhouse emissions, improve our economy and provide consumers with a better quality of life; and

Whereas, Nonconventional gas resources currently provide about 26% of gas production in the United States; and

Whereas, Nonconventional resources such as tight gas sands, coalbed methane and Devonian shale, are technologically challenging and require support for economic production; and

Whereas, Although the country holds a large natural gas resource base, natural gas is being limited in its use by Federal and State regulations; and

Whereas, There are large resources of undeveloped nonconventional gas resources that remain too difficult to develop and will only be produced with ongoing incentives; and

Whereas, The current tax credit for producing fuel from a nonconventional source under section 29 of the Internal Revenue Code of 1986 will expire in 2002; and

Whereas, This expiration will disrupt the ongoing progress in developing nonconventional gas resources at a time when the gas consumer, United States economy and our environment need these resources most; and

Whereas, The only short-term solution that reduces costs and avoids switching to less desirable energy resources is to increase the natural gas supply; therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania urge Congress to take all the necessary steps to extend the tax credit under section 29 of the Internal Revenue Code of 1986 to continue to provide for a reliable, fair-priced supply of natural gas to United States gas consumers; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officer of each house of Congress, to each member of Congress from Pennsylvania, to the Finance Committee of the United States Senate and to the Ways and Means Committee of the United States House of Representatives.

POM–291. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to the Fair Credit Reporting Act; to the Committee on Banking, Housing, and Urban Affairs.

RESOLUTION

Whereas, Identity theft is the fastest-growing crime in the United States, expanding at a rate of 50% per year; and

Whereas, Every 79 seconds an identity is stolen; and

Whereas, Approximately one out of every five Americans or a member of the family has been victimized by identity theft; and

Whereas, Every year more than 400,000 Americans are robbed of their identities and suffer losses of more than $2 billion; and

Whereas, More than 1,000 people a day in the United States fall victim to crimes of stolen identity; and

Whereas, Victims spend anywhere from six months to two years recovering from identity theft; and

Whereas, On average, victims spend 175 hours and $808 in out-of-pocket expenses to clear their names; and

Whereas, Experts report that most victims do not realize that a theft has occurred for months or years afterward; and

Whereas, To protect consumer privacy, the Congress of the United States enacted the Fair Credit Reporting Act (FCRA); and

Whereas, The FCRA requires all credit reporting agencies to maintain reasonable procedures designed to assure maximum possible accuracy of the information contained in credit reports; and

Whereas, A private right of action allows injured consumers to recover any actual damages caused by negligent violations and both actual and punitive damages for willful noncompliance; and

Whereas, The Supreme Court ruled unanimously in TRW, Inc. v. Andrews that the two-year deadline to sue companies which collect or spread bad information begins when the credit agency reports erroneous information and not when the victim discovers the fraud; therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize Congress to amend the Fair Credit Reporting Act to permit victims of identity theft to bring suit any time within two years of the victim's discovery of the fraud; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–292. A Senate concurrent resolution adopted by the Legislature of the State of Michigan relative to Federal Forest Lands; to the Committee on Energy and Natural Resources.

SENATE CONCURRENT RESOLUTION NO. 53

Whereas, In recent years, our country has benefited from public policy encouraging the states to assume responsibility for tasks long handled by the federal government. Experts in many fields have come to accept the wisdom of utilizing state expertise and resources to deal with problems that are best addressed locally rather than from Washington, D.C.; and

Whereas, The management of public forest lands is another area that should be turned over to states through a program of block grants, Michigan, with more public forests than any other state in the eastern portion of the country, has compiled an impressive record of success in the management of its resources. The conditions of Michigan's state forest acreage is a model for other parts of the country; and

Whereas, There are several sound reasons why forest management would be more efficiently and productively managed by the state instead of the federal government. State management offers flexibility, rather than a ''one size fits all'' approach; shorter lines of communication; better communication within local regions; and generally lower overall costs. State control over forest operations in Michigan will more accurately reflect our citizens' historic sense of commitment and investment in this vitally important resource; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we memorialize the Congress of the United States to turn over the management of federal lands to the states through a block grant program; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and members of the Michigan congressional delegation.

POM–293. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 241

Whereas, The 9th U.S. Circuit Court of Appeals ruled it is unconstitutional to recite the Pledge of Allegiance in a public school; and

Whereas, The Pledge of Allegiance is not an oath or pledge of allegiance to a person, power, or potentate but to the principles that serve as the foundation of a free republic; and

Whereas, The Pledge of Allegiance is not an oath or pledge to any god, deity, or spirit, but rather it recognizes that those who govern do not receive their authority from a monarch. Instead, a god, deity, or spirit has bestowed on every citizen of the United States of America the inherent worth and dignity embodied in and protected by the Constitution and the Bill of Rights of the United States of America; and

Whereas, The Pledge of Allegiance recognizes that we are one nation of diverse and unique peoples within fifty separate states undivided in our dedication to the principles of freedom, liberty, and justice; and

Whereas, The Pledge of Allegiance reiterates the guarantees of liberty and justice mandated by the Bill of Rights; and

Whereas, The flag of the United States of America is a representation of the rights guaranteed by the Constitution and the Bill of Rights, as well as the free people who willingly sacrificed their lives and their freedoms to protect and preserve those freedoms; and

Whereas, The Pledge of Allegiance teaches students to cherish, preserve, and protect the republic dedicated to the preservation of freedom, liberty, and justice; now, therefore, be it

Resolved by the Senate, That the people of the state of Michigan, acting through the Senate, do hereby call upon the United States Supreme Court to overturn the 9th U.S. Circuit Court of Appeals decision to ban the recital of the Pledge of Allegiance in public schools; and be it further

Resolved, That copies of this resolution be transmitted to the justices of the United States Supreme Court, the President of the United States, and the members of the Congress of the United States.

POM–294. A joint resolution adopted by the Assembly of the State of California relative to pancreatic cancer; to the Committee on Health, Education, Labor, and Pensions.

ASSEMBLY JOINT RESOLUTION NO. 28

Whereas, Approximately 29,000 new cases of pancreatic cancer were diagnosed nationwide in 2001; and

Whereas, An estimated 28,000 people died from pancreatic cancer during 2001, representing more than 5 percent of all cancer deaths in the United States; and

Whereas, The average life expectancy after diagnosis with metastatic disease is just three to six months; and

Whereas, About 85 percent of pancreatic cancer victims die within a year of diagnosis, and less than 5 percent survive as long as five years; and

Whereas, The 99-percent mortality rate for pancreatic cancer is the highest of any cancer; and

Whereas, Pancreatic cancer ranks as the fourth most common cause of cancer death among men and women; and

Whereas, There is currently no physiological marker or screening test that permits early diagnosis of pancreatic cancer; and

Whereas, Pancreatic cancer is among the most aggressive of all cancers, but study of the disease has attracted comparatively little funding; and

Whereas, According to the National Cancer Institute, pancreatic cancer received approximately $20 million in federal research funding, roughly 7 percent of the funding level per fatality of that of breast cancer; and

Whereas, There is a critical need to support research that identifies new methods of detecting and treating pancreatic cancer; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California urges the President and Congress of the United States to expand federally funded research efforts aimed at developing a reliable means of detecting pancreatic cancer in its early stages, when the disease is more effectively treatable; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the directors of the National Institutes of Health and the National Cancer Institute.

POM–295. A resolution adopted by the House of the Legislature of the State of New Hampshire relative to developing a national missile defense system; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 21

Whereas, New Hampshire is located in the New England region of the northeastern United States and is populated by over 1,200,000 persons, and maintains distinguished centers of higher learning, and is the site of advanced information and defense technology, and is noted for outstanding natural endowments of forests, mountains, and lakes, and derives considerable electrical power from nuclear energy; and

Whereas, the people of New Hampshire are conscious of the state's assets and favorable future development for their children and future generations; and

Whereas, New Hampshire responded to the call at Bunker Hill with volunteers in the struggle for American independence and has contributed to national defense through its citizenry ever since; and

Whereas, the people of New Hampshire are aware of the global proliferation of ballistic missiles and weapons of mass destruction and their threat to our nation, our allies, and our armed forces abroad; and

Whereas, the United States does not possess a robust and effective defense against ballistic missiles bearing weapons of mass destruction, launched by anyone who opposes American ideals, interests, and influence throughout the world; and

Whereas, New Hampshire, the United States, and the international community are increasingly imperiled by the global proliferation of ballistic missiles and weapons of mass destruction and cannot defend against a hostile or accidental ballistic missiles and weapons of mass destruction and cannot defend against a hostile or accidental ballistic missile attack; in consequence, New Hampshire asserts its leadership as one of 50; now, therefore, be it

Resolved by the House of Representatives:

That the New Hampshire house of representatives hereby urges the President of the United States to take all actions necessary, within the limits of the considerable technological prowess of this great union, to protect our nation, our allies, and our armed forces abroad from the threat of missile attack; and

That the New Hampshire house of representatives hereby urges the President to allow the United States the freedom to defend itself, it allies, and its armed forces abroad from ballistic missile attack, treaties and other agreements to the contrary notwithstanding; and

That the New Hampshire house of representatives hereby conveys to the President and Congress that effective national missile defense will require a robust and multi-layered architecture consisting of integrated land-based, sea-based, and/or space-based assets designated to deter future threats whenever possible and meet them whenever necessary; and

That copies of this resolution shall be sent by the house clerk to the New Hampshire congressional delegation, the Speaker of the United States House of Representatives, the President of the United States Senate, the Chairman of the Joint Chiefs of Staff, and the President of the United States.

POM–296. A House joint resolution adopted by the General Assembly of the Commonwealth of Virginia relative to the Solid Waste Interstate Transportation Act of 2001; to the Committee on Environment and Public Works.

HOUSE JOINT RESOLUTION NO. 181

Whereas, recent reports issued by the Department of Environmental Quality reveal that Virginia is currently the second largest importer of municipal solid waste from other states, second only to Pennsylvania, and is currently importing approximately four million tons annually of municipal solid waste from other states; and

Whereas, the amount of municipal solid waste being imported into Virginia is expected to increase in coming years due to the closure of the Fresh Kills Landfill in New York and increased volumes from other states; and

Whereas, the importation of significant amounts of municipal solid waste from other states is prematurely exhausting Virginia's limited landfill capacity; and

Whereas, an increase in the number of garbage trucks on its roads and an increase in the number of garbage barges on its rivers resulting from the importation of significant amounts of municipal solid waste from other states has created many short-term environmental problems for Virginia; and

Whereas, the importation of significant amounts of municipal solid waste from other states also may create serious long-term environmental problems for Virginia; and

Whereas, the importation of significant amounts of municipal solid waste from other states is inconsistent with Virginia's efforts to promote the Commonwealth as a national and international destination for tourism and high-tech economic development; and

Whereas, the Commerce Clause of the United States Constitution and the interpretation and application of the Commerce Clause by the United States Supreme Court and other federal courts with respect to interstate solid waste transportation has left Virginia and other states with limited alternatives in regulating, limiting or prohibiting the importation of municipal solid waste; and

Whereas, it is the belief of the General Assembly of Virginia that state and local governments should be given more authority to control the importation of municipal solid waste into their jurisdictions; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring: That the Congress of the United States be urged to enact the Solid Waste Interstate Transportation Act of 2001 (HR 1213) incorporating amendments proposed by the Congresswoman representing Virginia's First Congressional District to give local and state governments, including Virginia, additional specific authority to regulate the importation of municipal solid waste into their jurisdictions; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation in order that they may be apprised of the sense of the General Assembly of Virginia in this matter.

POM–297. A resolution adopted by the House of Delegates of the General Assembly of the Commonwealth of Virginia to Veterans' Day; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 18

Whereas, the National Commission on Federal Election Reform suggested in its report to the President the possibility of moving the observance of Veterans Day to the second Tuesday in November in even-numbered years so that elections could be conducted on a national holiday; and

Whereas, Veterans Day, November 11th, formerly called Armistice Day, is the time when Americans unite to recognize the sacrifices and service of past and present members of the United States military; and

Whereas, the holiday was established as Armistice Day in 1926 to commemorate the November 11, 1918, armistice that ended hostilities in World War I; and

Whereas, in 1954 the name of the holiday was changed to Veterans Day to honor all men and women who have served America in its armed forces; and

Whereas, Veterans Day and the ceremonies nationwide to observe it are important to the millions of Americans who take the time each November 11th to honor their fellow citizens who have served their country; and

Whereas, the American Legion, at its 83rd National Convention in August 2001, expressed, by resolution, its opposition to any change of the date for observing Veterans Day; now, therefore, be it

Resolved by the House of Delegates, That the President and the Congress of the United States be urged to oppose efforts to move the observance of Veterans Day from November 11th; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the House of Delegates of Virginia in this matter.

POM–298. A resolution adopted by the House of Delegates of the General Assembly of the Commonwealth of Virginia relative to Medicare and oral anti-cancer drugs; to the Committee on Finance.

HOUSE RESOLUTION NO. 19

Whereas, cancer is a leading cause of morbidity and mortality in the Commonwealth and throughout the nation; and

Whereas, cancer is disproportionately a disease of the elderly, with more than half of all cancer diagnoses occurring in persons age 65 or older; persons who are often dependent on the federal Medicare program for provision of cancer care; and

Whereas, treatment with anti-cancer drugs is the cornerstone of modern cancer care, and elderly cancer patients must have access to potentially life-extending drug therapy; and

Whereas, the Medicare program's coverage of anti-cancer drugs is limited to injectable drugs or oral drugs that have an injectable version; and

Whereas, the nation's investment in biomedical research has begun to bear fruit with a compelling array of new oral anti-cancer drugs that are less toxic, more effective, and more cost-effective than existing therapies, but, because these drugs do not have an injectable equivalent, they are not covered by Medicare; and

Whereas, the lack of coverage for these important new products leaves many Medicare beneficiaries confronting the choice of either substantial out-of-pocket personal cost or selection of more toxic and less effective treatments that are covered by Medicare; and

Whereas, Medicare's failure to cover oral anti-cancer drugs leaves at risk many beneficaries suffering from blood-related cancers such as leukemia, lymphoma, and myeloma, as well as cancers of the breast, lung, and prostate; and

Whereas, certain members of the United States Congress have recognized the necessity of Medicare coverage for all oral anti-cancer drugs and have introduced legislation in the 107th Congress to achieve that result (H.R. 1624 and S. 913); now, therefore, be it

Resolved by the House of Delegates, That the Congress of the United States be urged to enact legislation requiring Medicare to cover all oral anti-cancer drugs; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Secretary of the Health and Human Services, the Administrator of the Centers for Medicare and Medicaid Services, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the House of Delegates of Virginia in this matter.

POM–299. A resolution adopted by the House of Delegates of the General Assembly of the Commonwealth of Virginia relative to the Transportation Equity Act for the 21st Century; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 21

Whereas, the Transportation Equity Act for the 21st Century (TEA–21), will expire on September 30, 2003; and

Whereas, the six-year federal authorization legislation provides guidelines, budget allocation formulas, and maximum budget limits for transportation spending; and

Whereas, TEA–21 provided for new budget categories to be established for highway and transit spending, effectively establishing a budgetary ''firewall'' between each of these programs and all other domestic discretionary programs to ensure that transportation trust funds can be used only for transportation spending; and

Whereas, authorizations for federal-aid highway and highway safety construction programs funded from the Highway Account of the Highway Trust Fund will be increased or decreased whenever the highway firewall amount is adjusted to reflect changed estimates of Highway Account revenue, that is, the budget authority will be aligned with the revenue; and

Whereas, this Revenue, Aligned Budget Authority has resulted in increased federal transportation funding to Virginia since FY 2000; and

Whereas, during the last reauthorization (TEA–21), Virginia was successful in increasing its return on contributions to the federal transportation trust fund from approximately 79 percent to 90.5 percent; and

Whereas, Virginia's current federal return rate of 90.5 percent is the lowest return level from the federal transportation trust fund in the nation; and

Whereas, Virginia taxpayers continue to subsidize other states' transportation programs through Virginia's low rate of return on contributions to the federal transportation trust fund; and

Whereas, the proposed reauthorization of federal aid for surface transportation programs provides an ideal opportunity to ensure that future methods of apportioning federal transportation funds are equitable and fair; and

Whereas, adequate support for the National Highway System (NHS) is necessary to provide consistent mobility and economic

benefits for all states throughout the nation, and to ensure that Virginia's citizens are able to connect with other citizens throughout the nation; and

Whereas, adequate support for the National Highway System and other transportation systems in Virginia is equally essential to the numerous and sizable U.S. military bases and other facilities that are located within the Commonwealth, for which an adequate and efficient transportation system is critical to effectively and promptly distribute, supply, and deploy military assets to meet and respond to the imperatives of national defense; and

Whereas, a streamlined transportation program is needed to provide flexible funding to allow states and their local partners to respond to specific state and local needs; and

Whereas, Congress directed the U.S. Department of Transportation in the TEA–21 legislation of 1998 to implement significant environmental regulatory streamlining so that transportation projects could receive federal review and approval in an expedited manner; and

Whereas, the federal review and approval process for transportation projects has not been shortened despite the environmental streamlining mandate of TEA–21; now, therefore, be it

Resolved by the House of Delegates. That the Congress of the United States be urged to reauthorize the Transportation Equity Act for the 21st Century, provide for increased equity in the distribution of federal highway funds to the states, and reduce complexity of and time required for compliance with federal environmental regulations related to highway construction. In reauthorizing the federal surface transportation program, the Congress is also urged to provide fair and equitable distribution of highway funds to states and increase the return to the Commonwealth to at least the national average, ensure that firewalls between the Transportation Trust Fund and other federal spending be maintained, continue Revenue Aligned Budget Authority, and meaningfully streamline federal environmental and other regulations to expedite project review and highway construction; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation in order that they may be apprised of the sense of the House of Delegates of Virginia in this matter.

POM–300. A resolution adopted by the House of Delegates of the General Assembly of the Commonwealth of Virginia relative to expanding the use of federal historic preservation tax credits to qualified owner-occupied structures; to the Committee on Finance.

HOUSE RESOLUTION NO. 22

Whereas, the Federal Historic Preservation Tax Credit Program currently provides federal income tax incentives for rehabilitation of historic income-producing properties; and

Whereas, legislation currently pending in the United States Congress will expand the program by providing a credit against income tax to individuals who rehabilitate historic homes or who are the first purchasers of rehabilitated historic homes for use as a principal residence; and

Whereas, passage of the pending legislation could have many beneficial effects in Virginia, including encouraging additional protection of historic buildings, returning underutilized buildings to local tax rolls, and providing a boost to efforts to improve older neighborhoods; now, therefore, be it

Resolved by the House of Delegates, That the Congress of the United States be urged to expand use of federal historic preservation tax credits to qualified owner-occupied structures; and, be it

Resolved Further. That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation in order that they may be apprised of the sense of the House of Delegates of Virginia in this matter.

POM–301. A House joint resolution adopted by the General Assembly of the State of Illinois relative to inland waterway transportation; to the Committee on Environment and Public Works.

HOUSE JOINT RESOLUTION NO. 54

Whereas, the State of Illinois borders or contains over 1,000 miles of the inland waterway system; and

Whereas, Many of Illinois' locks and dams are more than 60 years old and only 600 feet long, making them unable to accommodate modern barge tows of 1,200 feet long, nearly tripling locking times and causing lengthy delays and ultimately increasing shipping costs; and

Whereas, The use of 1,200-foot locks has been proven nationwide as the best method of improving efficiency, reducing congestion, and modernizing the inland waterways; and

Whereas, The construction of the lock and dam system has spurred economic growth and a higher standard of living in the Mississippi and Illinois river basin, and today supplies more than 300,000,000 tons of the nation's cargo, supporting more than 400,000 jobs, including 90,000 in manufacturing; and

Whereas, More than 60% of American agricultural exports, including, corn, wheat, and soybeans, are shipped down the Mississippi and Illinois rivers on the way to foreign markets; and

Whereas, Illinois farmers, producers, and consumers rely on efficient transportation to remain competitive in a global economy, and efficiencies in river transport offset higher production costs, compared to those incurred by foreign competitors; and

Whereas, The Upper Mississippi and Illinois lock and dam system saves our nation more than $1,500,000,000 in higher transportation costs each year, and failing to construct 1,200-foot locks will cause farmers to use more expensive alternative modes of transportation, including trucks and trains; and

Whereas, According to the U.S. Army Corps of Engineers, congestion along the Upper Mississippi and Illinois Rivers is costing Illinois and other producers and consumers in the basin $98,000,000 per year in higher transportation costs; and

Whereas, River transportation is the most environmentally friendly form of transporting goods and commodities, creating almost no noise pollution and emitting 35% to 60% fewer pollutants than either trucks or trains, according to the U.S. EPA; and

Whereas, Moving away from river transport would add millions of trucks and rail cars to our nation's infrastructure, adding air pollution, traffic congestion, and greater wear and tear on highways; and

Whereas, Backwater lakes created by the lock and dam system provide breeding grounds for migratory waterfowl and fish; and

Whereas, The lakes and 500 miles of wildlife refuge also support a $1,000,000,000-a-year recreational industry, including hunting, fishing, and tourism jobs; and

Whereas, Upgrading the system of locks and dams on the Upper Mississippi and Illinois rivers will provide 3,000 construction and related jobs over a 15–20 year period; and

Whereas, In 1999 Illinois was the leading shipping state, with more than 66,000,000 tons of Illinois products, including grain, coal, chemicals, aggregates, and other products, representing a value of more than $8,000,000,000; and

Whereas, 109,000,000 tons of commodities including grain, coal, chemicals, aggregates, and other products were shipped to, from, and within Illinois by barge, representing $16,000,000,000 in value; and

Whereas, An additional 136,000,000 tons of commodities pass Illinois' borders on the Mississippi and Ohio rivers, representing a value of more than $43,000,000,000; and

Whereas, Shippers moving by barge in Illinois realized a savings of approximately $1,000,000,000, compared to other transportation modes; and

Whereas, Illinois docks shipped products by barge to 20 states and received products from 18 states; and

Whereas, Barges moving to and from Lake Michigan use the O'Brien Lock, with the Chicago Lock passing over 36,000 recreation vessels and over 410,00 passengers on over 13,000 commercial passenger vessels; and

Whereas, There are approximately 364 manufacturing facilities, terminals, and docks on the waterways of Illinois, representing thousand of jobs in the State; therefore be it

Resolved by the House of Representatives of the Ninety-Second General Assembly of the State of Illinois, the Senate concurring herein, That we recognize the importance of inland waterway transportation to Illinois agriculture and to industry in the State, the region, and the nation, and that we urge Congress to authorize funding to construct 1,200-foot locks on the Upper Mississippi and Illinois River System; and be it further

Resolved, That suitable copies of this Resolution be delivered to the President Pro Tempore and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, the Chair of the Senate Committee on Commerce, Science, and Transportation, the Chair of the House Committee on Transportation and Infrastructure, and to the Illinois congressional delegation.

POM–302. A concurrent resolution adopted by the Legislature of the State of Oklahoma relative to the United States Trade Representative preserve the traditional powers of state and local governments while negotiating international investment agreements; and directing distribution; to the Committee on Finance.

RESOLUTION NO. 71

Whereas, the United States government, through the United States Trade Representative, is negotiating to create or interpret investment agreements under the proposed Free Trade Area of the Americans (FTAA), bilateral agreements such as the United States-Chile agreement, the investment chapter of the North American Free Trade Agreement (NAFTA), and potentially under the World Trade Organization (WTO); and

Whereas, investment agreements affect state and local powers, including, but not limited to, zoning, protection of ground water and other natural resources, corporate ownership of land and casinos, law enforcement by courts, public services, and sovereign immunity; and

Whereas, investment rules under these agreements deviate from United States legal precedents on taking law and deference to legislative determination on protecting the public interest; and

Whereas, investment rules do not safeguard any category of law from investor

complaints including, but not limited to, laws passed in the interest of protecting human or animal health, environmental resources, human rights, and labor rights; and

Whereas, foreign investors have used the provisions of NAFTA's investment chapter to challenge core powers of state and local government including, but not limited to, regulatory power to protect ground water in California; the power of civil juries to use punitive damages to deter corporate fraud in Mississippi; the ability of states to invoke sovereign immunity in Massachusetts; and a decision by local government to deny a zoning permit for construction of a hazardous waste dump in Guadalcazar, Mexico; and

Whereas, serious concerns about international investment agreements have been expressed by national government associations, including the National Conference of State Legislatures (NCSL), which urged federal trade negotiators not to commit the United States to further investor-to-state dispute provisions such as those pending under NAFTA, and the National League of Cities, which has expressed concern that expansion of investment rules could undermine the successful effort by state and local governments to defeat legislation to expand compensation for takings in the 104th Congress.

Now, therefore, be it resolved by the Senate of the 2nd session of the 48th Oklahoma Legislature, the House of Representatives concurring therein:

That the Oklahoma State Legislature respectfully memorializes the President and Congress of the United States that the United States Trade Representative: preserve the traditional powers of state and local governments by requiring that negotiators of international investment agreements carve out state and local governments from the scope of future investment agreements or exclude investor-to-state disputes from investment agreements; ensure that international investment rules do not give greater rights to foreign investors than United States investors enjoy under the United States Constitution; ensure that international investment rules do not undermine traditional police powers of state and local governments to protect public health, conserve environmental resources, and regulate fair compensation; ensure that all proceedings are open to the public and that all submissions, findings, and decisions are promptly made public, consistent with the need to protect classified information, and that amicus briefs will be accepted and considered by investment tribunals; and provide that an investor's claim against its host government, must consent to the investor's claim against its host government, if investor-to-state disputes are retained.

That a copy of this resolution be distributed to the President and Vice President of the United States, to the United States Trade Representative, to members of Oklahoma's Congressional Delegation, and to the National Conference of State Legislatures (NCSL).

POM–303. A Senate concurrent resolution adopted by the Legislature of the State of Kansas relative to the establishment of a national holiday; to the Committee on the Judiciary.

SENATE CONCURRENT RESOLUTION NO. 1620

Whereas, Cesar Chavez, founder of the United Farm Workers of America, AFL–CIO, dedicated his life to the cause of justice for farm workers. Through his dedication, Cesar Chavez built not only a union but a movement of all races to continue the endless struggle to fight for workers' rights, civil rights and human rights; and

Whereas, Cesar Chavez was a role model for all workers, especially for Latinos and their children; and

Whereas, Cesar Chavez taught us to use power in the nonviolent manner and to employ this principle to secure justice for all workers in the labor movement; and

Whereas, His death on April 23, 1993 brought the Latino community together to continue his struggle to obtain justice and to secure a better life by organizing unions at the workplace; and

Whereas, A resolution is pending in the United States Congress to establish a national holiday in memory of Cesar Chavez: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That we urge the adoption of the United States House of Representatives Concurrent Resolution No. 3 providing for a national holiday honoring Cesar Chavez and that this holiday be celebrated on Cesar Chavez's birthday, March 31; and

Be it further resolved: That the Secretary of State send enrolled copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Kansas congressional delegation.

POM–304. A resolution adopted by the House of the Legislature of the State of New Hampshire relative to the Pledge of Allegiance; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 26

Whereas, on June 26, 2002, the United States Court of Appeals for the Ninth Circuit ruled the recitation of the pledge of allegiance in public schools to be an unconstitutional endorsement of religion in violation of the First Amendment to the United States Constitution; and

Whereas, the state of New Hampshire denounces the ruling of the Ninth Circuit; and

Whereas, the state of New Hampshire affirms the importance of the pledge of allegiance in honoring those citizens who have fallen in defense our country; and

Whereas, the state of New Hampshire affirms the importance of the pledge of allegiance in the education of the youth of our country; and

Whereas, the state of New Hampshire reaffirms the right to recite the pledge of allegiance as an exercise of free speech protected under the First Amendment to the United States Constitution; now, therefore, be it

Resolved by the House of Representatives:

That the New Hampshire house of representatives strongly disagrees with the ruling of the United States Court of Appeals for the Ninth Circuit; and

That the New Hampshire house of representatives reaffirms the right to recite the pledge of allegiance as an exercise of free speech protected under the First Amendment to the United States Constitution; and

That copies of this resolution be forwarded to the President of the United States; the Speaker of the United States House of Representatives; the President of the United States Senate; the Justices of the United States Supreme Court, and the members of the New Hampshire congressional delegation.

POM–305. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 242

Whereas, The decision of the Ninth United States Circuit Court of Appeals that the Pledge of Allegiance to the American flag is unconstitutional is an egregious error that cannot be allowed to stand as our law. In this time of war, especially, we are shocked that an expression of devotion and loyalty to our nation's flag and all it represents should be suppressed by a three-judge panel of the most reversed United States Court of Appeals; and

Whereas, The Ninth Circuit's ruling that the words ''under God'' somehow represent the establishment of an official state church in violation of the Establishment Clause of the United States Constitution is ludicrous. No state church has been established in the nearly five decades since those words were added to the Pledge of Allegiance. The freedom to believe and practice any religion, or to believe and practice no religion at all, is an ingrained part of our society. The purportedly terrible impact of reciting ''under God'' in our Pledge of Allegiance, should a person choose to do so, has not and will not happen; and

Whereas, Should the Ninth Circuit fail to correct this ruling, the United States Supreme Court should reverse this ruling as a gross misinterpretation of our Constitution and astounding lack of common sense. Our flag unites us, regardless of our heritage. Our Pledge of Allegiance to our flag, which represents all the freedoms we cherish and defend, must be preserved; now, therefore, be it

Resolved by the Senate, That we condemn the decision of the Ninth United States Circuit Court of Appeals that ruled that the Pledge of Allegiance is unconstitutional; and be it further

Resolved, That copies of this resolution be transmitted to the judges of the Ninth United States Circuit Court of Appeals, the justices of the United States Supreme Court, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–306. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to designating October 2002 as Respect Month and October 30, 2002, as Respect Your Neighborhood Day; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 244

Whereas, For over ten years, the state of Michigan has recognized October as Respect Month, a time for adults with influence over young people to talk with them about respect; and

Whereas, The state of Michigan has proclaimed October 30 as Respect Your Neighborhood Day, a time for people of all ages to launch projects that encourage respect for one another and serve their communities as a whole; and

Whereas, this has led young people to participate in such projects including the clean up of vacant lots and helping senior citizens; and

Whereas, In 1998, the City Councils of Detroit and Highland Park voted to make Respect Month and Respect Your Neighborhood Day permanent occasions in their cities and to request the President and the Congress of the United States to proclaim such occasions on a national level; and

Whereas, In 1999, the Highland Park School Board made a similar request; and

Whereas, Encouraging adults to help create an atmosphere of respect may avert tragedies and save lives. The recent horrors on September 11, 2001, and the shootings in schools like Columbine are prime examples of why prevention is crucial; and

Whereas, Such tragedies demonstrate why it is imperative that adults with influence over children communicate basic tenets of respect and demonstrate ways in which serving our communities can help maintain the dignity of all members of society; and

Whereas, Respect Month will function as a time to positively model respect, promote respect, and encourage youth and their peers to do the same for each other, their communities, and mankind; and

Whereas, Adults who can have an impact on children by putting an emphasis on the meaning of and the need for respect in society are invaluable to this cause, and character education brings about a greater respect and appreciation for all. The meaning of respect is ascertained during childhood, and the exhibiting of respect by adults is of great importance; and

Whereas, Proclaiming Respect Month and Respect Your Neighborhood Day will encourage service projects and conflict resolution courses, which are two ways to combat poor self-esteem and lack of self-respect which can lead to violence; and

Whereas, The existing diversity in our communities must be admired, appreciated, and valued, but without respect, this society will not achieve its full potential; now, therefore, be it

Resolved by the Senate, That the members of this legislative body commemorate October 2002 as Respect Month and October 30, 2002, as Respect Your Neighborhood Day on a permanent basis in the state of Michigan; and be it further

Resolved, That we urge President George W. Bush and the Congress of the United States to make such proclamations for the country as a whole; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and the Michigan congressional delegation.

POM–307. A resolution adopted by the General Assembly of the State of Maryland relative to September 11, 2001; ordered to lie on the table.

RESOLUTION

Be it hereby known to all that The Maryland General Assembly offers this resolution as an expression of sympathy in remembrance of September 11, 2001, when foreign terrorists conducted inhumane, murderous attacks on the United States.

The entire membership offers its deepest sympathy, its unwavering support, and its sincere concern to the families, friends, and the Nation.

The General Assembly directs this Resolution be presented on this 9th day of January, 2002, and that copies of this Resolution be sent to the President of the United States, George W. Bush, all members of the United States Congress, the Governor of New York and Mayor of New York City, the Governor of Virginia, and the Governor of Pennsylvania.

REPORTS OF COMMITTEES RECEIVED DURING RECESS

Under the authority of the order of the Senate of August 1, 2002, the following reports of committees were submitted on August 2, 2002:

By Mr. BAUCUS, from the Committee on Finance, with an amendment in the nature of a substitute:

S. 1971: A bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes. (Rept. No. 107–242).

Under the authority of the order of the Senate of July 29, 2002, the following reports of committees were submitted on August 28, 2002:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute and an amendment to the title:

S. 351: A bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, and for other purposes. (Rept. No. 107–243).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1079: A bill to amend the Public Works and Economic Development Act of 1965 to provide assistance to communities for the redevelopment of brownfield sites. (Rept. No. 107–244).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 710: A bill to require coverage for colorectal cancer screenings. (Rept. No. 107–245).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1210: A bill to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996. (Rept. No. 107–246).

S. 2711: A bill to reauthorize and improve programs relating to Native Americans. (Rept. No. 107–247).

S. 1344: A bill to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers. (Rept. No. 107–248).

S. 2017: A bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program. (Rept. No. 107–249).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 210: A bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes. (Rept. No. 107–250).

By Mr. KERRY, from the Committee on Small Business and Entrepreneurship, with an amendment in the nature of a substitute and an amendment to the title:

S. 2753: A bill to provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes. (Rept. No. 107–251).

By Mr. INOUYE, from the Committee on Indian Affairs, without amendment:

S. 1308: A bill to provide for the use and distribution of the funds awarded to the Quinault Indian Nation under United States Claims Court Dockets 772–72, 773–71, and 775–71, and for other purposes. (Rept. No. 107–252).

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. BIDEN, from the Committee on Foreign Relations:

Treaty Doc. 103–5 1990 Protocol to the 1983 Maritime Environment of the Widen Caribbean Region Convention (Exec. Rept. No. 107–8)

TEXT OF COMMITTEE RECOMMENDED RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Protocol Concerning Specifically Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, subject to Reservations, an Understanding, and a Declaration.

The Senate advises and consents to the ratification of the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, including Annexes, done at Kingston on January 18, 1990 (Treaty Doc. 103–5), subject to the reservations in section 2, the understanding in Section 3, and the declaration in Section 4.

Section 2. Reservations.

The advice and consent of the Senate under section 1 is subject to the following reservations, which shall be included in the instrument of ratification.

(1) The United States of America does not consider itself bound by Article 11(1) of the Protocol to the extent that United States law permits the limited taking of flora and fauna listed in Annexes I and II—

(A) which is incidental, or

(B) for the purposes of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation.

(2) The United States has long supported environmental impact assessment procedures, and has actively sought to promote the adoption of such procedures throughout the world. U.S. law and policy require environmental impact assessments for major Federal actions significantly affecting the quality of the human environment. Accordingly, although the United States expects that it will, for the most part, be in compliance with Article 13, the United States does not accept an obligation under Article 13 of the Protocol to the extent that the obligations contained therein differ from the obligations of Article 12 of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region.

(3) The United States does not consider the Protocol to apply to six species of fauna and flora that do not require the protection provided by the Protocol in U.S. territory. These species are the Alabama, Florida and Georgia populations of least tern (Sterna antillarum), the Audubon's shearwater (Puffinus lherminieri), the Mississippi, Louisiana and Texas population of the wood stork (Mycteria americana) and the Florida and Alabama populations of the brown pelican (Pelicanus occidentalis), which are listed on Annex II, as well as the fulvous whistling duck (Dendrocygna bicolor), and the populations of widgeon or ditch grass (Rupia maritima) located in the continental United States, which are listed on Annex III.

Section 3. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

The United States understands that the Protocol does not apply to non-native species, defined as species found outside of their natural geographic distribution, as a result of deliberate or incidental human intervention. Therefore, in the United States, certain exotic species, such as the muscovy duck (Carina moschata) and the common iguana (Iguana iguana), are not covered by the obligations of the Protocol.

Section 4. Declaration.

The advice and consent of the Senate under section 1 is subject to the following declaration:

Existing federal legislation provides sufficient legal authority to implement United States obligations under the Protocol. Accordingly, no new legislation is necessary in order for the United States to implement the Protocol.

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 Mrs. HUTCHISON (for herself, Mrs. FEINSTEIN, Mr. HATCH, Mrs. CLINTON, Mr. HUTCHINSON, Mrs. CARNAHAN, Mr. BENNETT, Mr. ROCKEFELLER, Mr. HELMS, Ms. LANDRIEU, Mr. HARKIN, Ms. COLLINS, Mr. KYL, Mr. DURBIN, Mr. EDWARDS, Mr. DODD, Mr. CRAPO, Ms. SNOWE, Mr. ALLARD, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. LOTT, Mr. BIDEN, Mr. LUGAR, and Ms. STABENOW):

S. 2896. A bill to enhance the operation of the AMBER Alert communications network in order to facilitate the recovery of abducted children, to provide for enhanced notification on highways of alerts and information on such children, and for other purposes; to the Committee on the Judiciary.

By Mr. JEFFORDS:

S. 2897. A bill to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries; to the Committee on Environment and Public Works.

By Mr. THURMOND:

S. 2898. A bill for the relief of Jaya Gulab Tolani and Hitesh Gulab Tolani; to the Committee on the Judiciary.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 2899. A bill to establish the Atchafalaya National Heritage Area, Louisiana; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE (for himself and Mr. DAYTON):

S. 2900. A bill to designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''; to the Committee on Governmental Affairs.

By Mr. GRASSLEY:

S. 2901. A bill to provide that bonuses and other extraordinary or excessive compensation of corporate insiders and wrongdoers may be included in the bankruptcy estate; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 414

At the request of Mr. CLELAND, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 414, a bill to amend the National Telecommunications and Information Administration Organization Act to establish a digital network technology program, and for other purposes.

S. 885

At the request of Mr. HUTCHINSON, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 885, a bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program.

S. 913

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 917

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor 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. 1085

At the request of Mr. WELLSTONE, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1085, a bill to provide for the revitalization of Olympic sports in the United States.

S. 1226

At the request of Mr. CAMPBELL, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1226, a bill to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1291

At the request of Mr. HATCH, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 1291, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien college-bound students who are long term United States residents.

S. 1339

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1379

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1379, a bill to amend the Public Health Service Act to establish an Office of Rare Diseases at the National Institutes of Health, and for other purposes.

S. 1549

At the request of Mr. LIEBERMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1549, a bill to provide for increasing the technically trained workforce in the United States.

S. 1651

At the request of Mr. DORGAN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1651, a bill to establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

S. 1867

At the request of Mr. LIEBERMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

S. 2027

At the request of Mr. DURBIN, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2027, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 2119

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2119, a bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of inverted corporate entities and of transactions with such entities, and for other purposes.

S. 2435

At the request of Mr. KENNEDY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2435, a bill to amend title 9 of the United States Code to exclude all employment contracts from the arbitration provisions of chapter 1 of such title; and for other purposes.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2480

At the request of Mr. LEAHY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

S. 2513

At the request of Mr. BIDEN, the names of the Senator from North Carolina (Mr. EDWARDS) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 2513, a bill to asses the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

S. 2521

At the request of Mr. KERRY, the name of the Senator from Maine (Ms.

COLLINS) 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. 2554

At the request of Mr. SMITH of New Hampshire, the names of the Senator from North Dakota (Mr. CONRAD) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2566

At the request of Mr. KENNEDY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2566, a bill to improve early learning opportunities and promote school preparedness, and for other purposes.

S. 2592

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2592, a bill to provide affordable housing opportunities for families that are headed by grandparents and other relatives of children, and for other purposes.

S. 2611

At the request of Mr. REED, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2611, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 2613

At the request of Mr. LIEBERMAN, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2613, a bill to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the cost-sharing requirement relating to the additional appropriations, and for other purposes.

S. 2633

At the request of Mr. BIDEN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2633, a bill to prohibit an individual from knowingly opening, maintaining, managing, controlling, renting, leasing, making available for use, or profiting from any place for the purpose of manufacturing, distributing, or using any controlled substance, and for other purpose.

S. 2657

At the request of Mrs. CLINTON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2657, a bill to amend the Child Abuse Prevention and Treatment Act to provide for opportunity passports and other assistance for youth in foster care and youth aging out of foster care.

S. 2704

At the request of Mr. NELSON of Florida, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 2704, a bill to provide for the disclosure of information on projects of the Department of Defense, such as Project 112 and the Shipboard Hazard and Defense Project (Project SHAD), that included testing of biological or chemical agents involving potential exposure of members of the Armed Forces to toxic agents, and for other purposes.

S. 2712

At the request of Mr. HAGEL, the name of the Senator from Minnesota (Mr. WELLSTONE) 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.

S. 2721

At the request of Mr. SARBANES, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2721, a bill to improve the voucher rental assistance program under the United States Housing Act of 1937, and for other purposes.

S. 2734

At the request of Mr. KERRY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2762

At the request of Mr. THOMAS, the name of the Senator from Colorado (Mr. ALLARD) 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.

S. 2777

At the request of Mr. CRAIG, the name of the Senator from Colorado (Mr. ALLARD) 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. 2826

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2826, a bill to improve the national instant criminal background check system, and for other purposes.

S. 2860

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of 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.

S. 2873

At the request of Mr. GRASSLEY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2873, a bill to improve the provision of health care in all areas of the United States.

S. 2882

At the request of Mr. CONRAD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2882, a bill to amend the Internal Revenue Code of 1986 to modify the tax credit for holders of qualified zone academy bonds.

S. RES. 311

At the request of Mr. JEFFORDS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. Res. 311, A resolution expressing the Sense of the Senate regarding the policy of the United States at the World Summit on Sustainable Development and related matters.

S. CON. RES. 94

At the request of Mr. WYDEN, the names of the Senator from Louisiana (Mr. BREAUX) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. Con. Res. 94, A concurrent resolution expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

S. CON. RES. 129

At the request of Mr. CRAPO, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Oregon (Mr. SMITH) were added as cosponsors 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''.

AMENDMENT NO. 4316

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of amendment No. 4316 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON (for herself, Mrs. FEINSTEIN, Mr. HATCH, Mrs. CLINTON, Mr. HUTCHINSON, Mrs. CARNAHAN, Mr. BENNETT, Mr. ROCKEFELLER, Mr. HELMS, Ms. LANDRIEU, Mr. HARKIN, Ms. COLLINS, Mr. KYL, Mr. DURBIN,

Mr. EDWARDS, Mr. DODD, Mr. CRAPO, Ms. SNOWE, Mr. ALLARD, Mr. VOINOVICH, Mr. NELSON of Florida, Mr. LOTT, Mr. BIDEN, Mr. LUGAR, Ms. STABENOW, Mr. SESSIONS, and Mr. INHOFE):

S. 2896. A bill to enhance the operation of the AMBER Alert communications network in order to facilitate the recovery of abducted children, to provide for enhanced notification on highways of alerts and information on such children, and for other purposes; to the Committee on the Judiciary.

Mrs. HUTCHISON. Madam President, I am introducing today with my friend from California, Senator FEINSTEIN, legislation to improve the current system of AMBER Alert plans that exist in various States. Our legislation recognizes the tremendous job that those involved in AMBER alerts are playing and we seek to build on their efforts.

In 1996, 9-year-old Amber Hagerman of Arlington, Texas was abducted and brutally murdered. Her death had such an impact on the community that local law enforcement and area broadcasters developed what is now known as AMBER Alert, America's Missing: Broadcast Emergency Response. An AMBER alert is activated by law enforcement to find a child, when a child has been abducted. An Alert triggers highway notification and broadcast messages throughout the area where the abduction occurred.

As we have seen this summer, AMBER plans in different communities have worked to bring children home safely. To date, AMBER Alert has helped recover 27 children nationwide. Many communities and states have outstanding AMBER plans, however, the vast majority of States do not yet have comprehensive, statewide coverage and lack the ability to effectively communicate between plans. This is a critical issue particularly when an abducted child is taken across State lines.

The bill I am introducing today establishes an AMBER Alert Coordinator within the Department of Justice to assist States with their AMBER plans. An AMBER Alert Coordinator is needed to address situations such as the recent examples of interstate travel with abducted children. We have witnessed several successful stories of AMBER plans helping to recover a child within a region, however, many gaps exist between the various AMBER plans around the country. The AMBER Alert Coordinator will facilitate appropriate regional coordination of AMBER alerts, particularly with interstate travel situations, and will assist states, broadcasters, and law enforcement in setting up additional AMBER plans.

The AMBER Alert Coordinator will set minimum, voluntary standards to help states coordinate when necessary. The AMBER Alert Coordinator will help to reconcile the different standards for what constitutes an AMBER alert. In doing so, the Coordinator will work with existing participants, including the National Center for Missing and Exploited Children, local and state law enforcement and broadcasters to define minimum standards. Overall, the AMBER Alert Coordinator's efforts will set safeguards to make sure the AMBER alert system is used to meet its intended purpose.

In addition, the bill provides for a matching grant program. The grant program will help localities and states build or further enhance their efforts to disseminate AMBER alerts. To this end, the matching grant program will fund road signage and electronic message boards along highways, dissemination of information on abducted children, education and training, and related equipment.

Our bill has the strong support of the National Center of Missing and Exploited Children and the National Association of Broadcasters, who play essential roles in the AMBER Alert system. I urge the Senate to act expeditiously on this legislation to further protect America's children.

Mrs. FEINSTEIN. Mr. President, today, I am pleased to join Senator HUTCHISON in introducing legislation that will save children's lives by expanding the existing AMBER Alert program nationwide.

AMBER Alerts are official bulletins broadcast over the airwaves to enlist the public's help in tracking down abducted children facing imminent danger from their kidnappers.

The power of the AMBER alert can be seen in the recent kidnapping of Tamara Brooks and Jacqueline Marris.

On August 1, 2002, twenty-four hours after the State of California launched its statewide AMBER Alert program, Tamara Brooks, 16, and Jacqueline Marris, 17, were abducted from their vehicles at gunpoint in Lancaster, CA.

Shortly thereafter, the California Highway Patrol issued an AMBER Alert on the girls disappearance.

Within the next few hours, concerned members of the community called into CHP hotlines, delivering a flurry of crucial tips that helped locate the suspect.

A driver on state Highway 178 spotted the abductor's stolen white bronco in Walker Pass, approximately 70 miles east of Bakersfield.

Two hours later, a CalTrans worker spotted the suspect on Highway 178, and,

A Kern County animal control officer spotted the Bronco on a local dirt road.

Based on these tips, sheriff's deputies located the girls and their abductor, Roy Ratliff, in a vehicle in a dry riverbed, just 12 hours after the abduction.

Ratliff was killed during an exchange of gunfire with sheriff's deputies, and the girls were returned home safely.

The AMBER Alert system and the effective work of the Kern County Sheriff's Department may be the only reasons those girls are alive today.

Children abducted in States without an AMBER Alert system, however, may not have been so fortunate.

That is why we are introducing this legislation, to spur the development of State and local AMBER plans across the country so we can increase the chances that children abducted by strangers can be returned home safely.

Each year, more than 58,000 children in the United States are abducted by non-family members, often in connection with another crime.

In the most dangerous type of child abduction, stranger abduction, fully 40 percent of children are murdered.

Speed is crucial to any effective law enforcement response to these most deadly cases.

According to a study by the U.S. Department of Justice, 74 percent of children who were abducted, and later found murdered, were killed within three hours of being taken.

AMBER Alerts are a proven weapon in the fight against stranger abductions, especially in those cases where an abducted child is facing an imminent threat of harm.

The program is named after nine-year-old Amber Hagerman who was kidnapped and murdered in Arlington, TX in 1996.

The power of the AMBER alert system is that an alert can be issued within minutes of an abduction, disseminating key information of the crime to the community at large.

Nationally, since 1996, the AMBER Alert has been credited with the safe return of 29 children to their families, including one case in which an abductor reportedly released the child after hearing the alert himself.

These are 29 families who didn't have to suffer the pain of losing a loved one. Twenty-nine families who didn't have to bury a child.

Since the State of California first adopted AMBER alerts a month ago, the State has issued 13 AMBER alerts. Each of the AMBER Alerts concluded with the missing child being united with their families.

Eight of these alerts involved stranger abductions. Four involved family members, and one case is considered a false alarm.

I would like to describe two of these cases: the rescue of four-year-old Jessica Cortez from Los Angeles and 10-year-old Nichole Timmons from Riverside.

Jessica disappeared from Echo Park in Los Angeles on August 11, 2002.

But when Jessica's abductor took her to a clinic for medical care, receptionist Denise Leon recognized Jessica from the AMBER Alert and notified law enforcement.

Without the publicity generated by the alert, Jessica could have been lost to her parents forever.

Nichole Timmons was kidnapped from her Riverside home on August 20.

In Nichole's case, an Alert was issued not just in California, but in Nevada as well.

A tribal police officer in Nevada spotted the truck of Nichole's abductor and stopped him within 24 hours of the abduction.

He was found with duct tape and a metal pipe.

The AMBER Alert enabled Nichole to return home safely to her parents.

The legislation we are introducing today is simple, yet very important.

First, it would establish a national coordinator for AMBER Alerts in the Department of Justice to expand the network of AMBER Alert systems and to coordinate the issuance of region-wide AMBER Alerts.

We need regional coordination of AMBER Alert because, as we saw in the case of Nichole Timmons, abductors of children may cross State lines as they flee crime scenes.

Second, the bill would establish grant programs in the Department of Justice and the Department of Transportation to provide for the development of AMBER Alert systems, electronic message boards, and training and education programs in states that do not have AMBER Alerts.

To date, AMBER Alert systems exist in only 15 States and 32 local and regional jurisdictions. This bill would help the expansion of AMBER Alerts to new jurisdictions.

Third, the bill directs the Department of Justice to establish minimum standards for the coordination of AMBER alerts between jurisdictions.

Minimum standards are needed because many of the existing AMBER plans have slightly different standards for an AMBER Alert, such as when to issue an alert.

Without a common standard, sharing AMBER Alerts between states will be difficult.

I would also like to stress what the bill does not do.

It is the specific intent of this bill not to interfere with the operation of the 50 State and local AMBER plans that are working so well.

Participation in regional AMBER plans is only voluntary, and any plan that wishes to go it alone may still do so.

The bill also does not change the very strict criteria of the AMBER Alert.

AMBER Alerts are successful because they are issued rarely, and only when strict criteria are met.

A typical AMBER Alert is only issued when a law enforcement agency confirms that a stranger abduction has occurred, the child is in imminent danger, and there is information available that, if disseminated to the public could assist in the safe recovery of the child.

The effectiveness of the system depends on the continued judicious use of the alert so that the public does not grow to ignore the warnings.

This bill is carefully designed to preserve the Alert's ongoing effectiveness.

In sum, through this legislation, we can extend to every corner of the nation a network of AMBER Alerts that will protect our children.

If we can set up a program that will increase the odds that an abducted child can return to his or her family safely, then I believe the program will be well worth it.

We know the AMBER Alert system works. We know that every community in America should have access to it.

Mr. HATCH. Mr. President, I am proud to join with Senators KAY BAILEY HUTCHISON (R–TX) and DIANE FEINSTEIN (D–CA) in introducing the ''National AMBER Alert Network Act of 2002'' which will extend the AMBER Alert (America's Missing: Broadcast Emergency Response) system across our Nation. The recent wave of child abductions across our Nation, including the kidnaping of Elizabeth Smart in my own home state of Utah, has highlighted the need for legislation to enhance our ability to protect our Nation's children against predators of all types.

When a child is abducted, time is of the essence. All too often it is only a matter of hours before a kidnaper commits an act of violence against the child. Alert systems, such as the AMBER Alert system, galvanize entire communities to assist law enforcement in the timely search for and safe return of child victims.

The AMBER Alert system was developed in 1996 in Texas after 9-year-old Amber Hagerman was kidnaped. To date, the system has been credited with the recovery of 27 missing children. Nonetheless, only 16 States have adopted statewide AMBER Alert systems. Just this year, my home State of Utah adopted a statewide alert program aimed at preventing child abduction called ''Rachel Alert.'' The program was named after young Rachel Runyan who was abducted and later found murdered.

We recently witnessed the success of the AMBER Alert system in California. There the AMBER system was used to broadcast the disappearance of Nichole Timmons who was safely recovered in the neighboring state of Nevada after she was recognized. In another recent California case, the AMBER Alert system was used when Tamera Brooks and Jaqueline Marris were kidnapped. Just hours after their abduction, and minutes before their possible murder, the two young women were found.

The legislation we introduce today will enhance our ability to recover abducted children by establishing a Coordinator within the Department of Justice to assist States in developing and coordinating alert plans nationwide. The Act also provides for a matching grant program through the Department of Justice and the Department of Transportation for highway signs, education and training programs, and the equipment necessary to facilitate AMBER Alert systems.

I support the National AMBER Alert Network Act and other legislative proposals that will improve our ability on a national level to combat crimes against children. For that reason, I will introduce in the coming days comprehensive legislation that will enhance existing laws, investigative tools, criminal penalties and child crime resources in a variety of ways. I believe Congress must do all it can to ensure that we devote the same intensity of purpose to crimes committed against children, as we do to other serious criminal offenses, such as those involving terrorism.

We have no greater resource than our children. I invite the Department of Justice, the Federal Bureau of Investigation and other entities and professionals who are charged with protecting our children to work with me to improve our Federal laws and to assist States in doing the same.

I commend Senator HUTCHISON for her tireless efforts on behalf of children and families and urge my colleagues to work with us to enact this critical legislation which will increase the chances that future victims of child predators will be found swiftly and returned home safely.

By Mr. JEFFORDS:

S. 2897. A bill to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, I rise today to introduce the ''Marine Turtle Conservation Act of 2002.''

Marine turtles were once abundant, but now they are in serious trouble. Six of the seven recognized species are listed as threatened on endangered under the Endangered Species Act, and all seven species have been included in Appendix I of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, CITES. Because marine turtles are long-lived, late-maturing, and highly migratory, they are particularly vulnerable to the impacts of human exploitation and habitat loss. In addition, for some species, illegal trade seriously threatens wild populations. Because of the immense challenges facing marine turtles, the resources available to date have not been sufficient to cope with the continued loss of nesting habitat due to human activities and the resulting diminution of marine turtle populations.

The Marine Turtle Conservation Act of 2002 is modeled after the successful Asian Elephant Conservation Act, the African Elephant Conservation Act, and the Rhinoceros and Tiger Conservation Act. These acts have established programs within the Department of the Interior to assist in the conservation and preservation of these species around the world. More than 300 projects have been funded and generated millions of dollars in private matching funds from sponsors representing a diverse group of conservation organizations. The projects range from purchasing anti-poaching equipment for wildlife rangers to implementing elephant conservation plans to aerial monitoring of the Northern white rhinoceros.

The Marine Turtle Conservation Act of 2002 will assist in the recovery and protection of marine turtles by supporting and providing financial resources for projects to conserve nesting habitats of marine turtles in foreign countries and marine turtles while they are found in such habitats, to prevent illegal trade in marine turtle parts and projects, and to address other threats to the survival of marine turtles. The bill authorizes $5 million annually to implement the program.

This legislation will help to preserve this ancient and distinctive part of the world's biological diversity.

By Mr. THURMOND:

S. 2898. A bill for the relief by Jaya Gulab Tolani and Hitesh Gulab Tolani; to the Committee on the Judiciary.

Mr. THURMOND. Madam President, I rise to introduce a private relief bill that would provide permanent legal resident status for Hitesh Tolani and his mother, Jaya Tolani, who face voluntary removal from this country.

I feel that the Tolanis' case presents a compelling need for legislative action. Hitesh Tolani, who is a scholarship student at Wofford College in Spartanburg, SC, came to the United States with his mother, Jaya, and father, Gulab, in 1984. When Hitesh arrived in this country, he was a toddler. Hitesh has a younger brother, Ravi, who was born here and is a United States citizen.

The Tolanis' efforts to become United States citizens was beset by tragedy. Gulab's brother, who served as a sponsor, died during the family's efforts to become legal permanent residents. Furthermore, just days before Gulab was to interview in New York in hopes of gaining legal permanent resident status for himself and his family, he passed away. Jaya was left with no way to legalize her or Hitesh's status. In the same year in which Gulab died, Jaya was also diagnosed with breast cancer. In the midst of these difficulties, Jaya was left with very few alternatives.

When Hitesh learned of his illegal status, he made the decision to turn himself into the authorities. After removal proceedings commenced, Hitesh and Jaya sought relief in the form of cancellation of removal. In order to succeed in this effort, it must be shown that the removal would result in ''exceptional and extremely unusual hardship.'' In this case, the Immigration court found that the Tolanis' case did not rise to this level of hardship. The court came to this conclusion despite the fact that Hitesh has lived the vast majority of his life in the United States and is in the middle of his college studies. If forced to leave the country, Hitesh's studies will be significantly interrupted, and he will be required to return to a land that he does not remember. Additionally, Hitesh will be placed at a social and educational disadvantage because he is not fluent in the Hindi language.

During this important time in Hitesh's life, he will leave the only home that he has ever known. Yet the events surrounding his entry into the United States were completely out of his control. Hitesh has done nothing but contribute in positive ways to his hometown community of Irmo, SC, and the Wofford College community. He has demonstrated excellent moral character and has always been a model student.

Relocation to India would also create extreme hardship for Jaya, who is in remission from breast cancer. She would have to abandon her clothing store business in South Carolina and return to a land that she has not seen for twenty years. She also faces the potential breakup of her family due to the status of her youngest son, Ravi, who is a U.S. citizen. Ravi would be forced to go to India with the rest of his family or face the prospect of foster care. Ravi is not fluent in Hindi, but is very proficient in English. Ravi is also an asthmatic who must periodically use an inhaler machine. He would be subject to unhealthy air quality in Bombay, the city where the Tolanis' closest relatives reside and the place where they would settle.

The Tolani family appealed to the Board of Immigration Appeals, and the Immigration Judge's decision was affirmed without comment. The family is now appealing to the Eleventh Circuit Court of Appeals, but the standard of review is deferential, making this an uphill climb for Hitesh and Jaya.

I have always been a strong proponent of enforcing our Nation's immigration laws. However, the Tolanis' case represents one of those rare instances where removal would be unjust. The Tolani family, if forced to leave this country, will face exceptional hardship. Hitesh is a fine young man and an outstanding student. Through no fault of his own, he faces the prospect of leaving the only home that he has ever known. 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. 2898

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Jaya Gulab Tolani and Hitesh Gulab Tolani shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Jaya Gulab Tolani and Hitesh Gulab Tolani, as provided in section 1, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 2899. A bill to establish the Atchafalaya National Heritage Area, Louisiana; to the Committee on Energy and Natural Resources.

Ms. LANDRIEU. Madam President, today I rise, along with Senator BREAUX to introduce a bill to establish the Atchafalaya National Heritage Area in Louisiana. This legislation has particularly special meaning to those of us from Louisiana because of the importance of the cultural and natural resources of the Atchafalaya region to the Nation.

This legislation would establish a framework to help protect, conserve, and promote these unique natural, cultural, historical, and recreational resources of the region. Specifically, the legislation would establish a National Heritage Area in Louisiana that encompasses thirteen parishes in and around the Atchafalaya Basin swamp, America's largest river swamp. The heritage area in south-central Louisiana stretches from Concordia parish to the north, where the Mississippi River begins to partially flow into the Atchafalaya River, all the way to the Gulf of Mexico in the south. The thirteen parishes are: St. Mary, Iberia, St. Martin, St. Landry, Avoyelles, Pointe Coupee, Iberville, Assumption, Terrebonne, Lafayette, West Baton Rouge, Concordia, and East Baton Rouge. This boundary is the same area covered by the existing Atchafalaya Trace State Heritage Area.

This measure will appoint the existing Atchafalaya Trace Commission as the federally recognized ''local coordinating entity.'' The commission is composed of thirteen members with one representative appointed by each parish in the heritage area. Both the Atchafalaya Trace Commission and the Atchafalaya Trace State Heritage Area were created by the Louisiana Legislature a number of years ago. The Atchafalaya Trace State Heritage Area program currently receives some State funding, and already has staff working at the Louisiana Department of Culture, Recreation & Tourism, DCRT, under Lieutenant Governor Kathleen Blanco. State funds were used to create the management plan for the heritage area, which followed ''feasibility analysis'' guidelines as recommended by the National Park Service. Therefore, the recently-completed management plan need only be submitted to the Secretary of the Interior for approval as this legislation would recognize an existing local coordinating entity that will oversee the implementation of this plan. We are very proud that this state heritage area has already completed the complicated planning process, with participation of local National Park Service representatives, while using a standard of planning quality equal to that of existing national heritage

areas. All at no cost to the Federal Government.

Please let me also emphasize that this legislation protects existing private property rights. It will not interfere with local land use ordinances or regulations, as it is specifically prohibited from doing so. Nor does this legislation grant any powers of real property acquisition to the local coordinating entity or heritage area program. In addition, the legislation does not impose any environmental rule or process or cause any change in Federal environmental quality standards different from those already in effect.

Heritage areas are based on cooperation and collaboration at all levels. This legislation remains true to the core concept behind heritage areas. The heritage area concept has been used successfully in various parts of our nation to promote historic preservation, natural and cultural resources protection, heritage tourism and sustainable economic revitalization for both urban and rural areas. Heritage areas provide a flexible framework for government agencies, private organizations and businesses and landowners to work together on a coordinated regional basis. The Atchafalaya National Heritage Area will join the Cane River National Heritage Area to become the second National Heritage Area in Louisiana, ultimately joining the 23 existing National Heritage Areas around the Nation.

The initiative to develop the Atchafalaya National Heritage Area is an outgrowth of a grassroots effort to achieve multiple goals of this region. Most important among these is providing opportunities for the future, while at the same time not losing anything that makes this place so special. Residents from all over the region, local tourism agencies, State agencies such as the DCRT and the Department of Natural Resources, the State legislature, Federal agencies including the National Park Service and U.S. Army Corps of Engineers, parish governments, conservation and preservation groups, local businesses and local landowners have all participated in this endeavor to make it the strong initiative it is today. These groups have been very supportive of the heritage area effort, and as time moves on, the heritage area will continue to involve more and more of the area's most important resource, its people.

I would also like to give you a brief overview of the resources that make this place significant to the entire country. Not only is it important to our Nation's history but it is also critical to understanding America's future. The name of the place itself—Atchafalaya, comes from the American Indians and means ''long river.'' This name signifies the first settlers of the region, descendants of whom still live there today.

Other words come to mind in describing the Atchafalaya: mysterious dynamic, multi-cultural; enchanting, bountiful; threatened and undiscovered. This region is one of the most complex and least understood places in Louisiana and the Nation. Yet, the stories of the Atchafalaya Heritage Area are emblematic of the broader American experience. Here there are opportunities to understand and witness the complicated, sometimes harmonious, sometimes adversarial interplay between nature and culture. The history of the United States has been shaped by the complex dance of its people working with, against, and for, nature. Within the Atchafalaya a penchant for adventure, adaptation, ingenuity, and exploitation has created a cultural legacy unlike anywhere else in the world.

The heart of the heritage area is the Atchafalaya Basin. It is the largest river swamp in the United States, larger than the more widely known Everglades or Okefenokee Swamp. The Atchafalaya is characterized by a maze of streams, and at one time was thickly forested with old-growth cypress and tupelo trees. The Basin provides outstanding habitat for a remarkably diverse array of wildlife, including the endangered American bald eagle and Louisiana black bear. The region's unique ecology teems with life. More than 85 species of fish, crustaceans such as crawfish, wildlife including alligators; an astonishing array of well over 200 species of birds, from waterfowl to songbirds, forest-dwelling mammals such as deer, squirrel, beaver and other commercially important furbearers all make their home here. Bottomland hardwood-dependent bird species breed here in some of the highest densities ever recorded in annual North American Breeding Bird Surveys. The Basin also forms part of the Mississippi Valley Flyway for migratory waterfowl and is a major wintering ground for thousands of these geese and ducks. In general, the Atchafalaya Basin has a significant proportion of North America's breeding wading birds, such as herons, egrets, ibises, and spoonbills. Some of the largest flocks of Wood Storks in North America summer here, and the southern part of the Basin has a healthy population of Bald Eagles nesting every winter.

The region's dynamic system of waterways, geology, and massive earthern guide levees reveals a landscape that is at once fragile and awesome. The geology and natural systems of the Atchafalaya Heritage Area have fueled the economy of the region for centuries. For decades the harvest of cypress, cotton, sugar cane, crawfish, salt, oil, gas, and Spanish moss, have been important sources of income for the region's residents. The crawfish industry has been particularly important to the lives of Atchafalaya residents and Louisiana has become the largest crawfish producer in the United States. Sport fishing and other forms of commercial fishing are important here, too, but unfortunately, natural resource extraction and a changing environment have drastically depleted many of these resources and forced residents to find new ways to make a living.

Over the past century, the Atchafalaya Basin has become a study of man's monumental effort to control nature. After the catastrophic Mississippi River flood of 1927 left thousands dead and millions displaced, the U.S. Congress decreed that the U.S. Army Crops of Engineers should develop an intricate system of levees to protect human settlements, particularly New Orleans. Today, the Mississippi River is caged within the walls of earthern and concrete levees and manipulated with a complex system of locks, barrages and floodgates. The Atchafalaya River runs parallel to the Mississippi and through the center of the Basin. In times of flooding the river basis serves as the key floodway in controlling floodwaters headed for the large population centers of Baton Rouge and New Orleans by diverting waters from the Mississippi River to the Gulf of Mexico. This system was sorely tested in 1973 when floodwaters threatened to break through the floodgates and permanently divert the Mississippi River into the Atchafalaya. However, after this massive flood event, new land started forming off the coast. These new land formations make up the Atchafalaya Delta, and is the only significant area of new land being built in the United States. These vast amounts of Mississippi River sediment are also raising filling in the Basin itself, raising the level of land in certain areas of the basin and filling in lakes and waterways. And to demonstrate just how complex this ecosystem is, one only needs to realize that just to the East of the Delta, Terrebonne parish, also in the heritage area, is experiencing some of the most significant coastal land loss in the country.

Over the centuries, the ever-changing natural environment has shaped the lives of the people living in the basin. Residents have profited from and been imperiled by nature. The popular cultural identify of the region is strongly associated with the Canjuns, descendents of the French-speaking Acadians who settled in south Louisiana after being deported by the British from Nova Scotia, (formerly known as Acadia). Twenty-five hundred to three thousand exiled Acadians repatriated in Louisiana where they proceeded to re-establish their former society.

Today, in spite of complex social, cultural, and demographic transformations, Cajuns maintain a sense of group identify and continue to display a distinctive set of cultural expressions nearly two-hundred-and-fifty years after their exile from Acadia. Cajun culture has become increasingly popular outside of Louisiana. Culinary specialties adapted from France and Acadia such as etoufee, boudin, andouille, crepes, beignets and sauces thickened with roux, delight food lovers well

beyound Lousiana's borders. Cajun music has also ''gone mainstream'' with its blend of French folk songs and ballads and instrumental dance music, and more recent popular country, rhythm-and-blues, and rock music influences. While the growing interest in Cajun culture has raised appreciation for its unique traditions, many of the region's residents are concerned about the growing commercialization and stereotyping that threatens to diminish the authentic Cajun ways of life.

While the Atchafalaya Heritage Area may be well known for its Cajun culture, there is an astonishing array of other cultures within these parishes. Outside of New Orleans, the Atchafalaya Heritage Area is the most racially and ethnically complex region of Louisiana, and has been so for many year. A long legacy of multiculturalism presents interesting opportunities to examine how so many distinct cultures have survived in relative harmony. There may be interesting lessons to learn from here as our nation becomes increasingly heterogeneous. The cultural complexity of this region has created a rich tapestry of history and traditions, evidenced by the architecture, music, language, food and festivals unlike anyplace else. Ethnic groups of the Atchafalaya include: African-Americans, Black Creoles, Asians, Chinese, Filipinos, Vietnamese, Lebanese, Cajuns, Spanish Islenos, Italians, Scotch-Irish, and American Indian tribes such as the Attakapa, Chitimacha, Coushatta, Houma, Opelousa and Tunica-Biloxi.

This heritage area has a wealth of existing cultural, historic, natural, scenic, recreational and visitor resources on which to build. Scenic resources include numerous State Wildlife Management Areas and National Wildlife Refuges, as well as ten designated state scenic byways that fall partially or entirely within the heritage area. The Office of State Parks operates three historic sites in the heritage area, and numerous historic districts and buildings can be found in the region. There are also nine Main Street communities in the heritage area. Outdoor recreational resources include two State Parks and a multitude of waterways and bayous. Hunting, fishing, boating, and canoeing, and more recently birdwatching and cycling, are popular ways to experience the region. Various visitor attractions, interpretive centers and visitor information centers exist to help residents and tourists alike better understand and navigate many of the resources in the heritage area. Major roads link the heritage area's central visitor entrance points and large population centers, especially New Orleans. Much of the hospitality industry servicing the Atchafalaya exists around the larger cities of Baton Rouge, Lafayette and Houma. However, more and more bed and breakfasts and heritage accommodations, such as houseboat rentals, are becoming more numerous in the smaller towns and rural areas.

These are just some of the examples of the richness and significance of this region. This legislation will assist communities throughout this heritage area who are committed to the conservation and appropriate development of these assets. Furthermore, this legislation will bring a level of prestige and national and international recognition that this most special of places certainly deserves.

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. 2899

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 ''Atchafalaya National Heritage Area Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Atchafalaya Basin area of Louisiana, designated by the Louisiana Legislature as the ''Atchafalaya Trace State Heritage Area'' and consisting of the area described in section 5(b), is an area in which natural, scenic, cultural, and historic resources form a cohesive and nationally distinctive landscape arising from patterns of human activity shaped by geography;

(2) the significance of the area is enhanced by the continued use of the area by people whose traditions have helped shape the landscape;

(3) there is a national interest in protecting, conserving, restoring, promoting, and interpreting the benefits of the area for the residents of, and visitors to, the area;

(4) the area represents an assemblage of rich and varied resources forming a unique aspect of the heritage of the United States;

(5) the area reflects a complex mixture of people and their origins, traditions, customs, beliefs, and folkways of interest to the public;

(6) the land and water of the area offer outstanding recreational opportunities, educational experiences, and potential for interpretation and scientific research; and

(7) local governments of the area support the establishment of a national heritage area.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to protect, preserve, conserve, restore, promote, and interpret the significant resource values and functions of the Atchafalaya Basin area and advance sustainable economic development of the area;

(2) to foster a close working relationship with all levels of government, the private sector, and the local communities in the area so as to enable those communities to conserve their heritage while continuing to pursue economic opportunities; and

(3) to establish, in partnership with the State, local communities, preservation organizations, private corporations, and landowners in the Heritage Area, the Atchafalaya Trace State Heritage Area, as designated by the Louisiana Legislature, as the Atchafalaya National Heritage Area.

SEC. 4. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Atchafalaya National Heritage Area established by section 5(a).

(2) LOCAL COORDINATING ENTITY.—The term ''local coordinating entity'' means the local coordinating entity for the Heritage Area designated by section 5(c).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area developed under section 7.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) STATE.—The term ''State'' means the State of Louisiana.

SEC. 5. ATCHAFALAYA NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Atchafalaya National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the whole of the following parishes in the State: St. Mary, Iberia, St. Martin, St. Landry, Avoyelles, Pointe Coupee, Iberville, Assumption, Terrebonne, Lafayette, West Baton Rouge, Concordia, and East Baton Rouge.

(c) LOCAL COORDINATING ENTITY.—

(1) IN GENERAL.—The Atchafalaya Trace Commission shall be the local coordinating entity for the Heritage Area.

(2) COMPOSITION.—The local coordinating entity shall be composed of 13 members appointed by the governing authority of each parish within the Heritage Area.

SEC. 6. AUTHORITIES AND DUTIES OF THE LOCAL COORDINATING ENTITY.

(a) AUTHORITIES.—For the purposes of developing and implementing the management plan and otherwise carrying out this Act, the local coordinating entity may—

(1) make grants to, and enter into cooperative agreements with, the State, units of local government, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The local coordinating entity shall—

(1) submit to the Secretary for approval a management plan;

(2) implement the management plan, including providing assistance to units of government and others in—

(A) carrying out programs that recognize important resource values within the Heritage Area;

(B) encouraging sustainable economic development within the Heritage Area;

(C) establishing and maintaining interpretive sites within the Heritage Area; and

(D) increasing public awareness of, and appreciation for the natural, historic, and cultural resources of, the Heritage Area;

(3) adopt bylaws governing the conduct of the local coordinating entity; and

(4) for any year for which Federal funds are received under this Act, submit to the Secretary a report that describes, for the year—

(A) the accomplishments of the local coordinating entity; and

(B) the expenses and income of the local coordinating entity.

(c) ACQUISITION OF REAL PROPERTY.—The local coordinating entity shall not use Federal funds received under this Act to acquire real property or an interest in real property.

(d) PUBLIC MEETINGS.—The local coordinating entity shall conduct public meetings at least quarterly.

SEC. 7. MANAGEMENT PLAN.

(a) IN GENERAL.—The local coordinating entity shall develop a management plan for the Heritage Area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, scenic, cultural, historic, and recreational resources of the Heritage Area.

(b) CONSIDERATION OF OTHER PLANS AND ACTIONS.—In developing the management plan, the local coordinating entity shall—

(1) take into consideration State and local plans; and

(2) invite the participation of residents, public agencies, and private organizations in the Heritage Area.

(c) CONTENTS.—The management plan shall include—

(1) an inventory of the resources in the Heritage Area, including—

(A) a list of property in the Heritage Area that—

(i) relates to the purposes of the Heritage Area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the Heritage Area;

(2) provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with this Act;

(3) an interpretation plan for the Heritage Area; and

(4) a program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the Heritage Area; and

(B) the identification of existing and potential sources of funding for implementing the plan.

(d) SUBMISSION TO SECRETARY FOR APPROVAL.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the local coordinating entity shall submit the management plan to the Secretary for approval.

(2) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Area is submitted to the Secretary.

(e) APPROVAL.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (d)(1), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—

(A) IN GENERAL.—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(i) advise the local coordinating entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the local coordinating entity to submit to the Secretary revisions to the management plan.

(B) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(f) REVISION.—

(1) IN GENERAL.—After approval by the Secretary of a management plan, the local coordinating entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the local coordinating entity for any revisions to the management plan that the local coordinating entity considers to be appropriate.

(2) EXPENDITURE OF FUNDS.—No funds made available under this Act shall be used to implement any revision proposed by the local coordinating entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 8. FINANCIAL ASSISTANCE.

(a) IN GENERAL.—To provide the Federal share of financial assistance provided by the local coordinating entity under section 6(a) the Secretary shall provide the local coordinating entity financial assistance in the amount of $10,000,000, not to exceed $1,000,000 for any fiscal year.

(b) COST SHARING.—The Federal share of the cost of any activity assisted by the local coordinating entity under this Act shall not exceed 50 percent.

SEC. 9. EFFECT OF ACT.

Nothing in this Act or in establishment of the Heritage Area—

(1) grants any Federal agency regulatory authority over any interest in the Heritage Area, unless cooperatively agreed on by all involved parties;

(2) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any use of land as provided for by law (including regulations) in existence on the date of enactment of this Act;

(3) grants any power of zoning or land use to the local coordinating entity;

(4) imposes any environmental, occupational, safety, or other rule, standard, or permitting process that is different from those in effect on the date of enactment of this Act that would be applicable had the Heritage Area not been established;

(5)(A) imposes any change in Federal environmental quality standards; or

(B) authorizes designation of any portion of the Heritage Area that is subject to part C of title I of the Clean Air Act (42 U.S.C. 7470 et seq.) as class 1 for the purposes of that part solely by reason of the establishment of the Heritage Area;

(6) authorizes any Federal or State agency to impose more restrictive water use designations, or water quality standards on uses of or discharges to, waters of the United States or waters of the State within or adjacent to the Heritage Area solely by reason of the establishment of the Heritage Area;

(7) abridges, restricts, or alters any applicable rule, standard, or review procedure for permitting of facilities within or adjacent to the Heritage Area; or

(8) affects the continuing use and operation, where located on the date of enactment of this Act, of any public utility or common carrier.

SEC. 10. REPORTS.

For any year in which Federal funds have been made available under this Act, the local coordinating entity shall submit to the Secretary a report that describes—

(1) the accomplishments of the local coordinating entity; and

(2) the expenses and income of the local coordinating entity.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 shall be made available for any fiscal year.

SEC. 12. TERMINATION OF AUTHORITY.

The Secretary shall not provide any assistance under section 8 after September 30, 2017.

By Mr. GRASSLEY:

S. 2901. A bill to provide that bonuses and other extraordinary or excessive compensation of corporate insiders and wrongdoers may be included in the bankruptcy estate; to the Committee on the Judiciary.

Mr. GRASSLEY. Madam President, I come to the floor today to introduce legislation that will bring more accountability to corporate officers and directors when a company goes bankrupt. This bill contains substantially the same language I had in an amendment I filed to the corporate reform bill that we passed into law a couple of months ago, but unfortunately my bankruptcy amendment was not considered. My legislation, the ''Corporate Accountability in Bankruptcy Act'', would clarify that the bonuses and other excessive compensation of corporate directors and wrongdoers can be brought back into a bankruptcy estate when a company goes bankrupt. This legislation is equitable because corporate officers and those individuals that have engaged in wrongdoing and violated the securities and accounting laws should not be able to make outrageous amounts of money off of a company which has gone bankrupt, while the company's employees, shareholders and creditors are left carrying the burden of the bankruptcy. Furthermore, corporate officers and insiders shouldn't be allowed to get bonuses and loans when a company has done so poorly to go bankrupt. They don't deserve that kind of excessive compensation. The plain fact is that corporate officers and those who engage in illegal activity should not be allowed to benefit where their actions have contributed to the downfall of the company. I don't think that's fair, and my bill would ensure that there is some equity in terms of who gets left holding the bag when a company goes bankrupt.

Currently, the Bankruptcy Code permits a trustee to recover assets which a debtor has previously distributed to creditors within a certain time period prior to the filing of a bankruptcy petition. This allows a trustee to increase a debtor's assets for the fair treatment and equitable distribution of assets among all creditors, as well as to help shore up a debtor's assets during a reorganization.

Section 547 of the Bankruptcy Code allows a trustee to recover assets from an insider made within a year of the filing of a bankruptcy petition. However, the Bankruptcy Code does not clearly establish that this section applies to bonuses and other extraordinary or excessive compensation of insiders, officers and directors. A cursory review of the case law by my staff and the Congressional Research Service indicates that the courts have not developed this issue, and that relevant case law is not dispositive on the matter of whether bonuses and excessive compensation are avoidable in bankruptcies of publically held companies.

In addition, section 548 of the Bankruptcy Code allows a trustee to recover transfers of assets, made within one year, where there has been a fraudulent transaction or where a debtor has received less than what is reasonably equivalent in value. Here too, the Bankruptcy Code is not clear as to whether this section applies to the bonuses and other extraordinary or excessive compensation of officers, directors or other company employees who have violated securities laws or engaged in illegal accounting practices when their conduct, but not their compensation, has led to the company's bankruptcy. Similarly, the case law is not dispositive on this matter either.

I think everyone would agree that a trustee should be able to recover these kinds of assets when a company goes bankrupt. Corporate bigwigs and wrongdoers shouldn't be able to keep their bonuses, loans or other excessive compensation when a company goes under. Corporate mismanagement and irresponsibility should not be rewarded, and the bad guys need to be held accountable.

So I think that we need to clarify the Bankruptcy Code in order that bonuses, loans, and other extraordinary or excessive compensation that the company has given to the insiders and wrongdoers can be drawn back into the bankruptcy estate.

My legislation is simply and straightforward. The Corporate Accountability in Bankruptcy Act would specifically provide in section 547 of the Bankruptcy Code that a trustee may recover bonuses, loans, nonqualified deferred compensation, and any other extraordinary or excessive compensation as determined by the court, made to an insider, officer or director and made within one year before the date of the filing of the bankruptcy petition.

In addition, the Corporate Accountability in Bankruptcy Act would specifically provide in section 548 of the Bankruptcy Code that a trustee may recover bonuses, loans, nonqualified deferred compensation, and any other extraordinary or excessive compensation, as determined by the court, paid to an officer, director or employee who has committed securities or accounting violations, within 4 years of the filing of the bankruptcy petition. My bill extends the present one year reach-back period for fraudulent transfers in the Bankruptcy Code to 4 years, I did that because a majority of states have adopted a 4 year time period or the Uniform Fraudulent Transfer Act which allows for a 4 year time frame. I believe that these changes to section 548 are fair because they are tied to excessiveness and wrongdoing. Simply said, illegal acts should not be rewarded with a big fat paycheck.

The point of this bill is that corporate officers and wrongdoers should not be able to keep bonuses, loans and other excessive compensation when the company goes under and others, employees, creditors and investors, are left holding an empty bag through no fault of their own. It's just not fair. So I hope that my colleagues will support the Corporate Accountability in Bankruptcy Act to make the Bankruptcy Code clear that corporate bigwigs and wrongdoers cannot unjustly enrich themselves and their excessive compensation and loans can and will be brought back into the bankruptcy estate.

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. 2901

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 ''Corporate Accountability in Bankruptcy Act''.

SEC. 2. BANKRUPTCY PROVISIONS.

(a) PREFERENCES.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) A trustee may avoid any transfer made within 1 year before the date of the filing of the petition that was made to an insider, officer, or director for any bonuses, loans, nonqualified deferred compensation, or other extraordinary or excessive compensation as determined by the court.''.

(b) FRAUDULENT TRANSFERS AND OBLIGATIONS.—Section 548(a) of title 11, United States Code, is amended by adding at the end the following:

''(3) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, including any bonuses, loans, nonqualified deferred compensation, or other extraordinary or excessive compensation as determined by the court, paid to any officer, director, or employee of an issuer of securities (as defined in section 2(a) of the Public Company Accounting Reform and Investor Protection Act of 2002), if—

''(A) that transfer of interest or obligation was made or incurred on or within 4 years before the date of the filing of the petition; and

''(B) the officer, director, or employee committed—

''(i) a violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), State securities laws, or any regulation or order issued under Federal or State securities laws;

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933; or

''(iii) illegal or deceptive accounting practices.''.

By Mr. WELLSTONE (for himself and Mr. DAYTON):

S. 2900. A bill to designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''; to the Committee on Governmental Affairs.

Mr. WELLSTONE. Madam President, I rise today to pay tribute to an American hero. Tom Burnett, Jr. was a beloved husband and father, an adored son, and an able business leader. He was a person who would not, and did not, sit quietly as terrorists carried out their plan last year on September 11.

I am introducing a bill today, along with my colleague from Minnesota, Senator DAYTON. Our bill would designate a U.S. Postal Service facility in Bloomington, MN as the ''Thomas E. Burnett, Jr. Post Office Building.'' It is a companion proposal to a bill introduced by our House colleague, Representative JIM RAMSTAD, whose district includes Bloomington.

Tom Burnett, Jr., who grew up in Bloomington, was aboard United Flight 93 on September 11 of last year. America owes Tom a deep debt of gratitude for his bravery on that day. It is possible that Members of Congress, including myself, could owe him our very lives. We will never know for sure. Tom is believed by investigators to have been among those passengers who kept the hijackers from crashing Flight 93 into a national landmark, most likely the White House or the Capitol. That, of course, would likely have resulted in many more deaths than already occurred that day. Instead, as we all know, Flight 93 crashed in a Pennsylvania field.

After listening to the tape from the flight's black box, law enforcement officials have described a desperate struggle aboard the plane. As FBI Director Mueller said after being briefed on the contents of the tape, ''We believe those passengers were absolute heroes, and their actions during this flight were heroic.''

Tom Burnett, Jr. was 38 years old when he died. A 1986 graduate of the Carlson School of Management at the University of Minnesota and a member of Alpha Kappa Psi fraternity, he had shown selfless leadership before. As a quarterback at Thomas Jefferson High School in Bloomington, Tom's inspired play led his team to the conference championship game in 1980. He was a successful business leader as chief operating officer for a medical device manufacturer in California.

We will never forget the ultimate sacrifice of Tom and many other heroes last September 11. Our thoughts and prayers today are with Tom's family: his wife Deena; their daughters Madison, Halley and Anna-Clair; his parents Thomas, Sr. and Beverly; and his sisters Martha O'Brien and Mary Margaret Burnett. Bloomington will be proud to have this post office named for Tom Burnett, Jr. We all are proud of this son of Minnesota.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4471. 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.

TEXT OF AMENDMENTS

SA 4471. 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; 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.

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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) RISK ANALYSIS AND RISK MANAGEMENT.—The term ''risk analysis and risk management'' means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(14) STRATEGY.—The term ''Strategy'' means the National Strategy for Combating Terrorism and the Homeland Security Response developed under this division.

(15) 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 manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(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 in 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) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(7) 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 coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(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 RISK ANALYSIS AND RISK MANAGEMENT RESPONSIBILITIES.—The Under Secretary for Intelligence shall, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, be responsible for—

(1) developing analysis concerning the means and methods terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) supporting experiments, tests, and inspections to identify weaknesses in homeland defenses;

(3) developing 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.

(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) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate. This shall include, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, establishing procedures, mechanisms, or units for the purpose of utilizing intelligence to identify vulnerabilities and protective measures in—

(A) public health infrastructure;

(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) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(15) 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) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(L) 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 assist the Secretary, the Under Secretary, and other Directorates with respect to their risk analysis and risk management activities by providing scientific or technical support for such activities. Such support shall include, as appropriate—

(A) identification and characterization of homeland security threats;

(B) evaluation and delineation of the risk of these threats;

(C) pinpointing of vulnerabilities or linked vulnerabilities to these threats;

(D) determination of criticality of possible threats;

(E) analysis of possible technologies, research, and protocols to mitigate or eliminate threats, vulnerabilities, and criticalities;

(F) evaluation of the effectiveness of various forms of risk communication; and

(G) other appropriate activities as directed by the Secretary.

(3) METHODS.—In performing the activities described under paragraph (2), the Office of Risk Analysis and Assessment may support or conduct, or commission from federally funded research and development centers or other entities, work involving modeling, statistical analyses, field tests and exercises (including red teaming), testbed development, development of standards and metrics.

(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.

SEC. 172. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''March 31, 2004''.

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 ensure that relevant agencies and entities conduct appropriate risk analysis and risk management activities and provide pertinent information derived such activities to the Office, and to review and integrate such information into the development of the Strategy.

(3) 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.

(4) To develop, with the Secretary of Homeland Security, the Strategy under title III.

(5) 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.

(6) 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.

(7)(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.

(8) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(9) To serve as an advisor to the National Security Council.

(10) 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 combating 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 (l)(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.

''(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

''(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.''.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON FORESTRY, CONSERVATION, AND RURAL REVITALIZATION

Mr. HARKIN. Mr. President, I would like to announce that the Subcommittee on Forestry, Conservation, and Rural Revitalization of the Committee on Agriculture, Nutrition, and Forestry will meet on September 5, 2002, in SR–328A at 9:00 a.m. The purpose of this hearing will be to discuss the decline of oak tree populations in southern states caused by prolonged drought and red oak borer insect infestation.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, September 3, 2002, at 2:30 pm on the nomination of Marion Blakey to be the Administrator of the Federal Aviation Administration.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Public Health, be authorized to meet for a hearing on Staying Healthy: Health Issues Surrounding Proposed Changes in Clean Air Standards during the session of the Senate on Tuesday, September 3, 2002, at 2:30 p.m. in SD–430.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 5005

Mr. REID. Madam President, I ask unanimous consent that at 1 p.m., Wednesday, September 4, when the Senate resumes consideration of H.R. 5005, Senator LIEBERMAN be recognized to call amendment No. 4471 before the Senate.

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

Mr. REID. This has been cleared with the minority.

NATIONAL BOOK FESTIVAL

Mr. REID. Madam President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H. Con. Res. 348, and the Senate then proceed to its consideration.

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

The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 348) authorizing the use of the Capitol Grounds for the National Book Festival.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the resolution be agreed to 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 concurrent resolution (H. Con. Res. 348) was agreed to.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 107–15

Mr. REID. Madam President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate today by the President of the United States:

Treaty with Honduras for Return of Stolen, Robbed, or Embezzled Vehicles and Aircraft (Treat Document No. 107–15).

I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Honduras for the Return of Stolen, Robbed, or Embezzled Vehicles and Aircraft, with Annexes and a related exchange of notes, signed at Tegucigalpa on November 23, 2001. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of stolen vehicle treaties being negotiated by the United States in order to eliminate the difficulties faced by owners of vehicles that have been stolen and transported across international borders. Like several in this series, this Treaty also covers aircraft. When it enters into force, it will be an effective tool to facilitate the return of U.S. vehicles and aircraft that have been stolen, robbed, or embezzled and found in Honduras.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

GEORGE W. BUSH.

THE WHITE HOUSE, *September 3, 2002.*

PRINTING OF LIEBERMAN SUBSTITUTE TO H.R. 5005

Mr. REID. Madam President, I ask unanimous consent that the Lieberman substitute amendment to H.R. 5005 be printed in the RECORD.

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

ORDERS FOR WEDNESDAY, SEPTEMBER 4, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Wednesday, September 4; that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate begin consideration of the Interior Appropriations Act; further, at 12 noon, there be a period of morning business until 1 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of Senator KENNEDY or his designee, and the second half of the time under the control of the Republican leader or his designee, and at 1 p.m. the Senate resume consideration of the Homeland Security Act.

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

DUAL TRACKING OF LEGISLATION

Mr. REID. Madam President, we are trying something in the Senate that we have tried on a number of other occasions but not often. We are going to do two bills at one time. It is dual tracking. We are going to take up the Interior Appropriations bill in the morning and go until 12 noon on that legislation. At 12 o'clock, we will have an hour of morning business, and then we will go back to the Homeland Security bill. We will do the same thing on Thursday.

We hope that people will be ready on both pieces of legislation to offer any amendment or amendments they might have. I would feel that we were wasting a lot of time if, for example, tomorrow we did not have some amendments offered on the Interior Appropriations bill. The leader has indicated that he expects late votes after tomorrow, which will be Thursday.

We have to stop early tomorrow because former Vice President Mondale will be here to address Members of the Senate. We have a lot of work to do and a very limited amount of time in which to do everything we need to do before our adjournment. Members are put on notice we will be working on Fridays and Mondays, and we will have votes later than normal on Fridays and earlier than usual on Mondays, with the exception of a week from next Monday.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:16 p.m. adjourned until Wednesday, September 4, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 3, 2002:

DEPARTMENT OF STATE

JOHN F. KEANE, 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 PARAGUAY.

KIM R. HOLMES, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF STATE (INTERNATIONAL ORGANIZATIONS), VICE C. DAVID WELCH.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

IRENE B. BROOKS, OF PENNSYLVANIA, TO BE A COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE SUSAN BAYH.

ALLEN I. OLSON, OF MINNESOTA, TO BE A COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE ALICE CHAMBERLIN.

EXECUTIVE OFFICE OF THE PRESIDENT

LINDA M. SPRINGER, OF PENNSYLVANIA, TO BE CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, VICE MARK W. EVERSON.

FEDERAL LABOR RELATIONS AUTHORITY

DALE CABANISS, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS EXPIRING JULY 29, 2007. (REAPPOINTMENT)

NATIONAL INDIAN GAMING COMMISSION

PHILIP N. HOGEN, OF SOUTH DAKOTA, TO BE CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION FOR THE TERM OF THREE YEARS, VICE MONTIE R. DEER, TERM EXPIRED.

CENTRAL INTELLIGENCE

SCOTT W. MULLER, OF MARYLAND, TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY, VICE ROBERT M. MCNAMARA, JR., RESIGNED.

SMALL BUSINESS ADMINISTRATION

HAROLD DAMELIN, OF VIRGINIA, TO BE INSPECTOR GENERAL, SMALL BUSINESS ADMINISTRATION, VICE PHYLLIS K. FONG.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. NORTON A. SCHWARTZ, 7542

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. RONALD E. KEYS, 5357

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. CARROL H. CHANDLER, 9115

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 admiral

ADM. JAMES O. ELLIS, 4995

IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

DONALD C. ALFANO, 2311

DANIEL M. FLEMING, 5242

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

ROBERT W. BISHOP, 3459
CURTIS L. DAVIS, 4991
KENNETH J. EMANUEL, 2003
GARY A. JEFFRIES, 8828
JEFFREY S. LAWSON, 5332
CYNTHIA A. RYAN, 1132
JOHN W. SHEFFIELD III, 6453
STEVEN K. YOUNG, 3541

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

MATHEW J. BRAKORA, 1409
JUAN R. CARRERAS, 4050
JACK A. SCHNURR, 5249
STEPHEN D. WINEGARDNER, 8752

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

TIMOTHY P. DESTIGTER, 2087
WAYNE L. ECHTERLING, 0464
SHELDON R. OMI, 5683

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

WILLIAM R. CHARBONNEAU, 3903

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

MARGARET H. BAIR, 3851
PAUL E. MAGUIRE, 7989

IN THE ARMY

THE FOLLOWING NAMED OFFICERS 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

WILLIAM C. DEVIRES, 9819
PETER P. MCKEOWN, 8942

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

SAMUEL B. GROVE, 7944

CONFIRMATION

Executive Nomination Confirmed by the Senate September 3, 2002:

THE JUDICIARY

TERRENCE F. MCVERRY, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Daily Digest

HIGHLIGHTS

See Résumé of Congressional Activity.

Senate

Chamber Action

Routine Proceedings, pages S8035–S8139

Measures Introduced: Six bills were introduced, as follows: S. 2896–2901. **Page S8092**

Measures Reported:

Reported on Friday, August 2, during the adjournment:

S. 1971, to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, with an amendment in the nature of a substitute. (S. Rept. No. 107–242)

Reported on Wednesday, August 28, during the adjournment:

S. 351, to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, with an amendment in the nature of a substitute. (S. Rept. No. 107–243)

S. 1079, to amend the Public Works and Economic Development Act of 1965 to provide assistance to communities for the redevelopment of brownfield sites, with an amendment in the nature of a substitute. (S. Rept. No. 107–244)

S. 710, to require coverage for colorectal cancer screenings, with an amendment in the nature of a substitute. (S. Rept. No. 107–245)

S. 1210, to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996, with an amendment in the nature of a substitute. (S. Rept. No. 107–246)

S. 2711, to reauthorize and improve programs relating to Native Americans, with an amendment in the nature of a substitute. (S. Rept. No. 107–247)

S. 1344, to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers, with an amendment in the nature of a substitute. (S. Rept. No. 107–248)

S. 2017, to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program, with an amendment in the nature of a substitute. (S. Rept. No. 107–249)

Reported today:

S. 210, to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, with an amendment in the nature of a substitute. (S. Rept. No. 107–250)

S. 2753, to provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, with an amendment in the nature of a substitute. (S. Rept. No. 107–251)

S. 1308, to provide for the use and distribution of the funds awarded to the Quinault Indian Nation under United States Claims Court Dockets 772–72, 773–71, and 775–71. (S. Rept. No. 107–252)

Page S8091

Measures Passed:

National Book Festival: Committee on Rules and Administration was discharged from further consideration of H. Con. Res. 348, authorizing the use of the Capitol Grounds for the National Book Festival, and the resolution was then agreed to. **Pages S8137–38**

Homeland Security Act: By a unanimous vote of 94 yeas (Vote No. 209), Senate agreed to the motion to proceed to consideration of H.R. 5005, to establish the Department of Homeland Security, and then began consideration of the bill.

Pages S3036–48, S8052–78

A unanimous-consent agreement was reached providing for further consideration of the bill at 1 p.m. on Wednesday, September 4, 2002, where Senator Lieberman will be recognized to offer Amendment No. 4471. **Page S8137**

Department of the Interior Appropriations—Agreement: A unanimous-consent agreement was reached providing for consideration of H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003 at 9:30 a.m., on Wednesday, September 4, 2002. **Page S8138**

Executive Reports of Committees: Senate received the following executive report of a committee:

Report to accompany 1990 Protocol To The 1983 Maritime Environment Of The Wider Caribbean Region Convention (Treaty Doc. 103–5) (Ex. Rept. 107–8) **Pages S8091–92**

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaty:

Treaty with Honduras for Return of Stolen, Robbed, or Embezzled Vehicles and Aircraft (Treaty Doc. No. 107–15).

The treaty was transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed. **Page S8138**

Nominations Confirmed: Senate confirmed the following nominations:

By unanimous vote of 88 yeas (Vote No. EX. 208), Terrence F. McVerry, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania. **Pages S8048–52, S8139**

Nominations Received: Senate received the following nominations:

John F. Keane, of Virginia, to be Ambassador to the Republic of Paraguay.

Kim R. Holmes, of Maryland, to be an Assistant Secretary of State (International Organizations).

Irene B. Brooks, of Pennsylvania, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Allen I. Olson, of Minnesota, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Linda M. Springer, of Pennsylvania, to be Controller, Office of Federal Financial Management, Office of Management and Budget.

Dale Cabaniss, of Virginia, to be a Member of the Federal Labor Relations Authority for a term of five years expiring July 29, 2007. (Reappointment)

Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

Scott W. Muller, of Maryland, to be General Counsel of the Central Intelligence Agency.

Harold Damelin, of Virginia, to be Inspector General, Small Business Administration.

3 Air Force nominations in the rank of general.

1 Navy nomination in the rank of admiral.

Routine lists in the Air Force, Army, Marine Corps. **Pages S8138–39**

Messages From the House: **Page S8082**

Measures Referred: **Page S8082**

Measures Placed on Calendar: **Page S8036**

Executive Communications: **Pages S8082–84**

Petitions and Memorials: **Pages S8084–91**

Executive Reports of Committees: **Pages S8091–92**

Additional Cosponsors: **Pages S8092–93**

Statements on Introduced Bills/Resolutions: **Pages S8093–S8100**

Additional Statements: **Pages S8079–82**

Amendments Submitted: **Pages S8100–37**

Notices of Hearings/Meetings: **Page S8137**

Authority for Committees to Meet: **Page S8137**

Record Votes: Two record votes were taken today. (Total—209) **Pages S8049, S8077–78**

Adjournment: Senate met at 9:30 a.m., and adjourned at 7:16 p.m., until 9:30 a.m., on Wednesday, September 4, 2002. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S8138).

Committee Meetings

(Committees not listed did not meet)

NOMINATION

Committee on Commerce, Science, and Transportation: Committee concluded hearings on the nomination of Marion C. Blakey, of Mississippi, to be Administrator of the Federal Aviation Administration, Department of Transportation, after the nominee testified and answered questions in her own behalf.

House of Representatives

Chamber Action

The House was not in session today. Pursuant to the provisions of S. Con. Res. 132, the House stands adjourned for the Summer District Work Period until 2 p.m. on Wednesday, September 4, 2002.

Committee Meetings

No committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D866)*

H.R. 3487, to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing. Signed on August 1, 2002. (Public Law 107–205)

H.R. 4775, making supplemental appropriations for the fiscal year ending September 30, 2002. Signed on August 2, 2002. (Public Law 107–206)

H.R. 2175, to protect infants who are born alive. Signed on August 5, 2002. (Public Law 107–207)

H.R. 1209, to amend the Immigration and Nationality Act to determine whether an alien is a child, for purposes of classification as an immediate relative, based on the age of the alien on the date the classification petition with respect to the alien is filed. Signed on August 6, 2002. (Public Law 107–208)

S.J. Res. 13,conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette. Signed on August 6, 2002. (Public Law 107–209)

H.R. 3009, to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act. Signed on August 6, 2002. (Public Law 107–210)

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. Signed on August 21, 2002. (Public Law 107–211)

H.R. 309, to provide for the determination of withholding tax rates under the Guam income tax. Signed on August 21, 2002. (Public Law 107–212)

H.R. 601, to redesignate certain lands within the Craters of the Moon National Monument. Signed on August 21, 2002. (Public Law 107–213)

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. Signed on August 21, 2002. (Public Law 107–214)

H.R. 1456, to expand the boundary of the Booker T. Washington National Monument. Signed on August 21, 2002. (Public Law 107–215)

H.R. 1576, to designate the James Peak Wilderness and Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado. Signed on August 21, 2002. (Public Law 107–216)

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''. Signed on August 21, 2002. (Public Law 107–217)

H.R. 2234, to revise the boundary of the Tumacacori National Historical Park in the State of Arizona. Signed on August 21, 2002. (Public Law 107–218)

H.R. 2440, to rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts''. Signed on August 21, 2002. (Public Law 107–219)

H.R. 2441, to amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center. Signed on August 21, 2002. (Public Law 107–220)

H.R. 2643, to authorize the acquisition of additional lands for inclusion in the Fort Clatsop National Memorial in the State of Oregon. Signed on August 21, 2002. (Pubic Law 107–221)

H.R. 3343, to amend title X of the Energy Policy Act of 1992. Signed on August 21, 2002. (Public Law 107–222)

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. Signed on August 21, 2002. (Public Law 107–223)

CONGRESSIONAL PROGRAM AHEAD

Week of September 4 through September 7, 2002

Senate Chamber

On *Wednesday,* at 9:30 a.m., Senate will consider H.R. 5093, Department of the Interior Appropriations Act; and at 1 p.m., Senate will continue consideration of H.R. 5005, Homeland Security Act.

During the balance of the week, Senate will consider any other cleared legislative and executive business, including appropriations bills and conference reports, when available.

Senate Committees

(Committee meetings are open unless otherwise indicated)

Special Committee on Aging: September 4, to hold hearings to examine the image of aging in news, entertainment and marketing, 9:30 a.m., SD–628.

Committee on Agriculture, Nutrition, and Forestry: September 5, Subcommittee on Forestry, Conservation, and Rural Revitalization, to hold hearings to examine the decline of oak tree populations in southern states caused by prolonged drought and red oak borer insect infestation, 9 a.m., SR–328A.

Committee on Banking, Housing, and Urban Affairs: September 5, to hold hearings to examine the importance of financial literacy among college students, 10 a.m., SD–538.

Committee on Commerce, Science, and Transportation: September 5, to hold hearings to examine the nominations of Roger P. Nober, of Maryland, to be a Member of the Surface Transportation Board, Department of Transportation, and David McQueen Laney, of Texas, to be a Member of the Reform Board (Amtrak), 2:30 p.m., SR–253.

Committee on Foreign Relations: September 4, to hold hearings to examine the nominations of John R. Dawson, of the District of Columbia, to be Ambassador to the Republic of Peru, Antonio O. Garza, Jr., of Texas, to be Ambassador to Mexico, and Linda Ellen Watt, of Florida, to be Ambassador to the Republic of Panama, 4 p.m., SD–419.

Committee on Health, Education, Labor, and Pensions: September 4, business meeting to consider S. 2758, entitled ''The Child Care and Development Block Grant Amendments Act'', 10 a.m., SD–430.

September 5, Full Committee, business meeting to consider S. 2328, to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to ensure a safe pregnancy for all women in the United States, to reduce the rate of maternal morbidity and mortality, to eliminate racial and ethnic disparities in maternal health outcomes, to reduce pre-term, labor, to examine the impact of pregnancy on the short and long term health of women, to expand knowledge about the safety and dosing of drugs to treat pregnant women with chronic conditions and women who become sick during pregnancy, to expand public health prevention, education and outreach, and to develop improved and more accurate data collection related to maternal morbidity and mortality; and S.2817, to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, 10 a.m., SD–430.

Select Committee on Intelligence: September 5, to hold closed hearings on intelligence matters, 2:30 p.m., SH–219.

Committee on the Judiciary: September 4, Subcommittee on Technology, Terrorism, and Government Information, to hold hearings to examine an AMBER Alert National System, 10 a.m., SD–226.

September 5, Full Committee, business meeting to consider pending business items, 10 a.m., SD–226.

House Chamber

Wednesday, consideration of suspensions pursuant to unanimous consent:

(1) H. Con. Res. 183, United States Congressional Philharmonic Society;

(2) H.R. 5012, John F. Kennedy Center Plaza Authorization;

(3) H.R. 1070, Great Lakes Legacy;

(4) H.R. 3287, Joseph Curseen, Jr. and Thomas Morris, Jr. Postal Facility, Washington, DC;

(5) H.R. 5308, Barney Apodaca Post Office, Fort Collins, Colorado;

(6) H.R. 5207, Thomas E. Burnett, Jr. Post Office, Bloomington, Minnesota;

(7) H. Res. 94, Contributions of Venus and Serena Williams; and

(8) H.R. , Education Affordability;

Thursday, consideration of:

H.R. 4727, Dam Safety and Security Act (Subject to a Rule); and Consideration of motions to go to conference:

(1) H.R. 5011, Military Construction Appropriations; and

(2) H.R. 5010, Department of Defense Appropriations.

Friday, the House will conduct a special meeting with the Senate in Federal Hall in New York, New York in remembrance of the victims and the heroes of September 11, 2001.

House Committees

Committee on Appropriations, September 5, to mark up the Energy and Water Development Appropriations for fiscal year 2003, 2 p.m., 2359 Rayburn.

September 5, Subcommittee on Foreign Operations, to mark up appropriations for fiscal year 2003, 10 a.m., H–140 Capitol.

Committee on Armed Services, September 5, Special Oversight Panel on Terrorism, hearing on a report entitled ''Counter-Terrorism Intelligence Capabilities and Performance of the CIA, FBI, and NSA Prior to 9/11,'' 9:30 a.m., 2212 Rayburn.

Committee on Energy and Commerce, September 4, Subcommittee on Commerce, Trade, and Consumer Protection, hearing entitled ''The Consumer Product Safety Commission: The New Chairman's Agenda,'' 3 p.m., 2123 Rayburn.

Committee on the Judiciary, September 5, to continue markup of H.R. 4600, Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002; and to mark up the following bills: H.R. 1701, Consumer Rental Purchase Agreement; S. 2690, to reaffirm the reference to one Nation under God in the Pledge of Allegiance; H.R. 4125, Federal Courts Improvement Act of

2002; H.R. 4689, Fairness in Sentencing Act of 2002; and H.R. 4561, Federal Agency Protection of Privacy Act, 10 a.m., 2141 Rayburn.

Committee on Resources, September 5, to discuss the Administration's Healthy Forests: An Initiative for Wildlife Prevention and Stronger Communities; and to hold a hearing on the following measures: H.R. 5214, National Forest Fire Prevention Act; H.R. 5309, Wildlife Prevention and Forest Health Protection Act of 2002; and the Healthy Forests Reform Act of 2002, 9:30 a.m., 1324 Longworth.

September 5, Subcommittee on National Parks, Recreation and Public Lands, hearing on the following bills: H.R. 282, to authorize the Pyramid of Remembrance Foundation to establish a memorial in the District of Columbia or its environs to soldiers who have lost their lives during peacekeeping operations, humanitarian efforts, training, terrorist attacks, or covert operations; H.R. 3747, Bainbridge Island Japanese-American Memorial Study Act of 2002; H.R. 4692, to amend the Act entitled 'An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes', to provide for the addition of certain donated lands to the Andersonville National Historic Site; and a measure to provide for an exchange of certain private property in Colorado and certain Federal property in Utah, 10 a.m., 1334 Longworth.

Committee on Rules, September 4, to consider H.R. 4727, Dam Safety and Security Act of 2002, 5 p.m., H–313 Capitol.

Committee on Transportation and Infrastructure, September 5, Subcommittee on Highways and Transit, hearing on Driver's License Security Issues, 10 a.m., 2167 Rayburn.

Joint Meetings

Conference: September 5, meeting of conferees, in closed session, on H.R. 4546, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, 3 p.m., HC–8, Capitol.

Résumé of Congressional Activity

SECOND SESSION OF THE ONE HUNDRED SEVENTH CONGRESS

The first table gives a comprehensive résumé of all legislative business transacted by the Senate and House. The second table accounts for all nominations submitted to the Senate by the President for Senate confirmation.

DATA ON LEGISLATIVE ACTIVITY

January 23 through August 31, 2002

	Senate	*House*	*Total*
Days in session	106	85	..
Time in session	746 hrs., 01′	575 hrs., 25′	..
Congressional Record:			
Pages of proceedings	8,034	5,999	..
Extensions of Remarks	..	1,480	..
Public bills enacted into law	17	70	87
Private bills enacted into law	..	..	..
Bills in conference	10	10	..
Measures passed, total	254	357	611
Senate bills	55	16	..
House bills	78	171	..
Senate joint resolutions	1	2	..
House joint resolutions	2	3	..
Senate concurrent resolutions	22	8	..
House concurrent resolutions	17	47	..
Simple resolutions	79	110	..
Measures reported, total	211	260	471
Senate bills	126	6	..
House bills	47	169	..
Senate joint resolutions	2	1	..
House joint resolutions	..	3	..
Senate concurrent resolutions	8	..	..
House concurrent resolutions	3	11	..
Simple resolutions	25	70	..
Special reports	5	5	..
Conference reports	1	7	..
Measures pending on calendar	218	92	..
Measures introduced, total	1,188	2,079	3,267
Bills	1,010	1,705	..
Joint resolutions	13	28	..
Concurrent resolutions	44	160	..
Simple resolutions	121	186	..
Quorum calls	2	1	..
Yea-and-nay votes	207	207	..
Recorded votes	..	162	..
Bills vetoed	..	..	..
Vetoes overridden	..	..	..

DISPOSITION OF EXECUTIVE NOMINATIONS

January 23 through August 31, 2002

Civilian Nominations, totaling 532 (including 166 nominations carried over from the First Session), disposed of as follows:	
Confirmed	303
Unconfirmed	222
Withdrawn	7
Other Civilian Nominations, totaling 1,396 (including 535 nominations carried over from the First Session), disposed of as follows:	
Confirmed	1,123
Unconfirmed	273
Air Force Nominations, totaling 5,640 (including 4 nominations carried over from the First Session), disposed of as follows:	
Confirmed	5,231
Unconfirmed	409
Army Nominations, totaling 3,608 (including 53 nominations carried over from the First Session), disposed of as follows:	
Confirmed	1,924
Unconfirmed	1,684
Navy Nominations, totaling 4,424, disposed of as follows:	
Confirmed	3,049
Unconfirmed	1,375
Marine Corps Nominations, totaling 3,004 (including 33 nominations carried over from the First Session), disposed of as follows:	
Confirmed	2,976
Unconfirmed	28

Summary

Total Nominations carried over from the First Session	791
Total Nominations Received this Session	17,813
Total Confirmed	14,606
Total Unconfirmed	3,991
Total Withdrawn	7
Total Returned to the White House	0

Next Meeting of the SENATE

9:30 a.m., Wednesday, September 4

Senate Chamber

Program for Wednesday: Senate will consider H.R. 5093, Department of the Interior and Related Agencies Appropriations Act.

At 12 noon, Senate will begin a period of morning business.

At 1 p.m., Senate will continue consideration of H.R. 5005, Homeland Security Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

2 p.m., Wednesday, September 4

House Chamber

Program for Wednesday:

(1) H. Con. Res. 183, United States Congressional Philharmonic Society;

(2) H.R. 5012, John F. Kennedy Center Plaza Authorization;

(3) H.R. 1070, Great Lakes Legacy;

(4) H.R. 3287, Joseph Curseen, Jr. and Thomas Morris, Jr. Postal Facility, Washington, DC;

(5) H.R. 5308, Barney Apodaca Post Office, Fort Collins, Colorado;

(6) H.R. 5207, Thomas E. Burnett, Jr. Post Office, Bloomington, Minnesota;

(7) H. Res. 94, Contributions of Venus and Serena Williams; and

(8) H.R. , Education Affordability.

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