transmitting, pursuant to law, the report of a rule entitled ''Service Contracts Subject to the Shipping Act of 1984'' (Docket 98–30) received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2180. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the report of a rule entitled ''Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984'' (Docket 98–26) received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2181. A communication from the Acting Associate Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Mentor-Protege Program'' received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2182. A communication from the Acting Associate Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Application of Earned Value Management (EVM)'' received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2183. A communication from the Acting Associate Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Waiver of Submission of Cost or Pricing Data for Acquisitions With the Canadian Commercial Corporation and for Small Business Innovation Research Phase II Contracts'' received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2184. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Table of Allotments, TV Broadcast Stations (Kansas City, Missouri)'' (Docket 96–134) received on March 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2185. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Table of Allotments, FM Broadcast Stations (Brewster, Massachusetts)'' (Docket 98–58) received on March 9, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2186. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Table of Allotments, FM Broadcast Stations (Spencer and Webster, Massachusetts)'' (Docket 98–174) received on March 9, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2187. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Table of Allotments, FM Broadcast Stations (Pottsboro, Roxton and Whitesboro, Texas, and Durant, Leonard, Madill, and Sopher, Oklahoma)'' (Docket 98–63) received on March 9, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2188. A communication from the Attorney Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Utility Vehicle Label'' (RIN2127–AG53) received on March 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–2189. A communication from the Research and Special Programs Administration Attorney, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions'' (RIN2137–AD15) received on March 4, 1999; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following report of committees was submitted:

By Mr. THOMPSON, from the Committee on Governmental Affairs:

Report to accompany the bill (S. 557) to provide guidance for the designation of emergencies as a part of the budget process (Rept. No. 106–14).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COVERDELL (for himself and Mr. CLELAND):

S. 604. A bill to direct the Secretary of Agriculture to complete a land exchange with Georgia Power Company; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HOLLINGS:

S. 605. A bill to solidify the off-budget status of the old-age, survivors, and disability insurance program under title II of the Social Security Act and to protect program assets; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the Committee have thirty days to report or be discharged.

By Mr. NICKLES (for himself, Mr. HATCH, Mr. MACK, and Mrs. FEINSTEIN):

S. 606. A bill for the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes; to the Committee on the Judiciary.

By Mr. CRAIG (for himself and Mr. MURKOWSKI):

S. 607. A bill reauthorize and amend the National Geologic Mapping Act of 1992; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. CRAIG, Mr. GRAMS, and Mr. CRAPO):

S. 608. A bill to amend the Nuclear Waste Policy Act of 1982; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI:

S. 609. A bill to amend the Safe and Drug-Free Schools and Communities Act of 1994 to prevent the abuse of inhalants through programs under the Act, and for other purposes; read the first time.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 610. A bill to direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CAMPBELL:

S. 611. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

S. 612. A bill to provide for periodic Indian needs assessments, to require Federal Indian program evaluations; and for other purposes; to the Committee on Indian Affairs.

S. 613. A bill to encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes; to the Committee on Indian Affairs.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 614. A bill to provide for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands; to the Committee on Indian Affairs.

By Mr. CAMPBELL:

S. 615. A bill to encourage Indian economic development, to provide for a framework to encourage and facilitate intergovernmental tax agreements, and for other purposes; to the Committee on Indian Affairs.

By Mr. WELLSTONE:

S. 616. A bill to amend the Child Care and Development Block Grant Act of 1990 and the Higher Education Act of 1965 to establish and improve programs to increase the availability of quality child care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. COLLINS:

S. 617. A bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of insulin pumps as items of durable medical equipment; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 618. A bill to provide for the declassification of the journal kept by Glenn T. Seaborg while serving as chairman of the Atomic Energy Commission; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE:

S. 619. A bill to provide for a community development venture capital program; to the Committee on Small Business.

By Mr. SARBANES (for himself, Mr. WARNER, Mrs. MURRAY, and Mr. CAMPBELL):

S. 620. A bill to grant a Federal charter to Korean War Veterans Association, Incorporated, and for other purposes; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. DORGAN, Mr. BURNS, Mr. ROBERTS, and Mr. CONRAD):

S. 621. A bill to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS:

S. 605. A bill to solidify the off-budget status of the old-age, survivors, and disability insurance program under title II of the Social Security Act and to protect program assets; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the committee have 30 days to report or be discharged.

SOCIAL SECURITY FISCAL PROTECTION ACT OF 1999

Mr. HOLLINGS. Mr. President, on tomorrow afternoon, we begin to mark up the budget. That is, when I say we, I mean that the Budget Committee on the Senate side meets to mark up the budget for the year 2000 commencing October 1 this year, and immediately we will hear the cry, ''Surplus.''

I am constrained to say—as in the earliest days of the Republic when Patrick Henry said, ''Peace, Peace, everywhere men cry peace,'' and there was no peace—''surplus, surplus, everywhere men cry surplus,'' but there is no surplus.

The fact is that we are spending $100 billion more than we are taking in already this fiscal year, and under current policy the deficit for next year will be right at $90 billion.

Also, Mr. President, another thing to note is the fact that you are going to hear the cry, ''Saving Social Security.'' I can tell you categorically that neither the Republican plan, policy or approach nor the Democratic White House plan, policy or approach will save Social Security. Both spend 100 percent of the Social Security moneys coming in the fiscal year 2000, as is the case already this year. And otherwise, all the wonderful talk about paying down the debt is nothing more than fancy rhetoric for a flawed policy that has got us into a situation of fiscal cancer.

Now let me go right to the meaning of ''Surplus.'' Yes, we are making progress on the budget and the deficit. At a news conference earlier today I was asked about this and when did we ever expect to get some results. Well, I see that we are beginning to understand that there is no surplus. Most of the nation's astute commentators on the budget see this, too. Allan Sloan of Newsweek said, of course, that the President's plan was double accounting. Paul Samuelson talks about when they said ''surplus,'' it was ''surplus in the sky.'' The Concord Coalition, made up of our former colleagues, Senators Rudman and Nunn, with whom I have had an on-going engagement, finally says there is no surplus. And only two weeks ago Barron's, the conservative financial newspaper—which I hold it here—said: ''Hey, Guys, There is no Budget Surplus.''

But be that as it may, the White House and many members of Congress are going to start dealing around the so-called surplus, nonexistent that it is, for education, Medicare, tax cuts, anything and everything—everything but saving Social Security. It has been a constant charade on messages of the party caucuses on both sides since January, even during the impeachment days; we have got to get our message out. Unfortunately, most of the media falls right in line with the message. They don't look into the actual fact or the reality.

On the matter of the so-called surplus and the $100 billion that we are spending now: mind you me, Mr. President, we set spending caps year before last, and last year we broke the caps by $12 billion, and we have already broken the cap in this year's budget by $21 billion, which would mean in marking up 2000's budget we would immediately have to cut spending $33 billion to conform to the fiscal year 2000 budget cap.

Instead of doing that, we have already met in unison, almost like a chorus singing ''Whoopee for the military,'' and we have spent $18 billion on the military, money which is unaccounted for. Instead of cutting back, the Senate has already exceeded the agreed-to caps by $18 billion. Unless, of course, they intend to cut $18 billion in domestic programs or cut $18 billion in operation, maintenance and readiness within the defense budget.

We are going in the wrong direction. No one should think that Social Security has a surplus. This fiscal year, we have a surplus of the amount required to be paid out, but since we have been spending it each year there is a $730 billion deficit due and owing. Social Security is in the red.

So there are no surpluses. Even trying to get around that to try to get something to politic on for this year and next year, the Campaign 2000, they say, ''Well, wait a minute; we will start our tax cuts in the year 2002 when there is one document to the effect there might be a slight surplus in Social Security, over and above the Social Security amount or otherwise we can spend it on Medicare beginning in 2000''—anything for the Campaign 2000.

They talk in the Chamber about the Chinese. Come, come, come. It is not the Chinese. It is not the baby boomers in the next generation. It is the adults in Congress who are looting the Social Security trust fund. Each one of these particular plans spends 100 percent of the Social Security so-called surplus.

How do I say that? Well, it is easy. You go back into the original law—and I have a copy of the law itself—section 201.

I ask unanimous consent to have that printed in the RECORD.

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

THE SOCIAL SECURITY ACT (ACT OF AUGUST 14, 1935) [H.R. 7260]

TITLE II—FEDERAL OLD-AGE BENEFITS OLD-AGE RESERVE ACCOUNT

Section 201. (a) There is hereby created an account in the Treasury of the United States to be known as the Old-Age Reserve Account hereinafter in this title called the Account. There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the Account as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the Account only on such terms as to provide an investment yield of not less than 3 per centum per annum.

(c) Any obligations acquired by the Account (except special obligations issued exclusively to the Account) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Account shall be credited to and form a part of the Account.

(e) All amounts credited to the Account shall be available for making payments required under this title.

(f) The Secretary of the Treasury shall include in his annual report the actuarial status of the Account.

Mr. HOLLINGS. Mr. President, I will send that momentarily to the desk, section 201 of the Social Security Act. Under section 201 of Social Security, we required at this moment—and have been doing so for years—under law to invest only and immediately in T-bills, Treasury bills, these special securities of the Federal Government. Once we do that, of course, we get a bond or IOU; the Government gets the money, and immediately all of those moneys are transferred to the Government account and it is spent, allocated, or used to pay down the so-called public debt.

The one way to stop that is a bill, which I will send to the desk and for which I request proper referral. Mr. President, this bill simply says, amongst other things—and I will read section 5—that:

Notwithstanding any other provision of law, throughout each month that begins after October 1, 1999, the Secretary of Treasury shall maintain, in a secure repository or repositories, cash in a total amount equal to the total redemption value of all obligations issued to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund pursuant to section 201(d) of the Social Security Act that are outstanding on the first day of each month.

Advisedly, Mr. President, this was worked out by none other than my Social Security friends. At one time, I had the distinction of being the chairman of the Budget Committee. We had an outstanding staffer then named Ken Apfel. He is now the Social Security Administrator. I called over there and I said: Let's stop this roundabout dance

about surpluses and spending all the money and everything else; I want you to write a provision whereby we can do exactly what we said when Congress passed the Social Security Act.

Remember old John Mitchell, under the Nixon administration? He said, ''Watch what we do, not what we say.'' I am afraid on budget matters we have arrived exactly at that point. But, in any event, to do what we say, we have prepared this bill and now it has been introduced and, if passed by the Congress, yes, we will save Social Security.

Immediately, one of the distinguished Senators said, ''Wait a minute. Is the money going to just sit there?''

No. Mr. President, that money will be invested in T-bills, just as it has been all these years. Or, if there is an additional plan, like the Kerrey-Moynihan plan, like our Thrift Savings Plan—a certain percentage invested in the market in order to make more money but take on more risk—we can debate that. What this particular bill really does is save Social Security. Social Security funds will not be spent, save and excepting on Social Security purposes.

This is exactly what was intended by Mr. Greenspan when he headed the Greenspan Commission in 1983. In 1983, section 21 of the Greenspan Commission report said to take Social Security outside of the unified budget, outside of the unified deficit, and set it aside in trust. I struggled from 1983 until 1990 to translate Chairman Greenspan's recommendations into law. I thought we had done it in 1990, when we passed the Budget Act by a vote of 98 Senators here on the floor of the Senate and almost an equal majority, overwhelming as it was, over on the House side. President Bush, on November 5, 1990, signed the bill into law, including section 13301 of the Budget Act, which stated Congress could not spend Social Security moneys on anything other than the Social Security program; you had it outside of the unified budget and the deficit.

Unfortunately, Mr. President, that has been ignored. That is why I have to reword it this way. But the contemplation at the particular time, the law itself, the policy of the U.S. Government with respect to corporate America—we passed the Pension Reform Act of 1994 saying: Thou shalt not, in corporate America, spend your pension fund to pay off the company debt.

The most interesting and ironic thing is, when Denny McLain, the former great pitcher for the Detroit Tigers, became the head of a corporation and paid off its debt with the pension fund, he was sent to jail for 8 years. If you can find what jail poor Denny is in, say to him, ''Denny, next time, run for the U.S. Senate. Instead of a jail term, they will give you the good government award.''

That is exactly what we are doing. We violate our own policy. We pay off the debt with the Social Security Trust Fund and have been doing it for 15 years.

That gets me immediately to the point of so-called paying off the public debt. You know, they have these euphemisms and different expressions that come around budget time and make you think you have a real policy on board. That has been the policy.

Admittedly, if you had a stagnant economy, if you had a dormant stock market, you could welcome paying off the public debt to get the economy and the stock market moving and everything else. But to do it, not over just a year or 2, but to do it for the last 15 years to the tune of in excess of $100 billion, what it has really done is given us fiscal cancer. We have gone up, up, and away with the national debt, and the interest costs are killing us.

Let me dwell a minute on the interest costs on the national debt. The interest cost, when President Lyndon Johnson last balanced the budget, was $16 billion. Today the interest cost is projected to be $357 billion, almost a billion dollars a day. What it says to me is, this year I have to spend—and next year I have to spend—$357 billion for nothing. If I had been fiscally prudent, I could have had $80 billion for tax cuts plus $80 billion for spending increases plus $80 billion to pay down the debt plus $80 billion to save Social Security. That is $320 billion. I would have had $37 billion for you to have a party out here on the west front when I jump off the Capitol dome.

Since 1995, I have been telling Chairman DOMENICI, trying to bring sense to this entire budget debate by talking in the extreme, that by the year 2002, if he had a balanced budget, truly balanced—if we were paying out less than what we were bringing in or just at that amount—I would jump off the Capitol dome. And I reiterate the pledge. Let's make the bets—''Get old HOLLINGS to jump off the dome.'' Because under current policies, no one can possibly balance the budget while exceeding revenue by over $100 billion. Nobody is cutting $100 billion. They are spending $18 billion more unaccounted for, breaking the caps. Nobody is spending less than $90 billion. So we know with all of this spending for tax cuts, Medicare, education, housing, and everything else of that kind, that we are in deep trouble.

We have fiscal cancer. What we really should do, probably, as Mr. Greenspan, the head of the Federal Reserve, finally came around to saying, is do nothing: take this year's budget for next year. I did that as the Governor of South Carolina. I capped the debt. By the way, that would bring truth in budgeting to this crowd, if they are right. Let's plead guilty: They are right, I am wrong, there is a surplus and we are going to pay down the debt. If that occurs, we can cap the debt as of October 1 of this year, the beginning of the next fiscal year. Whatever it is, since there is a surplus and since we are going to pay down the debt, let's cap it so it does not exceed that particular amount.

You cannot get the White House—I faced them down in one of these briefings—to go along with it. I will make the motion and we will see how many people vote for that.

I am trying to bring truth to our federal budget. I am trying to avoid the fiscal cancer. The Republicans talk about an $80 billion across-the-board tax cut. I want a $357 billion tax cut this year, next year, and right along the line. I want, in that 10-year period, $3.5 trillion in tax cuts, not just this $800 billion tax cut. I want to get rid of this waste in Government.

I served on the Grace Commission to Eliminate Waste. I know what waste is. I speak advisedly. Before long, if those interest rates go up, instead of $357 billion, we will be up around $500 billion in interest costs. It is the largest item in the domestic budget for spending at this minute.

What we ought to do is get a hold of ourselves, start talking sense to each other, work out a plan to take care of the needs of Government, but quit using the Social Security surplus and trust fund as a political slush fund for any and every idea on the media message. And the media are going along with this nonsense and act like we actually are doing it. My particular bill will bring sobriety to the entire process and debate.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 605

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 ''Social Security Fiscal Protection Act of 1999''.

SEC. 2. OFF BUDGET STATUS OF SOCIAL SECURITY TRUST FUNDS.

Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 3. EXCLUSION OF RECEIPTS AND DISBURSEMENTS FROM SURPLUS AND DEFICIT TOTALS.

The receipts and disbursements of the old-age, survivors, and disability insurance program established under title II of the Social Security Act and the revenues under sections 86, 1401, 3101, and 3111 of the Internal Revenue Code of 1986 related to such program shall not be included in any surplus or deficit totals required under the Congressional Budget Act of 1974 or chapter 11 of title 31, United States Code.

SEC. 4. CONFORMITY OF OFFICIAL STATEMENTS TO BUDGETARY REQUIREMENTS.

Any official statement issued by the Office of Management and Budget or by the Congressional Budget Office of surplus or deficit totals of the budget of the United States Government as submitted by the President

or of the surplus or deficit totals of the congressional budget, and any description of, or reference to, such totals in any official publication or material issued by either of such Offices, shall exclude all receipts and disbursements under the old-age, survivors, and disability insurance program under title II of the Social Security Act and the related provisions of the Internal Revenue Code of 1986 (including the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund).

SEC. 5. REPOSITORY REQUIREMENT.

Notwithstanding any other provision of law, throughout each month that begins after October 1, 1999, the Secretary of the Treasury shall maintain, in a secure repository or repositories, cash in a total amount equal to the total redemption value of all obligations issued to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund pursuant to section 201(d) of the Social Security Act that are outstanding on the first day of such month.

By Mr. NICKLES (for himself, Mr. HATCH, Mr. MACK, and Mrs. FEINSTEIN):

S. 606. A bill for the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes; to the Committee on the Judiciary.

PRIVATE RELIEF BILL

Mr. NICKLES. Mr. President, today I introduce S. 606 for Senator MACK, Senator FEINSTEIN, Senator HATCH, and myself. This bill is intended to resolve litigation between the federal government and Kerr-McGee Corporation and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation) and Global Exploration and Development Corporation. This legislation embodies an agreement that has been reviewed and accepted by the Hearing Officer and a three judge reviewing panel. The Department of Justice has no objection to this legislation. In addition, this legislation would also make it a criminal act to distribute certain information relating to explosives, destructive devices, and weapons of mass destruction. This bill was reported by the Committee on the Judiciary in this form during the 105th Congress.

As background to this relief for Kerr-McGee and Global Exploration, in 1964, they first filed applications for phosphate prospecting permits in Osceola National Forest. Under Sec. 211(a) of the Mineral Lands Leasing Act, the Secretary can only grant prospecting permit applications following a determination that the public interest will be served by doing so. The U.S. Forest Service must also consent to the issuance of the prospecting permits. The permits were granted, and the plaintiffs subsequently discovered phosphate deposits.

The plaintiffs then filed applications with the Department of Interior for leases to mine the deposits in January of 1969. Whether the plaintiffs are entitled to leases is governed by the Mineral Lands Leasing Act (30 U.S.C. sec. 181 et. seq.) which requires the Secretary of Interior to issue leases to a permittee that has discovered a ''valuable deposit'' of mineral. The U.S. Geological Survey, the Bureau of Mines and the Office of Minerals Policy Department all confirmed that valuable deposits had in fact been discovered (valued at $100 to $300 million in 1970's dollars).

Kerr-McGee filed suit in 1973 and Global filed suit in 1978 seeking the immediate issuance of the leases. In 1981, the U.S. Forest Service began setting out the requirements for reclamation. The Department of Interior concluded the reclamation technology did not exist based on an Environmental Assessment (''EA'') prepared by Interior and issued in January of 1983. Based on that conclusion, the plaintiffs' applications for leases to mine the deposits were rejected.

Agency personnel had told plaintiffs that they would be able to comment on the EA findings before their final issuance. By law, the government was required to permit the applicants to participate in the EA process by submitting comments and expert analysis on the feasibility of reclamation. Plaintiffs were never given a chance to participate in the EA process, to show feasibility of reclamation, or to comment on the draft EA.

In 1984, the Florida Wilderness Act (Pub. L. 98–430, 98 Stat. 1665) was enacted which prevented the issuance of phosphate mining leases in Osceola, effectively foreclosing a legal remedy since plaintiffs could no longer ask for reversal of the prior decision or for relief for damages incurred. The House Committee Report accompanying the Act stated that ''in the event the courts ultimately determined that applicants have established lease rights, [the Act] provides that leases will not be issued. The applicants would instead be compensated as required in accordance with constitutional principles.'' H. Rpt. 98–102 Part I, 97th Cong., 1st Sess., at 7.

The plaintiffs pursued their case in federal district court and the Court of Appeals for the D.C. Circuit. The Court of Appeals vacated the district court's judgment and remanded the case with instructions to dismiss the suit as moot in light of Florida Wilderness Act. The U.S. Court of Federal Claims then questioned whether or not it had jurisdiction to hear the case, leaving plaintiffs without a forum to be heard.

Under 28 U.S.C. 2509, a congressional reference empowers a judge of the Court of Federal Claims to sit as a Hearing Officer, hold a hearing and determine the facts of the case. The Hearing Officer's findings and conclusions are then reviewed by a three-judge panel. The panel then adopts or modifies the findings and conclusions and submits its report to the Chief Judge who then transmits the recommendations to the house of Congress which referred the case.

On Jan. 10, 1991, H. Res. 29 and H.R. 477 were introduced during the 102nd Congress to refer the case to the U.S. Court of Federal Claims in order to compensate plaintiffs for any damages incurred on account of the failure of the Secretary of the Interior to grant and permit mining operations pursuant to phosphate leases in the Osceola National Forest. On July 10, 1991, the House Judiciary Subcommittee on Administrative Law and Government Relations held hearings on H.R. 477 and H. Res. 29. On October 3, 1991, the Subcommittee reported the resolution, with a technical amendment, to full Committee. On July 21, 1992, the House of Representatives passed H. Res. 29, referring H.R. 477 to Court of Claims. The formal Congressional reference confirmed jurisdiction for the plaintiffs' suit in the U.S. Court of Federal Claims.

In the Court of Federal Claims, the Government moved for summary judgement. The Court ruled that plaintiffs did not have a legal claim but did have an equitable claim since the government failed to comply with the legal requirement of the EA. The court ruled that the Secretary of Interior had made an error in denying phosphate mining leases on the basis of an EA without allowing plaintiffs the opportunity to comment. The court concluded that the error was not harmless.

Remaining was the question of fact whether reclamation was feasible, according to Forest Service standards as of January of 1983. A 6 week evidentiary hearing was held on that issue from October 13 to December 14, 1995. Plaintiffs presented leading experts in reclamation who showed they could have successfully reclaimed the land, that the analysis in the EA was scientifically incorrect, and that EA members who concluded successful reclamation had their conclusions omitted.

Before the court issued its opinion, the parties agreed to a joint stipulation of settlement and submitted this stipulation to the Court: Global is to received $9.5 million; Kerr-McGee is to receive $10 million, which it will return to the government as partial payment for a Superfund cleanup site in Louisiana; and Kerr-McGee Chemical LLC is to receive $0. Global, Kerr-McGee and the Department of Justice accepted the report of the Hearing Officer, dated November 18, 1996, and the Review Panel endorsed the decision.

On November 18, 1996, the court published its recommendations to Congress that the disputes be settled for the amounts set forth in the joint stipulation of settlement. The court's recommendation was based on a finding that the settlement was fair, just, equitable and supported by the evidence. As noted in the Hearing Officer's report, ''if the case were to proceed to final disposition and plaintiffs to prevail, then the Government would face a potential liability substantially in excess of the proposed settlement amounts. Conversely, however, a victory for the Government would not assure it of protection against all future liability.''

This legislation would implement this settlement, and we urge its prompt consideration and approval by the Senate.

For the information of all Senators, I have included the House Committee Report from the 105th Congress which provides a very clear background and the need for this provision.

In addition, the bill includes language related to the prohibition of distribution of information related to destructive devices, explosives, and weapons of mass destruction in furtherance of a violent crime. This language was added to this legislation during markup of H.R. 1211 during the 105th Congress in the Senate Judiciary Committee by Senator FEINSTEIN and is a reasonable resolution of an issue pushed by Senator FEINSTEIN for several years.

I urge quick consideration and passage of this overdue and important legislation.

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. 606

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SATISFACTION OF CLAIMS AGAINST THE UNITED STATES.

(a) PAYMENT OF CLAIMS.—The Secretary of the Treasury shall pay, out of money not otherwise appropriated—

(1) to the Global Exploration and Development Corporation, a Florida corporation incorporated in Delaware, $9,500,000;

(2) to Kerr-McGee Corporation, an Oklahoma corporation incorporated in Delaware, $10,000,000; and

(3) to Kerr-McGee Chemical, LLC, a limited liability company organized under the laws of Delaware, $0.

(b) CONDITION OF PAYMENT.—

(1) GLOBAL EXPLORATION AND DEVELOPMENT CORPORATION.—The payment authorized by subsection (a)(1) is in settlement and compromise of all claims of Global Exploration and Development Corporation, as described in the recommendations of the United States Court of Federal Claims set forth in 36 Fed. Cl. 776.

(2) KERR-MCGEE CORPORATION AND KERR-MCGEE CHEMICAL, LLC.—The payment authorized by subsections (a)(2) and (a)(3) are in settlement and compromise of all claims of Kerr-McGee Corporation and Kerr-McGee Chemical, LLC, as described in the recommendations of the United States Court of Federal Claims set forth in 36 Fed. Cl. 776.

SEC. 2. CRIMINAL PROHIBITION ON THE DISTRIBUTION OF CERTAIN INFORMATION RELATING TO EXPLOSIVES, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.

(a) UNLAWFUL CONDUCT.—Section 842 of title 18, United States Code, is amended by adding at the end the following:

''(p) DISTRIBUTION OF INFORMATION RELATING TO EXPLOSIVES, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'destructive device' has the same meaning as in section 921(a)(4);

''(B) the term 'explosive' has the same meaning as in section 844(j); and

''(C) the term 'weapon of mass destruction' has the same meaning as in section 2332a(c)(2).

''(2) PROHIBITION.—It shall be unlawful for any person—

''(A) to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; or

''(B) to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.''.

(b) PENALTIES.—Section 844 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ''person who violates any of subsections'' and inserting the following: ''person who—

''(1) violates any of subsections'';

(2) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.''; and

(4) in subsection (j), by striking ''and (i)'' and inserting ''(i), and (p)''.

By Mr. CRAIG (for himself and Mr. MURKOWSKI):

S. 607. A bill reauthorize and amend the National Geologic Mapping Act of 1992; to the Committee on Energy and Natural Resources.

THE NATIONAL GEOLOGIC MAPPING REAUTHORIZATION ACT OF 1999

Mr. CRAIG. Mr. President, I am today introducing along with Senator MURKOWSKI, the National Geologic Mapping Reauthorization Act of 1999. This is an act that has been very beneficial to the Nation and deserves to be reauthorized.

The National Cooperative Geologic Mapping Act (NCGMA) was originally signed into law in 1992. The purpose of this geologic mapping program is to provide the nation with urgently needed geologic maps that can be and are used by a diverse clientele. These maps are vital to understanding groundwater regimes, mineral resources, geologic hazards such as landslides and earthquakes, geology essential for all types of land use planning, as well as providing basic scientific data. The NCGMA contains three parts; FedMap—the U.S. Geological Survey's geologic mapping program, StateMap—the state geological survey's part of the act, and EdMap—a program to encourage the training of future geologic mappers at our colleges and universities.

StateMap is a competitive program wherein the states submit proposals for geologic mapping that are critiqued by a peer review panel. A requirement of this section of the legislation is that each federal dollar be matched one-for-one with state funds. Each participating state has a StateMap Advisory Committee to insure that its proposal addresses priority areas and needs. The success of this program insured reauthorization of similar legislation in 1997 with widespread bipartisan support in both the House and Senate.

According to a recent poll conducted by the Association of American State Geologists, the 50 states have produced over 1,900 new geologic maps since the program authorized by this legislation started. There are an additional 300 maps currently being completed. Also, the states have digitized 650 existing geologic maps (1:24,000 scale) so they can be used as a computer data base. All of these maps have been submitted to the U.S. Geological Survey for inclusion in a national geologic map database. One of the purposes of this database is to eventually provide a digital geologic map of the entire nation at a scale of 1:100,000. This national database will assure that future maps will be easy to use by anyone.

The Edmap and Fedmap sections of the legislation support mapping projects led by Universities and regional mapping projects that address needs for geologic information to deal with land, water, mineral resource, natural hazard mitigation and environmental protection issues. Fed map projects are coordinated with State and university mapping portions of the program, through regional meetings, liaison groups and national reviews of ongoing projects.

Mr. President, the National Geologic Mapping Reauthorization Act benefits numerous citizens every day by assuring there is accurate and usable geologic information available to communities and individuals so better and safer resource use decisions can be made. I encourage my colleagues to support this legislation and am committed to its timely consideration.

Thank you, Mr. President, I ask unanimous consent that a copy 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. 607

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 ''National Geologic Mapping Reauthorization Act of 1999''.

SEC. 2. FINDINGS.

Section 2(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31a(a)) is amended—

(1) in paragraph (7), by striking ''and'' at the end;

(2) by redesignating paragraph (8) as paragraph (10);

(3) by inserting after paragraph (7) the following:

''(8) geologic map information is required for the sustainable and balanced development of natural resources of all types, including energy, minerals, land, water, and biological resources;

''(9) advances in digital technology and geographical information system science

have made geologic map databases increasingly important as decision support tools for land and resource management; and''; and

(4) in paragraph (10) (as redesignated by paragraph (2)), by inserting ''of surficial and bedrock deposits'' after ''geologic mapping''.

SEC. 3. DEFINITIONS.

Section 3 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31b) is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (6), (7), (8), and (10), respectively;

(2) by inserting after paragraph (3) the following:

''(4) EDUCATION COMPONENT.—The term 'education component' means the education component of the geologic mapping program described in section 6(d)(3).

''(5) FEDERAL COMPONENT.—The term 'Federal component' means the Federal component of the geologic mapping program described in section 6(d)(1).''; and

(3) by inserting after paragraph (8) (as redesignated by paragraph (1)) the following:

''(9) STATE COMPONENT.—The term 'State component' means the State component of the geologic mapping program described in section 6(d)(2).''.

SEC. 4. GEOLOGIC MAPPING PROGRAM.

Section 4 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c) is amended—

(1) in subsection (b)(1)—

(A) in the first sentence, by striking ''priorities'' and inserting ''national priorities and standards for'';

(B) in subparagraph (A)—

(i) by striking ''develop a geologic mapping program implementation plan'' and inserting ''develop a 5-year strategic plan for the geologic mapping program''; and

(ii) by striking ''within 300 days after the date of enactment of the National Geologic Mapping Reauthorization Act of 1997'' and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 1999'';

(C) in subparagraph (B), by striking ''within 90 days after the date of enactment of the National Geologic Mapping Reauthorization Act of 1997'' and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 1999''; and

(D) in subparagraph (C)—

(i) in the matter preceding clause (i), by striking ''within 210 days after the date of enactment of the National Geologic Mapping Reauthorization Act of 1997'' and inserting ''not later than 3 years after the date of enactment of the National Geologic Mapping Reauthorization Act of 1999, and biennially thereafter'';

(ii) in clause (i), by striking ''will coordinate'' and inserting ''are coordinating'';

(iii) in clause (ii), by striking ''will establish'' and inserting ''establish''; and

(iv) in clause (iii), by striking ''will lead to'' and inserting ''affect''; and

(2) by striking subsection (d) and inserting the following:

''(d) PROGRAM COMPONENTS—

''(1) FEDERAL COMPONENT.—

''(A) IN GENERAL.—The geologic mapping program shall include a Federal geologic mapping component, the objective of which shall be to determine the geologic framework of areas determined to be vital to the economic, social, environmental, or scientific welfare of the United States.

''(B) MAPPING PRIORITIES.—For the Federal component, mapping priorities—

''(i) shall be described in the 5-year plan under section 6; and

''(ii) shall be based on—

''(I) national requirements for geologic map information in areas of multiple-issue need or areas of compelling single-issue need; and

''(II) national requirements for geologic map information in areas where mapping is required to solve critical earth science problems.

''(C) INTERDISCIPLINARY STUDIES.—

''(i) IN GENERAL.—The Federal component shall include interdisciplinary studies that add value to geologic mapping.

''(ii) REPRESENTATIVE CATEGORIES.—Interdisciplinary studies under clause (i) may include—

''(I) establishment of a national geologic map database under section 7;

''(II) studies that lead to the implementation of cost-effective digital methods for the acquisition, compilation, analysis, cartographic production, and dissemination of geologic map information;

''(III) paleontologic, geochrono-logic, and isotopic investigations that provide information critical to understanding the age and history of geologic map units;

''(IV) geophysical investigations that assist in delineating and mapping the physical characteristics and 3-dimensional distribution of geologic materials and geologic structures; and

''(V) geochemical investigations and analytical operations that characterize the composition of geologic map units.

''(iii) USE OF RESULTS.—The results of investigations under clause (ii) shall be contributed to national databases.

''(2) STATE COMPONENT.—

''(A) IN GENERAL.—The geologic mapping program shall include a State geologic mapping component, the objective of which shall be to establish the geologic framework of areas determined to be vital to the economic, social, environmental, or scientific welfare of individual States.

''(B) MAPPING PRIORITIES.—For the State component, mapping priorities—

''(i) shall be determined by State panels representing a broad range of users of geologic maps; and

''(ii) shall be based on—

''(I) State requirements for geologic map information in areas of multiple-issue need or areas of compelling single-issue need; and

''(II) State requirements for geologic map information in areas where mapping is required to solve critical earth science problems.

''(C) INTEGRATION OF FEDERAL AND STATE PRIORITIES.—A national panel including representatives of the Survey shall integrate the State mapping priorities under this paragraph with the Federal mapping priorities under paragraph (1).

''(D) USE OF FUNDS.—The Survey and recipients of grants under the State component shall not use more than 15.25 percent of the Federal funds made available under the State component for any fiscal year to pay indirect, servicing, or program management charges.

''(E) FEDERAL SHARE.—The Federal share of the cost of activities under the State component for any fiscal year shall not exceed 50 percent.

''(3) EDUCATION COMPONENT.—

''(A) IN GENERAL.—The geologic mapping program shall include a geologic mapping education component for the training of geologic mappers, the objectives of which shall be—

''(i) to provide for broad education in geologic mapping and field analysis through support of field studies; and

''(ii) to develop academic programs that teach students of earth science the fundamental principles of geologic mapping and field analysis.

''(B) INVESTIGATIONS.—The education component may include the conduct of investigations, which—

''(i) shall be integrated with the Federal component and the State component; and

''(ii) shall respond to mapping priorities identified for the Federal component and the State component.

''(C) USE OF FUNDS.—The Survey and recipients of grants under the education component shall not use more than 15.25 percent of the Federal funds made available under the education component for any fiscal year to pay indirect, servicing, or program management charges.

''(D) FEDERAL SHARE.—The Federal share of the cost of activities under the education component for any fiscal year shall not exceed 50 percent.''.

SEC. 5. ADVISORY COMMITTEE.

Section 5 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d) is amended—

(1) in subsection (a)(3), by striking ''90 days after the date of enactment of the National Geologic Mapping Reauthorization Act of 1997'' and inserting ''1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 1999''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''critique the draft implementation plan'' and inserting ''update the 5-year plan''; and

(B) in paragraph (3), by striking ''this Act'' and inserting ''sections 4 through 7''.

SEC. 6. GEOLOGIC MAPPING PROGRAM 5-YEAR PLAN.

The National Geologic Mapping Act of 1992 is amended by striking section 6 (43 U.S.C. 31e) and inserting the following:

''SEC. 6. GEOLOGIC MAPPING PROGRAM 5-YEAR PLAN.

''(a) IN GENERAL.—The Secretary, acting through the Director, shall, with the advice and review of the advisory committee, prepare a 5-year plan for the geologic mapping program.

''(b) REQUIREMENTS.—The 5-year plan shall identify—

''(1) overall priorities for the geologic mapping program; and

''(2) implementation of the overall management structure and operation of the geologic mapping program, including—

''(A) the role of the Survey in the capacity of overall management lead, including the responsibility for developing the national geologic mapping program that meets Federal needs while fostering State needs;

''(B) the responsibilities of the State geological surveys, with emphasis on mechanisms that incorporate the needs, missions, capabilities, and requirements of the State geological surveys, into the nationwide geologic mapping program;

''(C) mechanisms for identifying short- and long-term priorities for each component of the geologic mapping program, including—

''(i) for the Federal component, a priority-setting mechanism that responds to—

''(I) Federal mission requirements for geologic map information;

''(II) critical scientific problems that require geologic maps for their resolution; and

''(III) shared Federal and State needs for geologic maps, in which joint Federal-State geologic mapping projects are in the national interest;

''(ii) for the State component, a priority-setting mechanism that responds to—

''(I) specific intrastate needs for geologic map information; and

''(II) interstate needs shared by adjacent States that have common requirements; and

''(iii) for the education component, a priority-setting mechanism that responds to requirements for geologic map information that are dictated by Federal and State mission requirements;

''(D) a mechanism for adopting scientific and technical mapping standards for preparing and publishing general- and special-purpose geologic maps to—

''(i) ensure uniformity of cartographic and scientific conventions; and

''(ii) provide a basis for assessing the comparability and quality of map products; and

''(E) a mechanism for monitoring the inventory of published and current mapping investigations nationwide to facilitate planning and information exchange and to avoid redundancy.''.

SEC. 7. NATIONAL GEOLOGIC MAP DATABASE.

Section 7 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31f) is amended by striking the section heading and all that follows through subsection (a) and inserting the following:

''SEC. 7. NATIONAL GEOLOGIC MAP DATABASE.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Survey shall establish a national geologic map database.

''(2) FUNCTION.—The database shall serve as a national catalog and archive, distributed through links to Federal and State geologic map holdings, that includes—

''(A) all maps developed under the Federal component and the education component;

''(B) the databases developed in connection with investigations under subclauses (III), (IV), and (V) of section 4(d)(1)(C)(ii); and

''(C) other maps and data that the Survey and the Association consider appropriate.''.

SEC. 8. BIENNIAL REPORT.

The National Geologic Mapping Act of 1992 is amended by striking section 8 (43 U.S.C. 31g) and inserting the following:

''SEC. 8. BIENNIAL REPORT.

''Not later 3 years after the date of enactment of the National Geologic Mapping Reauthorization Act of 1999 and biennially thereafter, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that—

''(1) describes the status of the national geologic mapping program;

''(2) describes and evaluates the progress achieved during the preceding 2 years in developing the national geologic map database; and

''(3) includes any recommendations that the Secretary may have for legislative or other action to achieve the purposes of sections 4 through 7.''.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

The National Geologic Mapping Act of 1992 is amended by striking section 9 (43 U.S.C. 31h) and inserting the following:

''SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act—

''(1) $28,000,000 for fiscal year 1999;

''(2) $30,000,000 for fiscal year 2000;

''(3) $37,000,000 for fiscal year 2001;

''(4) $43,000,000 for fiscal year 2002;

''(5) $50,000,000 for fiscal year 2003;

''(6) $57,000,000 for fiscal year 2004; and

''(7) $64,000,000 for fiscal year 2005.

''(b) ALLOCATION OF APPROPRIATIONS.—Of any amounts appropriated for any fiscal year in excess of the amount appropriated for fiscal year 2000—

''(1) 48 percent shall be available for the State component; and

''(2) 2 percent shall be available for the education component.''.

By Mr. MURKOWSKI (for himself, Mr. CRAIG, Mr. GRAMS, and Mr. CRAPO):

S. 608. A bill to amend the Nuclear Waste Policy Act of 1982; to the Committee on Energy and Natural Resources.

NUCLEAR WASTE POLICY ACT OF 1999

Mr. CRAIG. Mr. President, I come to the floor today with my colleague, Senator FRANK MURKOWSKI of Alaska, chairman of the Energy and Natural Resources Committee, and Senator ROD GRAMS to introduce the Nuclear Waste Policy Act of 1999.

Once again, Congress must clarify its intention toward the disposal of spent nuclear fuel and nuclear waste. It is for this reason that I introduced the Nuclear Waste Policy Act of 1997, which passed with broad bipartisan support in this body last year, as did similar legislation in the other body. It is why I am an original cosponsor of the legislation this year.

We must resolve the problem that this Nation faces with disposing of nuclear materials. Congress must recognize its responsibility to set a clear and definitive nuclear material disposal policy. With the passage of this legislation in the last Congress, the Senate expressed its will that Government fulfill its responsibilities. This legislation makes one significant change to the course we are currently on by directing that an interim storage facility for nuclear materials be constructed at area 25 at the Nevada test site and that the interim facility be prepared to accept nuclear materials by June 30, 2003.

The President and the Vice President do not support this provision. They do not support an interim storage facility at one safe, secure location in the Nevada desert. What they do support, according to Energy Secretary Bill Richardson, is an interim storage at 70 some sites spread across this Nation. They support storage near population centers and major bodies of water, but not at a site located right next to a permanent repository, a site where hundreds of nuclear explosions have already been detonated over the last 50 years.

In an announcement last month, the administration proposes to federalize storage of spent fuel at commercial reactors around this country by having the Government come in and take responsibility for each site. But do not worry, folks, because they promise to come and pick up the waste eventually, or at least that is what they have been promising for a long, long while. Well, I have some experience with the DOE and its promises, as many of my colleagues have, especially in the area of nuclear waste over the last number of years.

In 1995, the Secretary of Energy promised the State of Idaho, and signed a court enforceable agreement, that transuranic waste in Idaho would be headed out of the State to the Waste Isolation Pilot Plant no later than next month. Now DOE says they can't meet that deadline. Why? The Environmental Protection Agency has said that the Waste Isolation Pilot Plant is safe and ready to receive waste, but the State of New Mexico won't issue a permit for the disposal and that the court won't lift its injunction.

Now, I do believe our Secretary of Energy is trying in good faith to honor his commitment to the State of Idaho in moving that waste, but, once again, on issues of this kind of political sensitivity, our Government has shown no willingness to lead on this issue, and this administration is the prime example of a government without leadership.

I know something about the politics of nuclear waste. I know something about DOE's broken promises. I mentioned the example of WIPP as a misuse of environmental regulation to subvert the will of Congress. It is this kind of game playing that we must eliminate.

I guess my bottom line advice to those living next to one of these commercial nuclear reactors is, when DOE says they will come in and take responsibility for spent fuel and move it later, do not be fooled. You need a centralized interim storage facility and you need this legislation to make it happen.

This administration has said that interim storage in Nevada will prejudge the repository site investigation now going on at Yucca Mountain. I think it is important to note that this legislation calls for beginning operation of an interim storage facility in the year 2003, 2 years after DOE will have recommended the repository site to the President and 1 year after DOE will have submitted a license application for the repository to the Nuclear Regulatory Commission. This can hardly be called rushing ahead recklessly on interim storage. What it is is sealing the deal, trying to build credibility with the American people on this Government's responsibility and dedication toward the appropriate handling of high-level nuclear waste.

In addition to the billions of dollars that utility ratepayers have contributed to the disposal fund, taxpayers have contributed hundreds of millions of dollars to the disposal program for the removal of spent fuel and nuclear waste from the Nation's national laboratory sites. This legislation will make good on the Government's commitment to the communities which agreed to host our defense laboratories—that cleanup of these sites will happen, that it will happen sooner rather than later, and that defense nuclear waste, our legacy from the cold war, will be disposed of responsibly.

Just this past week, before the appropriate Appropriations Committee, I and Senator DOMENICI heard at length what this administration is doing to help Russia get rid of its cold war nuclear waste legacy. While we are going headlong to help them, it is ironic that we cannot help ourselves. This administration has promised and yet, in 6 years, has delivered nothing and finally gave up on its promises and found itself in a box canyon with a lot of lawyers lining up in lawsuits, because they are now out of compliance with an act that this Congress passed in the mid-1980s to deal with nuclear waste.

This bill will assure that the spent fuel from our nuclear fighting ships and submarines, currently stored at the Idaho National Engineering and Environmental Laboratory, can be sent to the interim storage facility beginning in the year 2003. This is good news for both the Navy and for Idaho. Our nuclear Navy ought to be concerned that DOE is still playing games with the real hard fact that sooner, rather than later, they must have a permanent repository for spent nuclear fuel coming from our Navy vessels.

Spent nuclear fuel will be moved out of Idaho well before the agreed date of the year 2035 called for in the agreement between Idaho Governor Batt, DOE and the Navy. This legislation will provide assurance that nuclear waste now in Idaho for permanent storage will eventually be disposed of at the repository. The tragedy here, of course, and we understand it, in the building of safe facilities, is the long lead time necessary. That is why this legislation is important now, to construct an interim storage facility ready to receive by the year 2003.

Critics of this legislation will attempt to distract you over the issue of transportation. In just a few months we will hear on the floor of the Senate the term ''mobile Chernobyl.'' This is just so much politics or political statement. There is absolutely no fact or record behind that statement other than a scare tactic that some of my colleagues will attempt to use to support an absence of fact. The fact is that there have been over 2,500 commercial shipments of spent fuel in the United States and that there has not been a single death or injury from the radioactivity nature of the cargo. In my State of Idaho, there have been over 600 shipments of naval fuel and over 4,000 other shipments of radioactive material. Again, there has been not one single injury related to the radioactive nature of these shipments.

This is a phenomenal safety record, but it is a real safety record, because this Government has insisted that the appropriate handling of our spent nuclear fuels and waste long term be dealt with in the right way. The proof is in the reality and the responsibility that this country has taken for years in the transportation of its waste. Those are the facts as I have related them.

I know that many people would prefer not to address the problem of spent nuclear fuel disposal. Some of my colleagues are probably fatigued at the prospect of debating this issue once again in the 106th Congress. Unfortunately, as long as this administration continues to stick its head in the sand, sand that is now going to cost millions of dollars in legal fees, my colleagues and I have no choice but to address this issue once again for the sake of our country, for the future of energy production in our country from radioactive materials, and just the tremendous responsibility we have in making sure to our public that all of it is done well and safely.

As this legislative body sets policies for the Nation, the Congress cannot sit by and watch while key components of the energy security of this Nation, the source of 20 percent of this country's electricity—and that is coming from nuclear powerplants—risk going down simply because we cannot manage our waste.

The Nuclear Waste Policy Act of 1999 will address what neither the 1982 nor the 1987 Act did, and that is to provide a cost-effective and safe means to store spent fuel in the near term while we continue to investigate and provide for the ultimate disposal.

I thank you, Mr. President. I see my colleague, the chairman of the full committee, has joined me now on the floor. I yield my time.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I wish the Presiding Officer a pleasant afternoon.

I thank my colleague, Senator CRAIG, for his statement relative to the reality that 22 percent of the Nation's power is generated by nuclear energy.

Here we are again today, Mr. President, with an obligation to fulfill a commitment. That obligation and that commitment was made to the ratepayers, the individuals all over America who depend on nuclear energy for their power. They paid $14 billion over the last 18 years.

What have they paid for? They have paid the Federal Government to take the waste under contract in the year 1998. That was a year ago. Shakespeare wrote in Henry III, ''Delays have dangerous ends. . . .'' We might also add, ''expensive ends.''

In addition to what the ratepayers have paid, there has been over $6 billion expended by the Federal Government in preparation for the waste primarily at Yucca Mountain. Delay has been the administration's answer to the problem of what to do with nuclear waste in this country. This administration simply doesn't want to take it up on its watch under any terms or circumstances.

In 1997, the administration objected to siting a temporary storage facility before 1998 when the viability assessment for Yucca Mountain would be complete.

The so-called ''dangerous ends'' to that delay is that 1998 has come and gone. The viability assessment was presented and guess what? There were no show stoppers. Safety issues requiring that we abandon the proposed Yucca Mountain nuclear waste repository project were not called for. The next step, of course, is to move on with the licensing, which is to take place in the year 2001.

What is the delay this year? It is the inability of the administration to recognize its contractual commitment under the agreement. To his credit, the new Secretary of Energy Bill Richardson has come forward with the first ever—and I mean first ever—administration proposal on nuclear waste. The Department of Energy would assume ownership of the used nuclear fuel and continue storing it at its commercial and defense sites in the 41 States across the country. The cost of the storage would be offset by consumer fees collected by the Department of Energy over the past 18 years, as I have stated. These are fees that were to have been dedicated to the removal and permanent storage of the spent fuel.

While this proposal may seem interesting, let's reflect on it a little bit, because what it means is that there is no date certain to remove the waste. The waste would sit onsite near the reactors.

It seems that we have gone full cycle in one sense. If you recognize that the Government had contracted to take the waste in 1998, the court has specifically stated that the Federal Government is liable to take that waste. So the court says, in effect, the Federal Government owns the waste onsite.

The proposal is the Government take the waste onsite. In fact, it owns the waste anyway. Think about it. There is a duplication, of course. I have a map here that I think warrants a little consideration. It shows some of the sites where we have nuclear fuel and radioactive waste that is destined for the geologic disposal.

The commercial reactors are in brown in California, in Washington, in Arizona, in Texas, up and down the east coast, in Illinois.

We have the shutdown reactors with the spent fuel onsite. These are the little triangles. We have them in Oregon, California, and Illinois. We have them in Michigan. This is significant amounts of waste that would go to a central repository at Yucca Mountain if this administration would come to grips with its responsibility.

Commercial spent nuclear fuel storage facilities are depicted by the little black squares. There are a few of them around.

Non-DOE research reactors. These are reactors that are spread through the country.

Then we have the Navy reactor fuel in Idaho. And we have the Department of Energy-owned spent fuel, high-level radioactive waste in New Mexico.

We have this all around the country, Mr. President, and the whole purpose of this legislation is to provide for and put this waste in one central repository at Yucca Mountain in Nevada where it would be retrievable. As a consequence, as we look at this proposal—and, again, I would like to point out there is no date for removal—one of the more interesting things is that there are claims now brought about by the nuclear industry against the Federal Government for nonperformance of its contract. Those claims total somewhere between $60 billion and $80 billion.

The Government is in default for nonperformance of its contractual obligation. One of the proposals circulated

is if the Government agrees to take the waste onsite, that those claims be dropped. If you think about this a little bit more, the Government has already collected a significant amount of money from the ratepayers over the last 18 years, some $14 billion. Now the Government is going to take this waste and use that money, paid for by the ratepayers, to store the nuclear waste onsite for no timeframe that can be ascertained. In other words, this waste is going to sit where it is, Mr. President. We do not know how long because there is no definite date in the proposal for the administration to take the waste.

So what have we done? We have simply gone full circle. The court said the Federal Government owned the waste. The Federal Government says they will take it and store it at site. They will not tell you when they are going to get rid of it. They use the money the ratepayers pay to store it there. I don't think that is satisfactory. It is a little different. It is acknowledging that they have come up with a proposal, but I do not think it is workable.

What we have here is, if you will, more delay. The Department of Energy—and really it is not the Department of Energy's fault—it is the administration that has broken its promise to the electric consumers, who depend on nuclear energy, people who have paid more than $14 billion to the Federal Government.

That $14 billion paid by consumers was designed specifically to remove this waste, Mr. President, to a single—a single—storage facility at Yucca Mountain. And that is what we have been building. The waste, again, was supposed to be taken in the year 1998.

Where have we been over the past 15 years? We have done nothing but slip the schedule on nuclear waste. First it was to have this waste removed by the year 2003, then 2005, then 2010, now 2015. With this proposal that I have just mentioned, that is in draft form, they are proposing it go back to 2010. Maybe that is progress; I don't know. Through it all, the nuclear ratepayers have paid the bill, but we are not through with the cost.

As I have indicated previously, the U.S. Court of Appeals has ruled the Department of Energy had an obligation to take possession of the waste in 1998, whether or not a repository was ready. The court ordered the Department of Energy to pay contractual remedies. This is a pretty big hit on the Federal Government and, hence, the taxpayer, Mr. President.

Estimates of damages range as high as $40, $50, $60—up to $80 billion. How do the damages break down? Here they are: the cost of storage of spent nuclear fuel, $19.6 billion; return of nuclear waste fees, $8.5 billion; interest on nuclear waste fees, $15 to $27.8 billion; consequential damages for shutdown of 25 percent of nuclear plants due to insufficient storage—these are power replacement costs—$24 billion.

That is a pretty disastrous scenario for the consumers. It would add, if you will, the high cost of replacement power if these reactors go down as a consequence of not being able to basically remove their waste. There is loss of emissions, a free source of electric energy if the nuclear plants are forced to close. And again, I would remind you that 22 percent of our total electric power is generated from nuclear energy.

These costs, these ''dangerous ends'' can be fixed. It is really time for the administration to stop trying out bats, if you will, and step up to the plate on its obligation. So today I once again, along with Senator CRAIG, and a number of my colleagues, Senator GRAMS, are introducing the Nuclear Waste Policy Act to solve our immediate liability problems by establishing an interim nuclear waste facility at the Nevada test site.

Why the Nevada test site? Over the last 50 years, we have tested nuclear bombs, nuclear weapons in that area numerous times. As a consequence, it appears, and was selected, to be the best site for a permanent repository.

What we are proposing, by this legislation, is to move this waste out and put it at site, but have it retrievable so when the permanent repository is ready it can be placed there. In the meantime, we will remove the waste from some 70 sites around the country.

In addition, this measure improves the process towards a permanent nuclear waste repository by making sure that funding is adequate and that the process to reach that goal is sound and viable?

While my committee will examine the proposal put forth by the Secretary, there is some circular reasoning inherent in it.

One, the administration's arguments to date have been that building an interim storage facility would divert funds from the study of the proposed permanent repository. But the Secretary's proposal for continued onsite storage would do just that. It would redirect consumer funds to pay for continued onsite storage.

Do we really want this nuclear waste piling up at 71 sites around the Nation rather than one? That is the critical question, Mr. President. Here is the proposed site for the nuclear waste—out in the Nevada desert. And the Nevada test site was previously used for more than 800 nuclear weapons tests. There it is.

There is some conversation that suggests, What if the current repository at Yucca Mountain does not prove to be licensable, what will you do with it then? Obviously, we will have to address that. But in the meantime, we would concentrate it out in this area in retrievable casks that would allow us to move it someplace for permanent storage. Or there is the technology that is developing on reprocessing that the Japanese and the French have proceeded with, which is to recover the plutonium out of the spent nuclear fuel and put it back in the reactors. That is another alternative.

So the alternative to leaving it at the 71 sites, vis-a-vis putting it out in one place where we have had over 800 nuclear tests over the past 50 years, obviously is a logical and reasonable progression to remove this from the various sites around the United States.

Finally, Mr. President, the time for delay is long past. We have had enough delay now. In the last Congress, we had a vote on this matter. It was overwhelmingly bipartisan. There were 65 Members of the U.S. Senate that voted yes—that voted yes—to put the waste in a temporary retrievable repository at Yucca Mountain. In the House there were 307 Members that voted yes.

Obviously the time is now at hand to move this bill out, to meet the responsibility that we have committed to with the ratepayers over these last 18 years and take that $14 billion and move this waste out to the Nevada test site once and for all until the permanent repository is licensed.

So, Mr. President, I encourage my colleagues to reflect on the merits of this bill—the debate went on in the last Congress—and recognize that we simply cannot put our heads in the sand and ignore this. This is a contract commitment. You have to recognize the sanctity of that contract and the recognition of 22 percent of our power is from nuclear energy, and if we are to allow this industry to strangle on its high-level waste, we are doing a great disservice and simply are going to have to come up with power sources from other generating capabilities that do not offer the air quality that is available by nuclear energy.

As we look at global warming and greenhouse gases and various legislative proposals by the administration, the role of nuclear energy is noticeably absent. I think that is unfortunate as we recognize that nuclear energy contributes to reducing greenhouse gases and hence global warming.

Mr. GRAMS. Mr. President, I rise today to join my colleagues in introducing the Nuclear Waste Policy Act amendments of 1999.

First, I would like to thank Senators MURKOWSKI and CRAIG for once again authoring this legislation and for their combined efforts in the Energy and Natural Resources Committee on matters related to nuclear waste storage.

As we all know, Washington's involvement in nuclear power isn't new. Since the 1950's ''Atoms for Peace'' program, the federal government has promoted nuclear energy, in part, by promising to remove radioactive waste from power plants. Congress decisively committed the federal government to take and dispose of civilian radioactive waste beginning in 1998 through the Nuclear Waste Policy Act of 1982, and its amendments in 1987. These acts established the DOE Office of Civilian Radioactive Waste Management to conduct the program, selected Yucca

Mountain, Nevada as the site to assess for the permanent disposal facility, and established fees of a tenth of a cent per kilowatt hour on nuclear-generated electricity, and provided that these fees would be deposited in the Nuclear Waste Fund. Furthermore, it authorized appropriations from this fund for a number of activities, including development of a nuclear waste repository.

Eventually, publication of the standard contract addressed how radioactive waste would be taken, stored, and disposed of. The DOE then signed individual contracts with all civilian nuclear utilities promising to take and dispose of civilian high-level waste beginning January 31, 1998. Other administrative proceedings, such as the Nuclear Regulatory Commission's Waste Confidence Rule, told the American public that they should literally bank on the federal government's promise.

Because of these promises and measures taken by the federal government, ratepayers have paid over $15 billion, including interest, into the Nuclear Waste Fund. Today, these payments continue, exceeding $1 billion annually, or $70,000 for every hour of every day of the year.

Up until recently, however, the administration has acted as if there is no problem. They have maintained a hands-off approach to the issue and when they have engaged Congress on nuclear waste storage, it has only been to issue a veto threat against this legislation.

As a member of the Senate Energy and Natural Resources committee last year, I had the opportunity to question Secretary Richardson on nuclear waste issues during his Senate confirmation hearings. Unfortunately, his answers to my questions were generally incomplete and contained little substantive discussion on the very real problems facing our nation's utilities, states, and ratepayers.

Mr. Richardson did, however, write some interesting things about nuclear power in his responses. Let me share with you a few of those responses. They read:

> Nuclear power is a proven means of generating electricity. When managed well, it is also a safe means of generating electricity.
>
> * * * * *
>
> It is my understanding that spent nuclear fuel has been safely transported in the United States in compliance with the regulatory requirements set forth by the Nuclear Regulatory Commission and the Department of Transportation.
>
> * * * * *
>
> The widely publicized shipment last week of spent fuel from California to Idaho is proof that transportation can be done safely. The safety record of nuclear shipments would be among the issues I would focus on as Secretary of Energy.

I asked Mr. Richardson to tell me who would pay the billions of dollars in damages some say the DOE will owe utilities as a result of DOE failure to remove spent nuclear fuel by January 31, 1998. After writing about the DOE's beliefs on their level of liability, he wrote: ''I will give this issue priority attention once I am confirmed as Secretary of Energy.''

I asked Mr. Richardson if he felt the taxpayers had been treated fairly. Again, after telling me about the history of the Department's actions to avoid its responsibilities, he wrote: ''I share your interest in resolving these issues and I will continue to pursue this once I am confirmed.''

Now, Mr. President, let's look at how then-nominee Federico Peña responded to my question regarding the responsibility of the DOE to begin removing spent nuclear fuel from my state. He said in testimony before the Energy and Natural Resources Committee:

> . . . we will work with the Committee to address these issues within the context of the President's statement last year. So we've got a very difficult issue. I am prepared to address it. I will do that as best as I can, understanding the complexities involved. But they are all very legitimate questions and I look forward to working with you and others to try to find a solution.

Does that sound familiar? I suspect Secretary O'Leary had something equally vague to say about nuclear waste storage as well. Secretary Peña, I believe, said it best when he stated, ''I will do that as best as I can, understanding the complexities involved.'' Those complexities, Mr. President, are not that complex at all. Quite simply, the President of the United States, despite the will of 307 Members of the House of Representatives and 65 Senators, last year refused to keep the DOE's promise.

Now, Secretary Richardson has come before the Senate and offered a ''new'' approach to the nuclear waste storage crisis. He believes we should leave the waste at sites across the country and merely transfer title, or ownership, to the federal government. The federal government would then be responsible for the costs associated with maintaining each of the 73 interim storage sites in 34 states, including the Prairie Island facility in Minnesota. To pay for this, Secretary Richardson is suggesting we raid the Nuclear Waste Fund, which was created to pay for the removal of that same spent nuclear fuel.

While I am glad to see the Administration is finally engaged in the nuclear waste debate and that Secretary Richardson has finally been allowed to address the issue before the U.S. Senate, his proposal is a ''year late and several billion dollars short.'' It does nothing to actually move the waste out of our states and into an interim storage facility. It is unclear whether his proposal would do anything to prevent the premature shutdown of nuclear facilities in states like Minnesota. And the one thing we know it will do, is take money from the Nuclear Waste Fund that was supposed to pay for the removal of spent nuclear fuel, not the indefinite continuance of a failed approach to nuclear waste management.

Mr. President, I want to be very clear that I am sincere in these complaints. My concern is for the ratepayers of my state and ratepayers across the country. They have poured billions of dollars into the Nuclear Waste Fund expecting the DOE to take this waste. They have paid countless more millions paying for on-site nuclear waste storage. Effective January 31, 1998, they began paying for both of these costs simultaneously, even though no waste has been moved.

When the DOE is forced to pay damages to utilities across the nation, the ratepayers and taxpayers will again pay for the follies created by the DOE. Some estimate the costs of damages to be $80 to $100 billion or more. The ratepayers will also have to pay the price of building new gas or coal-fired plants when nuclear plants must shut down. And, if the Administration gets its way, my constituents will pay again when the Kyoto Protocol takes effect in 2008—exactly the same time Minnesota will be losing 20 percent of its electricity from clean nuclear power and replacing it with fossil fuels.

That is why we must move forward, pass the legislation introduced today, and send it to the President for his signature. If he refuses to sign the bill, then I believe we will be able to find those last two votes we need to override his veto and remove the cloud hanging over our nation's ratepayers. There is no scientific or technical reason why we should not move this bill forward and pass it into law.

The administration has admitted nuclear waste can be transported safely. They have admitted they neglected their responsibility. They have admitted nuclear power is a proven, safe means of generating electricity. And they have admitted there is a general consensus that centralized interim storage is scientifically and technically possible and can be done safely. If you add all of these points together and hold them up against this Administration's lack of action, you can only come to one conclusion: politics has indeed won out over policy and science.

Mr. President, I am proud to once again support these amendments to the Nuclear Waste Policy Act and urge my colleagues to move this bill quickly through committee and onto the Senate floor where it will once again be approved by an overwhelming majority.

By Mr. MURKOWSKI:

S. 609. A bill to amend the Safe and Drug-Free Schools and Communities Act of 1994 to prevent the abuse of inhalants through programs under the Act, and for other purposes; read the first time.

THE SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT AMENDMENT

Mr. MURKOWSKI. Mr. President, I rise today to introduce a bill that will help fight a silent epidemic among America's youth. This epidemic can leave young people permanently brain damaged, and in some cases even dead. It is called inhalant abuse. An awful lot of attention goes to substance abuse—alcohol, drugs—but very little attention is being given to inhalant abuse. It seems to be the silent killer.

I ask that the bill be introduced pursuant to Senate rule 14 and be placed immediately on the Calendar.

My bill amends the Safe and Drug-Free Schools and Communities Act of 1994 to include inhalant abuse among the act's definition of ''abused substances,'' thereby allowing schools the option to educate students about the horrors of inhalant abuse.

What exactly are inhalants? What are we talking about? Inhalants are the intentional breathing of gas or vapors for the purpose of getting a high. Over 1,400 common products can be abused—lighter fluid, pressurized whipped cream, hair spray; gasoline is often used in my rural State of Alaska. These products are inexpensive, they are easily obtained, and, most of all, they are legal. One inhalant abuse counselor told me, ''If it smells like a chemical, it can be abused.''

It is a silent epidemic because few adults appreciate the severity of the problem or how often it occurs. It is estimated one in five students have tried inhalants by the time they reach the eighth grade. The use of inhalants by children has nearly doubled in the last 10 years. Inhalants are the third most abused substance among teenagers, behind alcohol and tobacco.

Inhalants are deadly. Inhalant vapors react with fatty tissues of the brain and literally dissolve those tissues. A one-time use of inhalants can cause instant and permanent brain damage, heart failure, kidney failure, liver failure, or death. The user can also suffer instant heart failure. This is known as sudden sniffing death syndrome. This means an abuser can die on the very first time he or she tries it or the 10th time or the 100th time that an individual sees fit to use an inhalant. In fact, according to a recent study by the National Native Health Consortium, ''inhaling has a higher risk of 'instant death' than any other abused substance.'' Think of that: Inhalants have a higher risk of instant death, the first time, than any other abused substance.

That is what happened last year to Theresa, an 18-year-old who lived in a rural western Alaska village. Last year Theresa was inhaling gasoline; shortly thereafter, her heart stopped. She was found outside in the near-zero temperature. Theresa was the youngest of five children and just a month shy of graduation. She was flown to the Fairbanks Memorial Hospital where she was pronounced dead on arrival.

Earlier this year in Pennsylvania, a teenaged driver with four teenaged passengers lost control of her car in broad daylight. The car hit a tree with such impact that all the passengers were killed. High levels of a chemical found in computer keyboard cleaners—think about this, computer keyboard cleaners—were found in the young driver's body. The medical examiner report cited impairment due to inhalant abuse as the cause of that crash.

Mr. Haviland, the principal of the school that the five girls attended, said the teacher never suspected that the students were involved with inhalants. That is why this bill is so important. The most effective prevention against inhalant abuse is education. It is preventable. But educators must first know about inhalants before they can teach our kids of their dangers.

My bill will amend section 4131 of the Safe and Drug-Free Schools and Communities Act to allow States and communities the option to develop programs on inhalant abuse. Under my amendment, the principals, teachers, and counselors will be able to learn about inhalants and will have the option to develop educational programs to teach about inhalant abuse.

There is no cost associated with this legislation. This bill makes fiscal sense. A 1993 study by the Alaska Indian Health Service revealed that a 19-year-old chronic inhalant abuser could have an average lifetime cost of up to $1.4 million. These are the costs of chronic medical care, substance abuse treatment, rehabilitation treatment, and social services. The costs go on and on. We can save those costs if we just prevent this type of abuse.

The goal of the Safe and Drug-Free Schools and Communities Act is to save the lives of young people, but currently only illegal drugs, alcohol, and tobacco are covered under the definitions of this act. This bill will help us solve the problem and save the lives of our youth. We support this legislation.

I ask unanimous consent 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. 609

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

Section 4131 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7141) is amended by adding at the end the following:

''(7) ABUSE.—The term 'abuse', used with respect to an inhalant, means the intentional breathing of gas or vapors from the inhalant for the purpose of achieving an altered state of consciousness.

''(8) DRUG.—The term 'drug' includes a substance that is an inhalant, whether or not possession or consumption of the substance is legal.

''(9) INHALANT.—The term 'inhalant' means a product that—

''(A) may be a legal, commonly available product; and

''(B) has a useful purpose but can be abused, such as spray paint, glue, gasoline, correction fluid, furniture polish, a felt tip marker, pressurized whipped cream, an air freshener, butane, or cooking spray.

''(10) USE.—The term 'use', used with respect to an inhalant, means abuse of the inhalant.''.

SEC. 2. FINDINGS.

Section 4002 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7102) is amended—

(1) in paragraph (2), by inserting '', and the abuse of inhalants,'' after ''other drugs'';

(2) in paragraph (5), by striking ''and the illegal use of alcohol and drugs'' and inserting '', the illegal use of alcohol and drugs, and the abuse of inhalants'';

(3) in paragraph (7), by striking ''and tobacco'' each place it appears and inserting '', tobacco, and inhalants'';

(4) in paragraph (9), by striking ''and illegal drug use'' and inserting '', illegal drug use, and inhalant abuse''; and

(5) by adding at the end the following:

''(11)(A) The number of children using inhalants has doubled during the 10-year period preceding 1999. Inhalants are the third most abused class of substances by children age 12 through 14 in the United States, behind alcohol and tobacco. One of 5 students in the United States has tried inhalants by the time the student has reached the 8th grade.

''(B) Inhalant vapors react with fatty tissues in the brain, literally dissolving the tissues. A single use of inhalants can cause instant and permanent brain, heart, kidney, liver, and other organ damage. The user of an inhalant can suffer from Sudden Sniffing Death Syndrome, which can cause a user to die the first, tenth, or hundredth time the user uses an inhalant.

''(C) Because inhalants are legal, education on the dangers of inhalant abuse is the most effective method of preventing the abuse of inhalants.''.

SEC. 3. PURPOSE.

Section 4003 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7103) is amended, in the matter preceding paragraph (1), by inserting ''and abuse of inhalants'' after ''and drugs''.

SEC. 4. GOVERNOR'S PROGRAMS.

Section 4114(c)(2) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7114(c)(2)) is amended by inserting ''(including inhalant abuse education)'' after ''drug and violence prevention''.

SEC. 5. DRUG AND VIOLENCE PREVENTION PROGRAMS.

Section 4116 of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7116) is amended—

(1) in subsection (a)(1)(A), by inserting '', and the abuse of inhalants,'' after ''illegal drugs''; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting ''and the abuse of inhalants'' after ''use of illegal drugs''; and

(ii) by inserting ''and abuse inhalants'' after ''use illegal drugs''; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting ''(including age appropriate inhalant abuse prevention programs for all students, from the preschool level through grade 12)'' after ''drug prevention''; and

(ii) in subparagraph (C), by inserting ''and inhalant abuse'' after ''drug use''.

SEC. 6. FEDERAL ACTIVITIES.

Section 4121(a) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7131(a)) is amended, in the first sentence, by striking ''illegal use of drugs'' and inserting ''illegal use of drugs, the abuse of inhalants,''.

SEC. 7. MATERIALS.

Section 4132(a) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7142(a)) is amended by striking ''illegal use of alcohol and other drugs'' and inserting ''illegal use of alcohol and other drugs and the abuse of inhalants''.

SEC. 8. QUALITY RATING.

Section 4134(b)(1) of the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7144(b)(1)) is amended by inserting '', and the abuse of inhalants,'' after ''tobacco''.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 610. A bill to direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes; to the Committee on Energy and Natural Resources.

WESTSIDE IRRIGATION DISTRICT LEGISLATION

● Mr. ENZI. Mr. President, today I am introducing legislation with my colleague from Wyoming, Senator THOMAS, that would authorize a land exchange project called the Westside Irrigation District in Washakie and Big Horn Counties, Wyoming. This project has been many years in the making and is very important to many people in our state. It will provide a strong foundation for economic development in the area and it will provide a great opportunity for the public to obtain parcels of land that are now in private hands.

The Westside District is a win-win project for everyone. It takes public land that is of low value for wildlife or aesthetic enjoyment and sells it to a non-profit district for conveyance into agricultural use. The District will pay fair market value for the surface land—not the mineral rights, which would remain federal property—and the Bureau of Land Management can then take the money and purchase other property that has a much higher value for public recreation, public access, fish and wildlife habitat, or cultural resources. The Bureau presently has very limited funds for this purpose and they could make good use of the money in the Worland District, which has a very complex land ownership mix.

The description of the project is nearly 37,000 acres of shelf land near the Big Horn River. The proposal would make use of unallocated water rights to irrigate approximately 20,000 acres, leaving the remainder in conservation buffer zones, rights of way and wildlife habitat. The local economy, which has been hit very hard in recent years, would benefit from additional production of barley, corn, beans, hay and sugar beets. The anticipated benefit of a fully implemented project could be as many as 216 new jobs in the community. And this is in a county that only has about 4,500 working people—so there is a real positive impact expected.

The district has been working diligently to address public questions that had been expressed early in the process. Some of these related to water quality, wildlife habitat, access, and land values. The Wyoming Game and Fish, the Bureau of Land Management, and the Westside District have been working out plans to mitigate each of the project's impacts. For example, the District will make use of overhead sprinkler systems to prevent runoff and will maintain vegetative buffer zones to capture any possible runoff due to natural events, such as snow melt. The District only plans to irrigate 20,000 acres of the total area, so the remaining 46 percent of the land will remain in native cover to provide habitat for wildlife and antelope winter range. The District will also help support additional staff with the Wyoming Game and Fish for mitigation assistance. And all existing rights of way and public access to surrounding public lands will be preserved.

Mr. President, this bill is necessary because the BLM does not have the statutory authority to complete a sale of lands. Although they could conduct an exchange, the sheer size of this project prevented creating a reasonable exchange portfolio of other lands. This could have been accomplished with existing authority, but was prohibitively difficult to achieve in a single process. This legislation enables the BLM to take the money now, and then purchase various private lands as they become available—lands that are more suitable to our public objectives, such as wildlife and resource conservation and public enjoyment.

This bill should be referred to the Senate Energy Committee and it is my hope that a hearing could be held and a report generated with enough time to complete action on the legislation this year. The people in Worland, Wyoming, have worked very hard to make this project happen. I would urge my colleagues to review the bill and support it.●

● Mr. THOMAS. Mr. President, it gives me great pleasure to join my colleague from Wyoming, Senator ENZI, in introducing legislation to convey certain BLM lands to the Westside Irrigation District. This measure is a culmination of years of hard work, by folks affected, to reach a solution through perseverance and much negotiation. It is a compromise—interested parties working together for a common goal, and it has been 30 years in the making. I am pleased today to be part of setting forth what is needed to turn a goal for many Wyoming residents into a reality.

This legislation directs the Secretary of the Interior to convey roughly 37,000 acres of land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District. In turn, Westside Irrigation District will irrigate these lands and sell them as farmland parcels. Proceeds raised from the land sales will be given to the Secretary of the Interior for the acquisition of land in the Worland District of the Bureau of Land Management, for the purpose of benefiting public recreation, increasing public access, enhancing fish and wildlife habitat and improving cultural resources.

In recent years, expanded residential development in Washakie and Big Horn Counties has resulted in key loss to the economy—farmland. What this legislation proposes to do is afford communities an opportunity to retain their economic vitality while protecting cultural and natural resources. It promises to benefit both the business community and preserve the environment.

Benefits attained from this legislation will be fruitful for all parties. Agricultural producers have the rare chance to increase private land holdings in a largely public lands State. Wildlife interests are given the resources necessary to enhance critical habitat areas. In addition, the creation of 200 new jobs and an estimated financial impact of $16.8 million annually will spur tremendous economic development in these Wyoming counties.

Mr. President, let me once again congratulate all of the folks who have worked so hard on this measure—it is a job well done. I hope the Senate will give this bill every consideration and I look forward to taking action on it in the near future.●

By Mr. CAMPBELL:

S. 611. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT

Mr. CAMPBELL. Mr. President, just as it recognizes foreign governments, the United States is called upon to consider extending its recognition to Indian tribal governments here at home.

From the first days of the republic, the Congress has acted to recognize the unique legal and political relationship the United States has with the Indian tribes. Reforming the process of recognition is the goal of the legislation I am introducing today.

Just as the United States at times refuses to recognize foreign governments, there are and always have been tribal governments which have not been recognized by the Federal government. This lack of recognition does not alter the ''Indian-ness'' of a tribe's members; rather it merely means that there is no formal political relationship between that tribal group and the United States.

Federal recognition is critical to tribal groups because it triggers eligibility for services and benefits provided by the United States because of their status as members of federally recognized Indian tribes.

I want to be clear—I am not advocating for the approval of every petition for recognition, and I am not proposing that the petitions receive a limited or cursory review. I am concerned with the viability of the current recognition process and am interested in seeing fairness, promptness, and finality brought into that process while providing basic assurances to already-recognized tribes regarding their inherent rights.

Federal recognition can be accomplished in two ways: through the enactment of federal legislation; or through the administrative process that occurs, or more accurately does not occur, within the Bureau of Indian Affairs (BIA).

Over the years, uncertainty has developed over just how or when the Bureau would process tribal group applications for recognition. In short, the current process is not getting the job done.

The process in the Department of the Interior is time consuming and costly, although it has improved from its original state. Some tribal groups allege that the Department's process leads to unfair and unfounded results. It has frequently been hindered by a lack of staff and resources needed to fairly and promptly review all petitions. At the same time, the Congress extends recognition to tribes with little or no reference to the legal standards and criteria employed by the Department.

The amount of time some tribal groups have had to wait before their petitions are acted on in some cases is outrageous. Sometimes these applications for recognition are pending literally for decades. The concerns expressed go beyond the delays I mentioned and involve the viability of the current recognition process itself.

As with any decision-making body, fairness and timeliness are the keys to maintaining a credible system which holds the confidence of affected parties. I believe that it is in the interests of all parties to have a clear deadline for the completion of the recognition process.

In 1978, the Department of the Interior promulgated regulations to establish criteria and procedures for the recognition of Indian tribes by the Secretary.

Since that time to date, tribal groups have filed hundreds of petitions for review. Of those, 42 have been resolved, and 179 are new petitioners; During this same time, 89 expressed letters of intent to petition, and 5 required legislative authority to proceed which are now deemed inactive.

The remainder are in various stages of consideration by the Department either ready for active status or are already placed on active status. During this same time to date, the Congress has recognized 7 other tribal groups through legislation.

In the last twenty years, the Committee on Indian Affairs held oversight hearings on the Federal recognition process. At each of those hearings the record clearly showed that the process is not working properly. At a Committee on Indian Affairs hearing in 1995, the Bureau testified that at the current rate of review and consideration, it would take several decades to eliminate the entire backlog of tribal petitions. The record from numerous previous hearings reveals a clear need for the Congress to address the problems affecting the recognition process.

The bill I am introducing today will go a long way toward resolving the problems which have plagued both the Department of the Interior and tribal petitioners over the years.

This bill, the Indian Federal Recognition Administrative Procedures Act of 1999, provides the required clarification and changes that will help tribal petitioners and the United States in providing fair and orderly administrative procedures to extend Federal recognition to eligible Indian groups. The key element of this bill is that it removes the recognition process from the BIA and places it in a temporary and independent ''Commission on Indian Recognition.''

This bill provides that the Commission will be an independent agency, composed of three members appointed by the President, and authorized to hold hearings, take testimony and reach final determinations on petitions for recognition.

The bill provides strict but realistic time-lines to guide the Commission in the review and decision making process. Under the existing process in the Bureau of Indian Affairs, some petitioners have waited ten years or more for even a cursory review of their petition.

The bill I am introducing today requires the Commission to set a date for a preliminary hearing on a petition not later than 60 days after the filing of a documented petition. Not later than 30 days after the conclusion of a preliminary hearing, the Commission would be required to either decide to extend federal acknowledgment to the petitioner or to require the petitioner to proceed to an adjudicatory hearing.

The current recognition process becomes so expensive that the consideration of petitions are stretched out over a number of years because there have been no real deadlines for these decisions.

This bill will allow for a cost-effective process for the BIA and the petitioners, will provide definite time-lines for the administrative recognition process, and ''sunsets'' the Commission in 12 years.

To ensure fairness, the bill provides for appeals of adverse decisions to the federal district court here in the District of Columbia.

To ensure promptness, the bill authorizes adequate funding for the costs of processing petitions through the Commission.

The bill also provides finality for both the petitioners and the Department by requiring all interested tribal groups to file their petitions within 6 years after the date of enactment and requiring the Commission to complete its work within 12 years from enactment.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD, and urge my colleagues to join me in enacting this much-needed reform legislation.

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

S. 611

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 ''Indian Federal Recognition Administrative Procedures Act of 1999''.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To establish an administrative procedure to extend Federal recognition to certain Indian groups.

(2) To extend to Indian groups that are determined to be Indian tribes the protection, services, and benefits available from the Federal Government pursuant to the Federal trust responsibility with respect to Indian tribes.

(3) To extend to Indian groups that are determined to be Indian tribes the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States.

(4) To ensure that when the Federal Government extends acknowledgment to an Indian tribe, the Federal Government does so with a consistent legal, factual, and historical basis.

(5) To establish a Commission on Indian Recognition to review and act upon petitions submitted by Indian groups that apply for Federal recognition.

(6) To provide clear and consistent standards of administrative review of documented petitions for Federal acknowledgment.

(7) To clarify evidentiary standards and expedite the administrative review process by providing adequate resources to process petitions.

(8) To remove the Federal acknowledgment process from the Bureau of Indian Affairs and transfer the responsibility for the process to an independent Commission on Indian Recognition.

SEC. 3. DEFINITIONS.

In this Act:

(1) ACKNOWLEDGED.—The term ''acknowledged'' means, with respect to an Indian group, that the Commission on Indian Recognition has made an acknowledgment, as defined in paragraph (2), for that group.

(2) ACKNOWLEDGMENT.—The term ''acknowledgment'' means a determination by the Commission on Indian Recognition that an Indian group—

(A) constitutes an Indian tribe with a government-to-government relationship with the United States; and

(B) with respect to which the members are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) ALASKA NATIVE.—The term ''Alaska Native'' means an individual who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof.

(4) AUTONOMOUS.—

(A) IN GENERAL.—The term ''autonomous'' means the exercise of political influence or authority independent of the control of any other Indian governing entity.

(B) CONTEXT OF TERM.—With respect to a petitioner, that term shall be understood in the context of the history, geography, culture, and social organization of the petitioner.

(5) BUREAU.—The term ''Bureau'' means the Bureau of Indian Affairs of the Department.

(6) COMMISSION.—The term ''Commission'' means the Commission on Indian Recognition established under section 4.

(7) COMMUNITY.—

(A) IN GENERAL.—The term ''community'' means any group of people, living within a reasonable territorial that is able to demonstrate that—

(i) consistent interactions and significant social relationships exist within the membership; and

(ii) the members of that group are differentiated from and identified as distinct from nonmembers.

(B) CONTEXT OF TERM.—The term shall be understood in the context of the history, culture, and social organization of the group, taking into account the geography of the region in which the group resides.

(8) CONTINUOUS OR CONTINUOUSLY.—With respect to a period of history of a group, the term ''continuous'' or ''continuously'' means extending from the first sustained contact with Euro-Americans throughout the history of the group to the present substantially without interruption.

(9) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(10) DOCUMENTED PETITION.—The term ''documented petition'' means the detailed, factual exposition and arguments, including all documentary evidence, necessary to demonstrate that those arguments specifically address the mandatory criteria established in section 5.

(11) GROUP.—The term ''group'' means an Indian group, as defined in paragraph (13).

(12) HISTORICALLY, HISTORICAL, HISTORY.—The terms ''historically'', ''historical'', and ''history'' refer to the period dating from the first sustained contact with Euro-Americans.

(13) INDIAN GROUP.—The term ''Indian group'' means any Indian or Alaska Native band, pueblo, village or community within the United States that the Secretary does not acknowledge to be an Indian tribe.

(14) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian or Alaska Native tribe, band, pueblo, village, or community within the United States that—

(A) the Secretary has acknowledged as an Indian tribe as of the date of enactment of this Act, or acknowledges to be an Indian tribe pursuant to the procedures applicable to certain petitions under active consideration at the time of the transfer of petitions to the Commission under section 5(a)(3); or

(B) the Commission acknowledges as an Indian tribe under this Act.

(15) INDIGENOUS.—With respect to a petitioner, the term ''indigenous'' means native to the United States, in that at least part of the traditional territory of the petitioner at the time of first sustained contact with Euro-Americans extended into the United States.

(16) LETTER OF INTENT.—The term ''letter of intent'' means an undocumented letter or resolution that—

(A) is dated and signed by the governing body of an Indian group;

(B) is submitted to the Commission; and

(C) indicates the intent of the Indian group to submit a petition for Federal acknowledgment.

(17) MEMBER OF AN INDIAN GROUP.—The term ''member of an Indian group'' means an individual who—

(A) is recognized by an Indian group as meeting the membership criteria of the Indian group; and

(B) consents in writing to being listed as a member of that group.

(18) MEMBER OF AN INDIAN TRIBE.—The term ''member of an Indian tribe'' means an individual who—

(A)(i) meets the membership requirements of the tribe as set forth in its governing document; or

(ii) in the absence of a governing document which sets out those requirements, has been recognized as a member collectively by those persons comprising the tribal governing body; and

(B)(i) has consistently maintained tribal relations with the tribe; or

(ii) is listed on the tribal membership rolls as a member, if those rolls are kept.

(19) PETITION.—The term ''petition'' means a petition for acknowledgment submitted or transferred to the Commission pursuant to section 5.

(20) PETITIONER.—The term ''petitioner'' means any group that submits a letter of intent to the Commission requesting acknowledgment.

(21) POLITICAL INFLUENCE OR AUTHORITY.—

(A) IN GENERAL.—The term ''political influence or authority'' means a tribal council, leadership, internal process, or other mechanism that a group has used as a means of—

(i) influencing or controlling the behavior of its members in a significant manner;

(ii) making decisions for the group which substantially affect its members; or

(iii) representing the group in dealing with nonmembers in matters of consequence to the group.

(B) CONTEXT OF TERM.—The term shall be understood in the context of the history, culture, and social organization of the group.

(22) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term ''previous Federal acknowledgment'' means any action by the Federal Government, the character of which—

(A) is clearly premised on identification of a tribal political entity; and

(B) clearly indicates the recognition of a government-to-government relationship between that entity and the Federal Government.

(23) RESTORATION.—The term ''restoration'' means the reextension of acknowledgment to any previously acknowledged tribe with respect to which the acknowledged status may have been abrogated or diminished by reason of legislation enacted by Congress expressly terminating that status.

(24) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(25) SUSTAINED CONTACT.—The term ''sustained contact'' means the period of earliest sustained Euro-American settlement or governmental presence in the local area in which the tribe or tribes from which the petitioner claims descent was located historically.

(26) TREATY.—The term ''treaty'' means any treaty—

(A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or tribe;

(B) made by any government with, or on behalf of, any Indian group or tribe, from which the Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group in California, whether or not the treaty was subsequently ratified.

(27) TRIBE.—The term ''tribe'' means an Indian tribe.

(28) TRIBAL RELATIONS.—The term ''tribal relations'' means participation by an individual in a political and social relationship with an Indian tribe.

(29) TRIBAL ROLL.—The term ''tribal roll'' means a list exclusively of those individuals who—

(A)(i) have been determined by the tribe to meet the membership requirements of the tribe, as set forth in the governing document of the tribe; or

(ii) in the absence of a governing document that sets forth those requirements, have been recognized as members by the governing body of the tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the tribe.

(30) UNITED STATES.—The term ''United States'' means the 48 contiguous States, and the States of Alaska and Hawaii. The term does not include territories or possessions of the United States.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

(a) ESTABLISHMENT.—There is established, as an independent commission, the Commission on Indian Recognition. The Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

(B) INDIVIDUALS TO BE CONSIDERED FOR MEMBERSHIP.—In making appointments to the Commission, the President shall give careful consideration to—

(i) recommendations received from Indian tribes; and

(ii) individuals who have a background in Indian law or policy, anthropology, genealogy, or history.

(2) POLITICAL AFFILIATION.—Not more than 2 members of the Commission may be members of the same political party.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Commission shall be appointed for a term of 4 years.

(B) INITIAL APPOINTMENTS.—As designated by the President at the time of appointment, of the members initially appointed under this subsection—

(i) 1 member shall be appointed for a term of 2 years;

(ii) 1 member shall be appointed for a term of 3 years; and

(iii) 1 member shall be appointed for a term of 4 years.

(4) VACANCIES.—Any vacancy in the Commission shall not affect the powers of the Commission, but shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of the term of that member until a successor has taken office.

(5) COMPENSATION.—

(A) IN GENERAL.—Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day, including traveltime, that member is engaged in the actual performance of duties authorized by the Commission.

(B) TRAVEL.—All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from their homes or regular places of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) FULL-TIME EMPLOYMENT.—Each member of the Commission shall serve on the Commission as a full-time employee of the Federal Government. No member of the Commission may, while serving on the Commission, be otherwise employed as an officer or employee of the Federal Government. Service by a member who is an employee of the Federal Government at the time of nomination as a member shall be without interruption or loss of civil service status or privilege.

(7) CHAIRPERSON.—At the time appointments are made under paragraph (1), the President shall designate a Chairperson of

the Commission (referred to in this section as the ''Chairperson'') from among the appointees.

(c) MEETINGS AND PROCEDURES.—

(1) IN GENERAL.—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed and confirmed by the Senate.

(2) QUORUM.—Two members of the Commission shall constitute a quorum for the transaction of business.

(3) RULES.—The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish the procedures of the Commission and to govern the manner of operations, organization, and personnel of the Commission.

(4) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the District of Columbia.

(d) DUTIES.—The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES.—

(1) POWERS AND AUTHORITIES OF CHAIRPERSON.—Subject to such rules and regulations as may be adopted by the Commission, the Chairperson may—

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairperson considers advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(2) GENERAL POWERS AND AUTHORITIES OF COMMISSION.—

(A) IN GENERAL.—The Commission may hold such hearings and sit and act at such times as the Commission considers to be appropriate.

(B) OTHER AUTHORITIES.—As the Commission may consider advisable, the Commission may—

(i) take testimony;

(ii) have printing and binding done;

(iii) enter into contracts and other arrangements, subject to the availability of funds;

(iv) make expenditures; and

(v) take other actions.

(C) OATHS AND AFFIRMATIONS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(3) INFORMATION.—

(A) IN GENERAL.—The Commission may secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require to carry out this Act. Each such officer, department, agency, establishment, or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon the request of the Chairperson.

(B) FACILITIES, SERVICES, AND DETAILS.—Upon the request of the Chairperson, to assist the Commission in carrying out the duties of the Commission under this section, the head of any Federal department, agency, or instrumentality may—

(i) make any of the facilities and services of that department, agency, or instrumentality available to the Commission; and

(ii) detail any of the personnel of that department, agency, or instrumentality to the Commission, on a nonreimbursable basis.

(C) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate on the date that is 12 years after the date of enactment of this Act.

SEC. 5. PETITIONS FOR RECOGNITION.

(a) IN GENERAL.—

(1) PETITIONS.—Subject to subsection (d) and except as provided in paragraph (2), any Indian group may submit to the Commission a petition requesting that the Commission recognize an Indian group as an Indian tribe.

(2) EXCLUSION.—The following groups and entities shall not be eligible to submit a petition for recognition by the Commission under this Act:

(A) CERTAIN ENTITIES THAT ARE ELIGIBLE TO RECEIVE SERVICES FROM THE BUREAU.—Indian tribes, organized bands, pueblos, communities, and Alaska Native entities that are recognized by the Secretary as of the date of enactment of this Act as eligible to receive services from the Bureau.

(B) CERTAIN SPLINTER GROUPS, POLITICAL FACTIONS, AND COMMUNITIES.—Splinter groups, political factions, communities, or groups of any character that separate from the main body of an Indian tribe that, at the time of that separation, is recognized as an Indian tribe by the Secretary, unless the group, faction, or community is able to establish clearly that the group, faction, or community has functioned throughout history until the date of that petition as an autonomous Indian tribal entity.

(C) CERTAIN GROUPS THAT HAVE PREVIOUSLY SUBMITTED PETITIONS.—Groups, or successors in interest of groups, that before the date of enactment of this Act, have petitioned for and been denied or refused recognition as an Indian tribe under regulations prescribed by the Secretary.

(D) INDIAN GROUPS SUBJECT TO TERMINATION.—Any Indian group whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(E) PARTIES TO CERTAIN ACTIONS.—Any Indian group that—

(i) in any action in a United States court of competent jurisdiction to which the group was a party, attempted to establish its status as an Indian tribe or a successor in interest to an Indian tribe that was a party to a treaty with the United States;

(ii) was determined by that court—

(I) not to be an Indian tribe; or

(II) not to be a successor in interest to an Indian tribe that was a party to a treaty with the United States; or

(iii) was the subject of findings of fact by that court which, if made by the Commission, would show that the group was incapable of establishing 1 or more of the criteria set forth in this section.

(3) TRANSFER OF PETITION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the date on which all of the members of the Commission have been appointed and confirmed by the Senate under section 4(b), the Secretary shall transfer to the Commission all petitions pending before the Department that—

(i) are not under active consideration by the Secretary at the time of the transfer; and

(ii) request the Secretary, or the Federal Government, to recognize or acknowledge an Indian group as an Indian tribe.

(B) CESSATION OF CERTAIN AUTHORITIES OF SECRETARY.—Notwithstanding any other provision of law, on the date of the transfer under subparagraph (A), the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any Indian group as an Indian tribe, except for those groups under active consideration at the time of the transfer whose petitions have been retained by the Secretary pursuant to subparagraph (A).

(C) DETERMINATION OF ORDER OF SUBMISSION OF TRANSFERRED PETITIONS.—Petitions transferred to the Commission under subparagraph (A) shall, for purposes of this Act, be considered as having been submitted to the Commission in the same order as those petitions were submitted to the Department.

(b) PETITION FORM AND CONTENT.—Except as provided in subsection (c), any petition submitted under subsection (a) by an Indian group shall be in any readable form that clearly indicates that the petition is a petition requesting the Commission to recognize the Indian group as an Indian tribe and that contains detailed, specific evidence concerning each of the following items:

(1) STATEMENT OF FACTS.—A statement of facts establishing that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1871. Evidence that the character of the group as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence that the Commission may rely on in determining the Indian identity of a group may include any 1 or more of the following items:

(A) IDENTIFICATION OF PETITIONER.—An identification of the petitioner as an Indian entity by any department, agency, or instrumentality of the Federal Government.

(B) RELATIONSHIP OF PETITIONER WITH STATE GOVERNMENT.—A relationship between the petitioner and any State government, based on an identification of the petitioner as an Indian entity.

(C) RELATIONSHIP OF PETITIONER WITH A POLITICAL SUBDIVISION OF A STATE.—Dealings of the petitioner with a county or political subdivision of a State in a relationship based on the Indian identity of the petitioner.

(D) IDENTIFICATION OF PETITIONER ON THE BASIS OF CERTAIN RECORDS.—An identification of the petitioner as an Indian entity by records in a private or public archive, courthouse, church, or school.

(E) IDENTIFICATION OF PETITIONER BY CERTAIN EXPERTS.—An identification of the petitioner as an Indian entity by an anthropologist, historian, or other scholar.

(F) IDENTIFICATION OF PETITIONER BY CERTAIN MEDIA.—An identification of the petitioner as an Indian entity in a newspaper, book, or similar medium.

(G) IDENTIFICATION OF PETITIONER BY ANOTHER INDIAN TRIBE OR ORGANIZATION.—An identification of the petitioner as an Indian entity by another Indian tribe or by a national, regional, or State Indian organization.

(H) IDENTIFICATION OF PETITIONER BY A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION.—An identification of the petitioner

as an Indian entity by a foreign government or an international organization.

(I) OTHER EVIDENCE OF IDENTIFICATION.—Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the membership of the petitioner.

(2) EVIDENCE OF COMMUNITY.—

(A) IN GENERAL.—A statement of facts establishing that a predominant portion of the membership of the petitioner—

(i) comprises a community distinct from those communities surrounding that community; and

(ii) has existed as a community from historical times to the present.

(B) EVIDENCE.—Evidence that the Commission may rely on in determining that the petitioner meets the criterion described in clauses (i) and (ii) of subparagraph (A) may include 1 or more of the following items:

(i) MARRIAGES.—Significant rates of marriage within the group, or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) SOCIAL RELATIONSHIPS.—Significant social relationships connecting individual members.

(iii) SOCIAL INTERACTION.—Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) SHARED ECONOMIC ACTIVITY.—A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) DISCRIMINATION OR OTHER SOCIAL DISTINCTIONS.—Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) SHARED RITUAL ACTIVITY.—Shared sacred or secular ritual activity encompassing most of the group.

(vii) CULTURAL PATTERNS.—Cultural patterns that—

(I) are shared among a significant portion of the group that are different from the cultural patterns of the non-Indian populations with whom the group interacts;

(II) function as more than a symbolic identification of the group as Indian; and

(III) may include language, kinship or religious organizations, or religious beliefs and practices.

(viii) COLLECTIVE INDIAN IDENTITY.—The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) HISTORICAL POLITICAL INFLUENCE.—A demonstration of historical political influence pursuant to the criterion set forth in paragraph (3).

(C) CRITERIA FOR SUFFICIENT EVIDENCE.—The Commission shall consider the petitioner to have provided sufficient evidence of community at a given point in time if the petitioner has provided evidence that demonstrates any one of the following:

(i) RESIDENCE OF MEMBERS.—More than 50 percent of the members of the group of the petitioner reside in a particular geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent social interaction with some members of the community.

(ii) MARRIAGES.—Not less than 50 percent of the marriages of the group are between members of the group.

(iii) DISTINCT CULTURAL PATTERNS.—Not less than 50 percent of the members of the group maintain distinct cultural patterns including language, kinship or religious organizations, or religious beliefs or practices.

(iv) COMMUNITY SOCIAL INSTITUTIONS.—Distinct community social institutions encompassing a substantial portion of the members of the group, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) APPLICABILITY OF CRITERIA.—The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

(3) AUTONOMOUS ENTITY.—

(A) IN GENERAL.—A statement of facts establishing that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the time of the petition. The Commission may rely on 1 or more of the following items in determining whether a petitioner meets the criterion described in the preceding sentence:

(i) MOBILIZATION OF MEMBERS.—The group is capable of mobilizing significant numbers of members and significant resources from its members for group purposes.

(ii) ISSUES OF PERSONAL IMPORTANCE.—Most of the membership of the group consider issues acted upon or taken by group leaders or governing bodies to be of personal importance.

(iii) POLITICAL PROCESS.—There is a widespread knowledge, communication, and involvement in political processes by most of the members of the group.

(iv) LEVEL OF APPLICATION OF CRITERIA.—The group meets the criterion described in paragraph (2) at more than a minimal level.

(v) INTRAGROUP CONFLICTS.—There are intragroup conflicts which show controversy over valued group goals, properties, policies, processes, or decisions.

(B) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OR AUTHORITY.—The Commission shall consider that a petitioner has provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders or other mechanisms exist or have existed that accomplish the following:

(i) ALLOCATION OF GROUP RESOURCES.—Allocate group resources such as land, residence rights, or similar resources on a consistent basis.

(ii) SETTLEMENT OF DISPUTES.—Settle disputes between members or subgroups such as clans or moieties by mediation or other means on a regular basis.

(iii) INFLUENCE ON BEHAVIOR OF INDIVIDUAL MEMBERS.—Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior.

(iv) ECONOMIC SUBSISTENCE ACTIVITIES.—Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) TEMPORALITY OF SUFFICIENCY OF EVIDENCE.—A group that has met the requirements of paragraph (2)(C) at any point in time shall be considered to have provided sufficient evidence to meet the criterion described in subparagraph (A) at that point in time.

(4) GOVERNING DOCUMENT.—A copy of the then present governing document of the petitioner that includes the membership criteria of the petitioner. In the absence of a written document, the petitioner shall be required to provide a statement describing in full the membership criteria of the petitioner and the then current governing procedures of the petitioner.

(5) LIST OF MEMBERS.—

(A) IN GENERAL.—A list of all then current members of the petitioner, including the full name (and maiden name, if any), date, and place of birth, and then current residential address of each member, a copy of each available former list of members based on the criteria defined by the petitioner, and a statement describing the methods used in preparing those lists.

(B) REQUIREMENTS FOR MEMBERSHIP.—In order for the Commission to consider the members of the group to be members of an Indian tribe for the purposes of the petition, that membership shall be required to consist of established descendancy from an Indian group that existed historically, or from historical Indian groups that combined and functioned as a single autonomous entity.

(C) EVIDENCE OF TRIBAL MEMBERSHIP.—Evidence of tribal membership required by the Commission for a determination of tribal membership shall include the following items:

(i) DESCENDANCY ROLLS.—Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes.

(ii) CERTAIN OFFICIAL RECORDS.—Federal, State, or other official records or evidence identifying then present members of the petitioner, or ancestors of then present members of the petitioner, as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iii) ENROLLMENT RECORDS.—Church, school, and other similar enrollment records identifying then present members or ancestors of then present members as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iv) AFFIDAVITS OF RECOGNITION.—Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(v) OTHER RECORDS OR EVIDENCE.—Other records or evidence identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(c) EXCEPTIONS.—A petition from an Indian group that is able to demonstrate by a preponderance of the evidence that the group was, or is the successor in interest to, a—

(1) party to a treaty or treaties;

(2) group acknowledged by any agency of the Federal Government as eligible to participate under the Act of June 18, 1934 (commonly referred to as the ''Indian Reorganization Act'') (48 Stat. 984 et seq., chapter 576; 25 U.S.C. 461 et seq.);

(3) group for the benefit of which the United States took into trust lands, or which the Federal Government has treated as having collective rights in tribal lands or funds; or

(4) group that has been denominated a tribe by an Act of Congress or Executive order,

shall be required to establish the criteria set forth in this section only with respect to the period beginning on the date of the applicable action described in paragraph (1), (2), (3), or (4) and ending on the date of submission of the petition.

(d) DEADLINE FOR SUBMISSION OF PETITIONS.—No Indian group may submit a petition to the Commission requesting that the Commission recognize an Indian group as an Indian tribe after the date that is 8 years after the date of enactment of this Act. After the Commission makes a determination on each petition submitted before that date, the Commission may not make any further determination under this Act to recognize any Indian group as an Indian tribe.

SEC. 6. NOTICE OF RECEIPT OF PETITION.

(a) PETITIONER.—

(1) IN GENERAL.—Not later than 30 days after a petition is submitted or transferred

to the Commission under section 5(a), the Commission shall—

(A) send an acknowledgement of receipt in writing to the petitioner; and

(B) publish in the Federal Register a notice of that receipt, including the name, location, and mailing address of the petitioner and such other information that—

(i) identifies the entity that submitted the petition and the date the petition was received by the Commission;

(ii) indicates where a copy of the petition may be examined; and

(iii) indicates whether the petition is a transferred petition that is subject to the special provisions under paragraph (2).

(2) SPECIAL PROVISIONS FOR TRANSFERRED PETITIONS.—

(A) IN GENERAL.—With respect to a petition that is transferred to the Commission under section 5(a)(3), the notice provided to the petitioner, shall, in addition to providing the information specified in paragraph (1), inform the petitioner whether the petition constitutes a documented petition that meets the requirements of section 5.

(B) AMENDED PETITIONS.—If the petition described in subparagraph (A) is not a documented petition, the Commission shall notify the petitioner that the petitioner may, not later than 90 days after the date of the notice, submit to the Commission an amended petition that is a documented petition for review under section 7.

(C) EFFECT OF AMENDED PETITION.—To the extent practicable, the submission of an amended petition by a petitioner by the date specified in this paragraph shall not affect the order of consideration of the petition by the Commission.

(b) OTHERS.—In addition to providing the notification required under subsection (a), the Commission shall notify, in writing, the Governor and attorney general of, and each federally recognized Indian tribe within, any State in which a petitioner resides.

(c) PUBLICATION; OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(1) PUBLICATION.—The Commission shall publish the notice of receipt of each petition (including any amended petition submitted pursuant to subsection (a)(2)) in a major newspaper of general circulation in the town or city located nearest the location of the petitioner.

(2) OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(A) IN GENERAL.—Each notice published under paragraph (1) shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition.

(B) COPY TO PETITIONER.—A copy of any submission made under subparagraph (A) shall be provided to the petitioner upon receipt by the Commission.

(C) RESPONSE.—The petitioner shall be provided an opportunity to respond to any submission made under subparagraph (A) before a determination on the petition by the Commission.

SEC. 7. PROCESSING THE PETITION.

(a) REVIEW.—

(1) IN GENERAL.—Upon receipt of a documented petition submitted or transferred under section 5(a) or submitted under section 6(a)(2)(B), the Commission shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

(2) CONTENT OF REVIEW.—The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) OTHER RESEARCH.—In conducting a review under this subsection, the Commission may—

(A) initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the status of the petitioner; and

(B) consider such evidence as may be submitted by other parties.

(4) ACCESS TO LIBRARY OF CONGRESS AND NATIONAL ARCHIVES.—Upon request by the petitioner, the appropriate officials of the Library of Congress and the National Archives shall allow access by the petitioner to the resources, records, and documents of those entities, for the purpose of conducting research and preparing evidence concerning the status of the petitioner.

(b) CONSIDERATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, petitions submitted or transferred to the Commission shall be considered on a first come, first served basis, determined by the date of the original filing of each such petition with the Commission (or the Department if the petition is transferred to the Commission pursuant to section 5(a) or is an amended petition submitted pursuant to section 6(a)(2)(B)). The Commission shall establish a priority register that includes petitions that are pending before the Department on the date of enactment of this Act.

(2) PRIORITY CONSIDERATION.—Each petition (that is submitted or transferred to the Commission pursuant to section 5(a) or that is submitted to the Commission pursuant to section 6(a)(2)(B)) of an Indian group that meets 1 or more of the requirements set forth in section 5(c) shall receive priority consideration over a petition submitted by any other Indian group.

SEC. 8. PRELIMINARY HEARING.

(a) IN GENERAL.—Not later than 60 days after the receipt of a documented petition by the Commission submitted or transferred under section 5(a) or submitted to the Commission pursuant to section 6(a)(2)(B), the Commission shall set a date for a preliminary hearing. At the preliminary hearing, the petitioner and any other concerned party may provide evidence concerning the status of the petitioner.

(b) DETERMINATION.—

(1) IN GENERAL.—Not later than 30 days after the conclusion of a preliminary hearing under subsection (a), the Commission shall make a determination—

(A) to extend Federal acknowledgment of the petitioner as an Indian tribe to the petitioner; or

(B) that provides that the petitioner should proceed to an adjudicatory hearing.

(2) NOTICE OF DETERMINATION.—The Commission shall publish in the Federal Register a notice of each determination made under paragraph (1).

(c) INFORMATION TO BE PROVIDED PREPARATORY TO AN ADJUDICATORY HEARING.—

(1) IN GENERAL.—If the Commission makes a determination under subsection (b)(1)(B) that the petitioner should proceed to an adjudicatory hearing, the Commission shall—

(A)(i) make available appropriate evidentiary records of the Commission to the petitioner to assist the petitioner in preparing for the adjudicatory hearing; and

(ii) include such guidance as the Commission considers necessary or appropriate to assist the petitioner in preparing for the hearing; and

(B) not later than 30 days after the conclusion of the preliminary hearing under subsection (a), provide a written notification to the petitioner that includes a list of any deficiencies or omissions that the Commission relied on in making a determination under subsection (b)(1)(B).

(2) SUBJECT OF ADJUDICATORY HEARING.—The list of deficiencies and omissions provided by the Commission to a petitioner under paragraph (1)(B) shall be the subject of the adjudicatory hearing. The Commission may not make any additions to the list after the Commission issues the list.

SEC. 9. ADJUDICATORY HEARING.

(a) IN GENERAL.—Not later than 180 days after the conclusion of a preliminary hearing under section 8(a), the Commission shall afford a petitioner who is subject to section 8(b)(1)(B) an adjudicatory hearing. The subject of the adjudicatory hearing shall be the list of deficiencies and omissions provided under section 8(c)(1)(B) and shall be conducted pursuant to section 554 of title 5, United States Code.

(b) TESTIMONY FROM STAFF OF COMMISSION.—In any hearing held under subsection (a), the Commission may require testimony from the acknowledgement and research staff of the Commission or other witnesses. Any such testimony shall be subject to cross-examination by the petitioner.

(c) EVIDENCE BY PETITIONER.—In any hearing held under subsection (a), the petitioner may provide such evidence as the petitioner considers appropriate.

(d) DETERMINATION BY COMMISSION.—Not later than 60 days after the conclusion of any hearing held under subsection (a), the Commission shall—

(1) make a determination concerning the extension or denial of Federal acknowledgment of the petitioner as an Indian tribe to the petitioner;

(2) publish the determination of the Commission under paragraph (1) in the Federal Register; and

(3) deliver a copy of the determination to the petitioner, and to every other interested party.

SEC. 10. APPEALS.

(a) IN GENERAL.—Not later than 60 days after the date that the Commission publishes a determination under section 9(d), the petitioner may appeal the determination to the United States District Court for the District of Columbia.

(b) ATTORNEY FEES.—If the petitioner prevails in an appeal made under subsection (a), the petitioner shall be eligible for an award of reasonable attorney fees and costs under section 504 of title 5, United States Code, or section 2412 of title 28, United States Code, whichever is applicable.

SEC. 11. EFFECT OF DETERMINATIONS.

A determination by the Commission under section 9(d) that an Indian group is recognized by the Federal Government as an Indian tribe shall not have the effect of depriving or diminishing—

(1) the right of any other Indian tribe to govern the reservation of such other tribe as that reservation existed before the recognition of that Indian group, or as that reservation may exist thereafter;

(2) any property right held in trust or recognized by the United States for that other Indian tribe as that property existed before the recognition of that Indian group; or

(3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for that other Indian tribe before the recognition by the Federal Government of that Indian group as an Indian tribe.

SEC. 12. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY FOR SERVICES AND BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), upon recognition by the Commission of a petitioner as an Indian tribe under this Act, the Indian tribe shall—

(A) be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian

tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; and

(B) have the responsibilities, obligations, privileges, and immunities of those Indian tribes.

(2) PROGRAMS OF THE BUREAU.—

(A) IN GENERAL.—The recognition of an Indian group as an Indian tribe by the Commission under this Act shall not create an immediate entitlement to programs of the Bureau in existence on the date of the recognition.

(B) AVAILABILITY OF PROGRAMS.—

(i) IN GENERAL.—The programs described in subparagraph (A) shall become available to the Indian tribe upon the appropriation of funds.

(ii) REQUESTS FOR APPROPRIATIONS.—The Secretary and the Secretary of Health and Human Services shall forward budget requests for funding the programs for the Indian tribe pursuant to the needs determination procedures established under subsection (b).

(b) NEEDS DETERMINATION AND BUDGET REQUEST.—

(1) IN GENERAL.—Not later than 180 days after an Indian group is recognized by the Commission as an Indian tribe under this Act, the appropriate officials of the Bureau and the Indian Health Service of the Department of Health and Human Services shall consult and develop in cooperation with the Indian tribe, and forward to the Secretary or the Secretary of Health and Human Services, as appropriate, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe.

(2) SUBMISSION OF BUDGET REQUEST.—Upon receipt of the information described in paragraph (1), the appropriate Secretary shall submit to the President a recommended budget along with recommendations, concerning the information received under paragraph (1), for inclusion in the annual budget submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

(a) LIST OF RECOGNIZED TRIBES.—Not later than 90 days after the first meeting of the Commission, and annually on or before each January 30 thereafter, the Commission shall publish in the Federal Register a list of all Indian tribes that—

(1) are recognized by the Federal Government; and

(2) receive services from the Bureau.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—Beginning on the date that is 1 year after the date of enactment of this Act, and annually thereafter, the Commission shall prepare and submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives that describes the activities of the Commission.

(2) CONTENT OF REPORTS.—Each report submitted under this subsection shall include, at a minimum, for the year that is the subject of the report—

(A) the number of petitions pending at the beginning of the year and the names of the petitioners;

(B) the number of petitions received during the year and the names of the petitioners;

(C) the number of petitions the Commission approved for acknowledgment during the year and the names of the acknowledged petitioners;

(D) the number of petitions the Commission denied for acknowledgment during the year and the names of the petitioners; and

(E) the status of all pending petitions on the date of the report and the names of the petitioners.

SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Any petitioner may bring an action in the district court of the United States for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act. The district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act.

SEC. 15. REGULATIONS.

The Commission may, in accordance with applicable requirements of title 5, United States Code, promulgate and publish such regulations as may be necessary to carry out this Act.

SEC. 16. GUIDELINES AND ADVICE.

(a) GUIDELINES.—Not later than 90 days after the date of enactment of this Act, the Commission shall make available to Indian groups suggested guidelines for the format of petitions, including general suggestions and guidelines concerning where and how to research information that is required to be included in a petition. The examples included in the guidelines shall not preclude the use of any other appropriate format.

(b) RESEARCH ADVICE.—The Commission may, upon request, provide suggestions and advice to any petitioner with respect to the research of the petitioner concerning the historical background and Indian identity of that petitioner. The Commission shall not be responsible for conducting research on behalf of the petitioner.

SEC. 17. ASSISTANCE TO PETITIONERS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to Indian groups seeking Federal recognition as Indian tribes to enable the Indian groups to—

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) TREATMENT OF GRANTS.—The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) COMPETITIVE AWARD.—The grants made under subsection (a) shall be awarded competitively on the basis of objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated to the Commission to carry out this Act (other than section 17) such sums as are necessary for each of fiscal years 2001 through 2009.

(b) SECRETARY OF HHS.—To carry out section 17, there are authorized to be appropriated to the Department of Health and Human Services for the Administration for Native Americans such sums as are necessary for each of fiscal years 2001 through 2009.

By Mr. CAMPBELL:

S. 612. A bill to provide for periodic Indian needs assessments, to require Federal Indian program evaluations; and for other purposes; to the Committee on Indian Affairs.

INDIAN NEEDS ASSESSMENT, PROGRAM EVALUATION AND POLICY COORDINATION ACT OF 1999

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senator INOUYE in introducing the Indian Needs Assessment, Program Evaluation and Policy Coordination Act of 1999 to bring about needed reforms in the way Indian programs are designed and funded.

As the annual funding debates over Indian programs show us year after year, rational and equitable funding decisions are made more difficult because of the lack of accurate and up to date information about the needs of tribal governments and tribal members.

The ability of the Congress to target unmet needs and make available adequate funds for tribes and tribal members is directly related to the quantity and quality of information available about the type and degree of demand for federal programs and services.

Within one year of the enactment of this Act, and every 5 years thereafter, each Federal agency or department is required to conduct an ''Indian Needs Assessment'' (''INA'') aimed at determining the needs of tribes and Indians eligible for programs and services administered by such agency or department.

To facilitate information collection and analysis, the bill requires the development of a uniform method, criteria and procedures for determining, analyzing, and compiling the program and service needs of tribes and Indians.

The resulting ''Indian Needs Assessments'' are to be filed with the Committees on Appropriations and Indian Affairs of the Senate, and the Committees on Appropriations and Resources of the House of Representatives.

In addition to a Needs Assessment, the bill also requires that each Federal agency or department responsible for providing services to Indians file an ''Annual Indian Program Evaluation'' (''AIPE'') with these same committees. The AIPE will measure the performance and effectiveness of the programs under the jurisdiction of that agency or department, and include recommendations as to how such programs can be improved.

I ask unanimous consent that a copy of the bill be printed in the RECORD and urge my colleagues to join me in supporting this measure.

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

S. 612

Be it enacted by the Senate and House or Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Needs Assessment and Program Evaluation Act of 1999''.

SEC. 2. FINDINGS, PURPOSES.

(a) FINDINGS.—the Congress finds that—

(1) the United States and the Indian tribes have a unique legal and political government-to-government relationship;

(2) pursuant to Constitution, treaties, statutes, executive order, court decisions, and course of conduct, the United States has a trust obligation to provide certain services to Indian tribes and to Indians;

(3) Federal agencies charged with administering programs and providing services to or for the benefit of Indians have not furnished Congress with adequate information necessary to assess such programs or the needs of Indians and Indian tribes;

(4) such lack of information has hampered the ability of the Congress to determine the nature, type, and magnitude of such needs as well as its ability to respond to them.

(5) Congress cannot properly fulfill its obligation to Indian tribes and Indian people unless and until it has an adequate store of information related to the needs of Indians nationwide.

(b) PURPOSES.—the purposes of this Act are to—

(1) ensure that Indian needs for federal programs and services are known in a more certain and predictable fashion;

(2) to require that Federal agencies and departments carefully review and monitor the effectiveness of the programs and services provided to Indians;

(3) to provide for more efficient and effective cooperation and coordination of, and accountability from, the agencies and departments providing programs and services, including technical and business development assistance, to Indians; and

(4) to provide Congress with reliable information regarding both Indian needs and the evaluation of federal programs and services provided to Indians nationwide.

SEC. 3. INDIAN TRIBAL NEEDS ASSESSMENT.

(a) INDIAN TRIBAL NEEDS ASSESSMENTS.—In General.—

(1) within 180 days after the enactment of this Act, the Secretary, in consultation and coordination with the Departments of Agriculture, Commerce, Defense, Energy, Labor, Justice, Treasury, Transportation, and Veterans Affairs, the Environmental Protection Agency, other relevant agencies, offices, and departments, shall develop a uniform method, criteria and procedures for determining, analyzing, and compiling the program and service assistance needs of Indian tribes and Indians nationwide. The needs assessment shall address, but not be limited to, the following:

(A) The total population of the tribe(s), and the population of tribal members located in the service area, where applicable;

(B) The size of the service area;

(C) The location of the service area;

(D) The availability of similar programs within the geographical area to tribes or tribal members; and

(E) socio-economic conditions that exist within the service area.

(2) the Secretary shall consult with tribal governments in establishing and conducting the needs assessment mandated by this Act.

(3) within 1 year of the enactment of this Act, and every five (5) years thereafter, each Federal agency or department, in coordination with the Secretary, shall conduct an Indian Needs Assessment (''INA'') aimed at determining the actual needs of Indian tribes and Indians eligible for programs and services administered by such agency or department.

(4) the Indian Needs Assessment developed pursuant to subsection (c)(3) above shall be filed with the Committees on Appropriations and Indian Affairs of the Senate, and the Committees on Appropriations and Resources of the House of Representatives on February 1 of each year in which it is to be submitted.

(b) FEDERAL AGENCY INDIAN TRIBAL PROGRAM EVALUATION.—

(1) within 180 days of enactment of this Act, the Secretary shall develop a uniform method, criteria and procedures for compiling, maintaining, keeping current and reporting to Congress all information concerning

(A) the agency or department annual expenditure for programs and services for which Indians are eligible, with specific information regarding the names of tribes who are currently participating in or receiving each service, the names of tribes who have applied for and not received programs or services, and the names of tribes whose services or programs have been terminated within the last fiscal year;

(B) services or programs specifically for the benefit of Indians, with specific information regarding the names of tribes who are currently participating in or receiving each service, the names of tribes who have applied for and not received programs or services, and the names of tribes whose services or programs have been terminated within the last fiscal year;

(C) the agency or department method of delivery of such services and funding, including a detailed explanation of the outreach efforts of each agency or department to Indian tribes.

(2) within 1 year of the enactment of this Act, and annually thereafter, each Federal agency or department responsible for providing services or programs to or for the benefit of Indian tribes or Indians shall file an Annual Indian Program Evaluation (''AIPE'') with the Committees on Appropriations and Indian Affairs of the Senate, and the Committees on Appropriations and Resources of the House of Representatives.

(c) ANNUAL LISTING OF TRIBAL ELIGIBLE PROGRAMS.—On or before February 1 of each calendar year, those Federal agencies or departments mentioned in (b)(2) above, shall develop and publish in the Federal Register a list of all programs and services offered by such agency or department for which Indian tribes or their members are or may be eligible, and shall provide a brief explanation of the program or service.

SEC. 4. REPORT TO CONGRESS

(a) IN GENERAL.—the Secretary shall, within 1 years of the enactment of this Act, develop and submit to the Committees on Appropriations and Indian Affairs of the Senate, and the Committees on Appropriations and Resources of the House of Representatives a report detailing the coordination of federal program and service assistance for which Indian tribes and their members are eligible.

(b) STRATEGIC PLAN.—the Secretary shall, within 18 months after the enactment of this Act, and after consultation and coordination with the Indian tribes, file a Strategic Plan for the Coordination of Federal Assistance for Indians.

(c) CONTENTS OF STRATEGIC PLAN.—the Plan required under this Act shall contain (1) identification of reforms necessary to the laws, regulations, policies, procedures, practices, and systems of the agencies involved; (2) proposals for remedying the reforms identified in the Plan; and (3) other recommendations consistent with the purposes of the Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) Beginning in fiscal year 2001 and for each fiscal year thereafter, there are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. CAMPBELL:

S. 613. A bill to encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes; to the Committee on Indian Affairs.

INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 1999

Mr. CAMPBELL. Mr. President, today I am pleased to introduce the Indian Tribal Economic Development and Contract Encouragement Act of 1999 to encourage tribal economic development, provide for disclosures regarding tribal sovereign immunity, and eliminate excessive and unproductive bureaucratic oversight of tribal decisions.

As many of my colleagues are aware, most Indian tribes are not in the position to fund all, or even most of their governmental operations through taxes imposed on reservation-based activities or assets. Often a tribe's own land and other natural resources are the only means a tribe has to fund its activities or to promote economic development within its reservation boundaries.

Since land is the basic trust resource, the United States has the authority and the responsibility to oversee the lease of tribal lands. Where tribes propose to enter leases of their lands, a federal statute provides that the lease is only valid if it is approved by the Interior Department. My proposed bill does not affect the federal government's authority to approve leases. My bill addresses non-lease agreements between Indian tribes and those that provide services that relate to the tribe's lands.

Not that long ago, tribes had to rely on federal bureaucrats to devise ways to develop their lands, to negotiate leases, and to then approve those leases. In many instances, tribes are now developing their own proposals. To assist in the development of a private sector, I want to encourage this entrepreneurial spirit.

There are strong indications, however, that an ancient federal statute is impeding every Indian tribe's ability to enter into agreements with those who might be hired by the tribe to assist it in developing its lands. Like most laws, this statute was enacted with the best intentions. I speak of a law enacted over 125 years ago; a law enacted when many Indians had to rely on translators to read the treaties between the United States and their tribal government. The statute I propose to amend was enacted in 1871, and it survives in much the same form today as it did then—64 Congresses ago.

Section 81, as it is known, provides that a contract ''relating to Indian lands'' is not valid unless it is approved by the Secretary. Section 81 imposes no limits on how long the BIA may take to review the agreement or even what standards apply to decide whether the contract should be approved or denied.

The bill I introduce today addresses these issues and others.

First, the bill gives the Secretary 90 days to review a proposed contract. This is the same amount of time the Secretary has to review contracts relating to the management of gaming facilities. My bill provides that if the government takes no action for 90

days, then the tribe can proceed with the project unhindered by the lack of approval.

All other federal laws will still apply to the agreement.

Second, the Secretary must identify the types of contracts that are not covered by this statute. A tribe can submit such contracts and the BIA has 45 days to determine whether they are covered by the law. The Secretary is still authorized to reject any contract that violates federal law.

Finally, the bill incorporates a suggestion made in 1988 by then-Assistant Secretary Ross Swimmer to ''eliminate the current statutory requirements that the Secretary approve the tribal selection of attorneys and attorney fees.'' To allow the selection of counsel, without the Secretary's oversight, is fundamental to Indian self-determination.

My bill addresses one other key matter. Like other sovereign governments, Indian tribes are free to negotiate with potential business partners whether, in what form, and to what extent the parties can sue and be sued under a contract they enter. My bill recognizes a tribe's discretion in this area and it leaves it in place.

After numerous hearings conducted in the 105th Congress and in previous congresses, I believe the record is clear: Indian tribes have been increasingly responsible in their consideration of immunity decisions.

I am concerned, however, about those who may enter into agreements with Indian tribes knowing that the tribe retains immunity but at a later time insist that they have been treated unfairly by the tribe raising the immunity defense.

Under my bill, the Secretary must deny approval of contracts if the agreement in question fails to state that the parties recognize that the tribe is immune from suit unless immunity is expressly waived.

Excessive federal regulation, especially if it impedes business and economic development in Indian Country, needs to be eliminated. Whether we put this belief in terms of the Contract with America, or the initiative to reinvent government, our objective is the same.

There is no group of people who have experienced more federal regulation of every aspect of their lives than Indians. This bill represents a commitment to reduce unnecessary and anachronistic federal bureaucratic requirements.

I ask unanimous consent that a copy of the bill be printed in the RECORD, and I urge my colleagues to join me in supporting this critical measure.

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

S. 613

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 ''Indian Tribal Economic Development and Contract Encouragement Act of 1999''.

SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.

Section 2103 of the Revised Statutes (25 U.S.C. 81) is amended—

(1) by inserting ''(a)'' before ''No agreement'';

(2) in subsection (a), as designated by paragraph (1) of this section—

(A) by striking '', or individual Indians not citizens of the United States,'';

(B) by striking ''First. Such agreement'' and inserting the following:

''(1) Such contract or agreement'';

(C) by striking ''Second. It shall bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs endorsed up on it.'' and inserting the following:

''(2) Except as provided in subsection (b), it shall bear the approval of the Secretary of the Interior (referred to in this section as the 'Secretary') or a designee of the Secretary of the Interior endorsed upon it.'';

(D) by striking ''Third. It'' and inserting the following:

''(3) It'';

(E) by striking ''Fourth. It'' and inserting the following:

''(4) It''; and

(F) by striking ''Fifth. It'' and inserting the following:

''(5) It'';

(3) by inserting ''(d)'' before ''All contracts'';

(4) by inserting after subsection (a) the following:

''(b) Subsection (a)(2) shall not apply to a contract or agreement in any case in which—

''(1) the Secretary (or a designee of the Secretary) fails to approve or disapprove the contract or agreement by the date that is 90 days after the date on which the contract or agreement is filed with the Secretary under this section; or

''(2)(A) the tribe notifies the Secretary in a manner prescribed by the Secretary under subsection (c)(3) that a contract or agreement is not covered under subsection (a); and

''(B) the Secretary (or a designee of the Secretary) fails to inform the tribe in writing, by the date that is 45 days after receipt of the notification under subparagraph (A), that the Secretary (or designee) intends to review the contract agreement by the date specified in paragraph (1).

''(c)(1) The Secretary (or a designee of the Secretary) shall refuse to approve a contract or agreement that is filed with the Secretary under this section if the Secretary (or designee) determines that the contract or agreement—

''(A) violates Federal law; or

''(B)(i) is covered under subsection (a); and

''(ii) does not include a provision that—

''(I) provides for remedies in the case of a breach of the contract or agreement;

''(II) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

''(III) includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

''(2)(A) The Secretary (or a designee of the Secretary) shall not approve any contract or agreement that is submitted to the Secretary for approval under this section if the Secretary (or designee) determines that the contract or agreement is not covered under subsection (a).

''(B) If the Secretary determines that a contract or agreement is not covered under subsection (a), the Secretary shall notify the tribe of that determination.

''(3) To assist tribes in providing notice under subsection (b)(2), the Secretary shall—

''(A) issue guidelines for identifying types of contracts or agreements that are not covered under subsection (a); and

''(B) establish procedures for providing that notice.

''(4) The failure of the Secretary to approve a contract or agreement under this subsection or to provide notice under paragraph (2)(B) shall not affect the applicability of a requirement under any other provision of Federal law.'';

(5) in subsection (d), as redesignated by paragraph (3) of this section, by striking ''paid to any person by any Indian tribe'' and all that follows through the end of the subsection and inserting ''paid to any person by any tribe or any other person on behalf of the tribe on account of such services in excess of the amount approved by the Secretary of the Interior, may be recovered in an action brought by the tribe or the United States. Such an action may be brought in any district court of the United States, without regard to the amount in controversy. Any amount recovered under this subsection shall be paid to the Treasury of the United States for use by the tribe for whom it was recovered.''; and

(6) by adding at the end the following:

''(e) Nothing in this section shall be construed to require the Secretary of the Interior to approve a contract for legal services by an attorney.''.

SEC. 3. CHOICE OF COUNSEL.

Section 16(e) of the Act of June 18, 1934 (commonly referred to as the ''Indian Reorganization Act'') (48 Stat. 987, chapter 576; 25 U.S.C. 476(e)) is amended by striking '', the choice of counsel and fixing of fees to be subject to the approval of the Secretary''.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 614. A bill to provide for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands; to the Committee on Indian Affairs.

INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT ACT OF 1999

Mr. CAMPBELL. Mr. President, today I am pleased to introduce another key piece of legislation to encourage private sector development on Indian lands. This bill is aimed at removing the obstacles that stand in the way of responsive government and greater levels of business activity in Indian country—the Indian Tribal Regulatory Reform and Business Development Act of 1999.

Over the years, laws, regulations and policies have been built up—often with good intentions—but have outlived their usefulness or relevance to the contemporary needs of Indian tribal governments and economies.

More importantly, the multi-layered bureaucracies, federal as well as tribal, have been repeatedly identified as a barrier to Indian entrepreneurship and business development on and around Indian lands.

Efforts to reduce bureaucracy are not new or unique to Indian country. Governments around the world have begun

embarking on efforts to downsize and streamline government operations to an appropriate level—one that complements human endeavors rather than hindering them.

The bill I am introducing today is part of the much-needed effort to accomplish the same goal to benefit the business environments on Indian lands nationwide.

The legislation requires a comprehensive review of the laws and regulations affecting investment and business decisions on Indian lands, and requires the Regulatory Reform and Business Development on Indian lands Authority to determine the extent to which such laws and regulations unnecessarily or inappropriately impair investment and business development on Indian lands.

The Authority is also required to determine how such laws and regulations impact the financial stability and management efficiency of tribal governments.

Under the provisions of this bill, the Authority is required to conduct the review and within one year report the findings and recommendations to the Congress and the President for further actions.

Mr. President, this is not the first time an effort of this sort has been proposed, but I believe that if conducted properly, it can serve as a lasting and constructive initiative to further the long-term health and prosperity of tribal governments and economies.

I ask unanimous consent that a copy of the bill be printed in the RECORD, and urge my colleagues to join me in supporting this key measure.

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

S. 614

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 ''Indian Tribal Regulatory Reform and Business Development Act of 1999''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, American Indians and Alaska Natives suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills to a greater degree than any other group in the United States;

(2) the capacity of Indian tribes to build strong tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities conducted on Indian lands;

(3) beginning in 1970, with the issuance by the Nixon Administration of a special message to Congress on Indian Affairs, each President has confirmed the special government-to-government relationship between Indian tribes and the United States; and

(4) the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands to—

(A) encourage investment from outside sources that do not originate with the Indian tribes; and

(B) facilitate economic development on Indian lands.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To provide for a comprehensive review of the laws (including regulations) that affect investment and business decisions concerning activities conducted on Indian lands.

(2) To determine the extent to which those laws unnecessarily or inappropriately impair—

(A) investment and business development on Indian lands; or

(B) the financial stability and management efficiency of tribal governments.

(3) To establish an authority to conduct the review under paragraph (1) and report findings and recommendations that result from the review to Congress and the President.

SEC. 3. DEFINITIONS.

In this Act:

(1) AUTHORITY.—The term ''Authority'' means the Regulatory Reform and Business Development on Indian Lands Authority.

(2) FEDERAL AGENCY.—The term ''Federal agency'' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(3) INDIAN.—The term ''Indian'' has the meaning given that term in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(4) INDIAN LANDS.—The term ''Indian lands'' has the meaning given that term in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

(5) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(7) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the meaning given that term in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(*l*)).

SEC. 4. ESTABLISHMENT OF AUTHORITY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Interior and other officials whom the Secretary determines to be appropriate, shall establish an authority to be known as the Regulatory Reform and Business Development on Indian Lands Authority.

(2) PURPOSE.—The Secretary shall establish the Authority under this subsection in order to facilitate identifying and subsequently removing obstacles to investment, business development, and the creation of wealth with respect to the economies of Indian reservations.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Authority established under this section shall be composed of 21 members.

(2) REPRESENTATIVES OF INDIAN TRIBES.—12 members of the Authority shall be representatives of the Indian tribes from the areas of the Bureau of Indian Affairs. Each such area shall be represented by such a representative.

(c) INITIAL MEETING.—Not later than 90 days after the date of enactment of this Act, the Authority shall hold its initial meeting.

(d) REVIEW.—Beginning on the date of the initial meeting under subsection (c), the Authority shall conduct a review of laws (including regulations) relating to investment, business, and economic development that affect investment and business decisions concerning activities conducted on Indian lands.

(e) MEETINGS.—The Authority shall meet at the call of the chairperson.

(f) QUORUM.—A majority of the members of the Authority shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON.—The Authority shall select a chairperson from among its members.

SEC. 5. REPORT.

Not later than 1 year after the date of enactment of this Act, the Authority shall prepare and submit to the Committee on Indian Affairs of the Senate, the Committee on Resources of the House of Representatives, and to the governing body of each Indian tribe a report that includes—

(1) the findings of the Authority concerning the review conducted under section 4(d); and

(2) such recommendations concerning the proposed revisions to the laws that were subject to review as the Authority determines to be appropriate.

SEC. 6. POWERS OF THE AUTHORITY.

(a) HEARINGS.—The Authority may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Authority considers advisable to carry out the duties of the Authority.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Authority may secure directly from any Federal department or agency such information as the Authority considers necessary to carry out the duties of the Authority.

(c) POSTAL SERVICES.—The Authority may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Authority may accept, use, and dispose of gifts or donations of services or property.

SEC. 7. AUTHORITY PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) NON-FEDERAL MEMBERS.—Members of the Authority who are not officers or employees of the Federal Government shall serve without compensation, except for travel expenses, as provided under subsection (b).

(2) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members of the Authority who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Authority 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 Authority.

(c) STAFF.—

(1) IN GENERAL.—The chairperson of the Authority may, without regard to the civil service laws, appoint and terminate such personnel as may be necessary to enable the Authority to perform its duties.

(2) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Authority may procure temporary and intermittent service under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed under GS–13 of the General Schedule established under section 5332 of title 5, United States Code.

SEC. 8. TERMINATION OF THE AUTHORITY.

The Authority shall terminate 90 days after the date on which the Authority has

submitted, to the committees of Congress specified in section 5, and to the governing body of each Indian tribe, a copy of the report prepared under section 5.

SEC. 9. EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.

The activities of the authority conducted under this title shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

By Mr. CAMPBELL:

S. 615. A bill to encourage Indian economic development, to provide for a framework to encourage and facilitate intergovernmental tax agreements, and for other purposes.

INTER-GOVERNMENTAL TAX AGREEMENT ACT OF 1999

Mr. CAMPBELL. Mr. President, to encourage states and tribes to negotiate and enter fair and binding tax compacts, I introduce today the Inter-Governmental Tax Agreement Act of 1999.

In 1998, I introduced similar legislation to provide a mechanism, short of litigation, for the collection of state retail sales taxes. The Committee on Indian Affairs held several hearings on the issue of taxation involving tribes and sales made on Indian lands and heard from tribal leaders, state tax officials, private retailers, and other affected parties. Though no resolution was reached, the voluminous record developed by the Committee has helped flesh out the issue of taxation and has led to a fuller picture being developed.

Because there is much confusion about Indians and tax matters, I should be clear and explain exactly what we are talking about when we address these matters. Indian tribal governments, like state governments, pay no federal taxes on income earned by the tribe. Individual members of Indian tribes pay the same taxes other citizens of the United States pay: federal income taxes, Social Security taxes, and a host of other taxes.

What we are focusing on with this bill are state taxes on retail sales made to non-Indians on goods such as tobacco and fuel when the transaction occurs on Indian lands. As late as 1991, the Supreme Court ruled that such taxes are legitimately levied taxes and set out several possible remedies available to states including lawsuits against tribal officials and negotiating a tax compact. The court was equally clear, however, that because of tribal common law immunity from lawsuits, tribes cannot be sued to collect the tax revenues.

Consistent with that opinion, at least 18 states and dozens of Indian tribes have chosen to negotiate and enter into tax agreements. At the Committee hearing in March 1998, it was estimated that more than 200 ''intergovernmental tax agreements'' are now in place covering a variety of retail goods.

These agreements detail the collection and remittance of tax revenues by the tribe to the state on sales to non-members of the tribe, and often allow for an ''administrative fee'' paid to the tribe for their efforts to collect and remit the tax revenues.

Two factors were presented to the Committee which are legitimate issues for debate in the 106th Congress. First, the question of services provided by the state and/or the tribe to Indians and non-Indians living on tribal lands; and second, the devastating impact on Indian economies as a result of ''dual'' state and tribal taxes levied on the same transaction.

This legislation encourages state-tribal agreements by requiring that states and tribes attempt to resolve their differences in good faith through negotiations aimed at entering into a tax compact.

If efforts to reach agreement through negotiations and mediation fail, under this bill the Interior Secretary may refer the matter to the ''Intergovernmental Dispute Resolution Panel'' consisting of representatives of the departments of Interior, Justice, and Treasury, Indian tribal governments, and State governments.

Rather than create an entirely new mechanism, the framework provided by this bill relies on existing mediation services provided by the Federal Mediation and Conciliation Service to assist the Panel in carrying out its duties in arriving at fair agreements.

The history of state-tribal relations is one full of acrimony with brief periods of cooperation. The tax issue is an emotional one with a long history, Mr. President, but I am hopeful that fair and equitable solutions to matters involving states, tribes and taxation can be developed with the input of all affected parties.

I ask unanimous consent that a copy of the bill be printed in the RECORD and urge my colleagues to support this important measure.

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

S. 615

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 ''Intergovernmental Tax Agreement Act of 1999''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Indian tribal governments exercise governmental authority and powers over persons and activities that occur on Indian lands;

(2) a dual State-tribal tax burden on transactions by Indian tribes and members of Indian tribes with non-Indian persons and entities undermines the ability of Indian tribes to finance governmental functions and programs of those Indian tribes;

(3) the apportionment of taxes from commercial activities occurring on Indian lands should take into account the government services provided by the State and the Indian tribe involved to members of that Indian tribe and other individuals residing on those lands;

(4) the governments of Indian tribes and States have negotiated and entered into more than 200 tax compacts, and those compacts cover a variety of commodities and retail taxes;

(5) in cases in which a tax compact between an Indian tribe and a State is not in effect, conflicts between the State and Indian tribe may require the active involvement of the United States in the role of the United States as a trustee for the Indian tribe;

(6) alternative dispute resolution—

(A) has been used to resolve successfully disputes in the public and private sectors;

(B) results in expedited decisionmaking; and

(C) is less costly and less contentious than litigation; and

(7) it is necessary to facilitate intergovernmental agreements between Indian tribes and States and political subdivisions thereof.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To strengthen the economies of Indian tribes.

(2) To encourage and facilitate tax agreements between the governments of Indian tribes and State governments.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMPACT.—The term ''compact'' means a written agreement between a State and an Indian tribe concerning the collection and remittance of—

(A) applicable State taxes on retail commercial transactions involving non-Indians on Indian lands of that Indian tribe; or

(B) covered tribal equivalency taxes.

(2) COVERED TRIBAL EQUIVALENCY TAX.—The term ''covered tribal equivalency tax'' means a tribal equivalency tax—

(A) with a rate that is equal to or greater than the rate of an applicable State sales or excise tax for transactions for which the tax is imposed; and

(B)(i) that is used to—

(I) fund tribal government operations or programs;

(II) provide for the general welfare of the Indian tribe and the members of that Indian tribe;

(III) promote the economic development of that Indian tribe; or

(IV) assist in funding operations of local governmental agencies; or

(ii) that is a fuel or highway tax, with respect to which the revenues derived from the tax are used only for highway and transportation purposes.

(3) INDIAN LANDS.—The term ''Indian lands'' means, with respect to an Indian tribe—

(A) lands within the reservation of that Indian tribe; and

(B) other lands over which the Indian tribe exercises governmental jurisdiction.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(5) NON-INDIAN.—The term ''non-Indian'' means a person who is not—

(A) an Indian tribe;

(B) comprised of members of an Indian tribe; or

(C) a member of an Indian tribe.

(6) PANEL.—The term ''Panel'' means the Intergovernmental Dispute Resolution Panel established under section 5.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(8) STATE.—The term ''State'' means each of the 50 States.

(9) TRIBAL EQUIVALENCY TAX.—The term ''tribal equivalency tax'' means a tax that—

(A) is imposed by the tribal government of an Indian tribe on retail commercial transactions that involve non-Indians on Indian

lands within the jurisdiction of that Indian tribe; and

(B) is in addition to any State tax that may be imposed.

SEC. 4. INTERGOVERNMENTAL TAX AGREEMENTS.

(a) IN GENERAL.—The consent of the United States is granted to States and Indian tribes to enter into compacts and agreements in accordance with this Act.

(b) COMPACT NEGOTIATIONS.—An Indian tribe may request the Secretary to initiate negotiations on the part of that Indian tribe with a State for the purpose of entering into a tax compact under this section. A State may request the Secretary to initiate negotiations between an Indian tribe and the State to enter into such a tax compact.

(c) NOTIFICATION.—The Secretary shall notify each affected Indian tribe or State of any request made under subsection (b).

(d) REQUIREMENTS FOR REQUEST FOR INITIATION OF NEGOTIATIONS.—

(1) WRITTEN REQUEST.—A request by an Indian tribe or State under subsection (a) shall be in writing.

(2) RESPONSE.—Not later than 30 days after receiving a request referred to in paragraph (1), the Secretary shall issue a written response to the Indian tribe or State that submitted the request.

(e) COMMENCEMENT OF NEGOTIATIONS; COMPLETION OF NEGOTIATIONS.—

(1) COMMENCEMENT OF NEGOTIATIONS.—Not later than 30 days after the date specified in subsection (d), the Secretary shall commence negotiations with respect to the tax compact that is the subject of the request submitted by the Indian tribe or State.

(2) COMPLETION OF NEGOTIATIONS.—Not later than 120 days after the commencement of the negotiations under paragraph (1), the parties shall complete the negotiations, unless the parties agree to an extension of the period of time for completion of the negotiations.

(f) MEDIATION.—The Secretary shall initiate a mediation process, with the goal of achieving a tax compact, if—

(1) by the date specified in subsection (e)(1), the party that was requested to enter into negotiations, failed to respond to that request; or

(2) upon the completion of an applicable period for negotiations, as determined under subsection (e)(2), the parties have failed to execute a compact.

SEC. 5. INTERGOVERNMENTAL DISPUTE RESOLUTION PANEL.

(a) ESTABLISHMENT.—There is established the Intergovernmental Dispute Resolution Panel.

(b) MEMBERSHIP OF THE PANEL.—

(1) IN GENERAL.—The Panel shall consist of—

(A) 1 representative from the Department of the Interior;

(B) 1 representative from the Department of Justice;

(C) 1 representative from the Department of the Treasury;

(D) 1 representative of State governments; and

(E) 1 representative of tribal governments of Indian tribes.

(2) CHAIRPERSON.—The members of the Panel shall select a Chairperson from among the members of the Panel.

(c) DUTIES OF PANEL.—To the extent allowable by law, the Panel may consider and render a decision on the following:

(1) If negotiations and mediation conducted under section 4 do not result in the execution of a compact, a dispute between the State and Indian tribe that is referred to the Panel at the discretion of the Secretary.

(2) Any claim involving the legitimacy of a claim for the collection or payment of retail taxes claimed by a State with respect to transactions conducted on Indian lands (including counterclaims, setoffs, or related claims submitted or filed by an Indian tribe in question regarding an original claim involving that Indian tribe).

(d) FEDERAL MEDIATION CONCILIATION SERVICE.—

(1) IN GENERAL.—In a manner consistent with this Act, the Panel shall consult with the Federal Mediation Conciliation Service (referred to in this subsection as the ''Service'') established under section 202 of the National Labor Relations Act (29 U.S.C. 172).

(2) DUTIES OF SERVICE.—The Service shall, upon request of the Panel and in a manner consistent with applicable law, provide services to the Panel to aid in resolving disputes brought before the Panel.

SEC. 6. JUDICIAL ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the district courts of the United States shall have original jurisdiction with respect to—

(1) the enforcement of any compact entered into under this Act; and

(2) any civil action, claim, counterclaim, or setoff, brought by any party with respect to a compact entered into under this Act to secure equitable relief, including injunctive and declaratory relief.

(b) DAMAGES.—No action to recover damages arising out of or in connection with an agreement or compact entered into under this Act may be brought, except as specifically provided for in that agreement or compact.

(c) CONSENT TO SUIT.—Each compact entered into under this Act shall specify that each party to the compact—

(1) consents to litigation to enforce the compact; and

(2) to the extent necessary to enforce that compact, waives any defense of sovereign immunity.

By Ms. COLLINS:

S. 617. A bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of insulin pumps as items of durable medical equipment; to the Committee on Finance.

MEDICARE INSULIN PUMP COVERAGE ACT OF 1999

Ms. COLLINS. Mr. President, diabetes is a serious and potentially life-threatening disease affecting more than 16 million Americans at a cost of more than $105 billion annually. Moreover, since 3 million elderly Medicare beneficiaries have been diagnosed with diabetes, and another 3 million are likely to have the disease but not know it, nowhere is the economic impact of diabetes felt more strongly than in the Medicare Program.

Treating these seniors for the often devastating complications associated with diabetes accounts for more than one-quarter of all Medicare expenditures. Therefore, helping diabetic seniors avoid the complications of their disease will not only improve the quality of their lives but also help reduce the economic burden that diabetes places on Medicare. While there is no known cure, diabetes is largely a treatable disease. Many people who have diabetes can often lead relatively normal, active lives as long as they stick to a proper diet, carefully monitor the amount of sugar or glucose in their blood and take their medication, which may or may not include insulin.

However, if these people with diabetes are unable to follow or do not follow this regimen, they put themselves at risk of blindness, loss of limbs and have an increased chance of heart disease, kidney failure and stroke. Therefore, preventive services for people with diabetes has the potential to save a great deal of money that would otherwise go for hospitalizations or acute care costs—not to mention a great deal of unnecessary pain and suffering.

Congress recently took a number of important steps to improve Medicare coverage of preventive care for diabetics. Prior to the enactment of the balanced budget amendment in 1997, Medicare covered diabetics' self-maintenance education services in inpatient or hospital-based settings and in limited outpatient settings, specifically hospital outpatient departments or rural health clinics. Medicare did not, however, cover education services if they were given in any other outpatient setting, such as a doctor's office. Moreover, while Medicare did cover the cost of blood-testing strips used to monitor the sugar in the blood, the program did so for only Type I diabetics who require insulin to control their disease.

The balanced budget amendment of 1997 rightly expanded Medicare to cover all outpatient self-management training services as well as providing uniform coverage of blood-testing strips for all persons with diabetes. With the enactment of the balanced budget amendment, we made significant progress toward improving care for our senior citizens with diabetes. However, there is more that we can do.

External insulin infusion pumps have proven to be much more effective in controlling blood glucose levels than conventional therapy injection therapy for insulin-dependent diabetics whose blood sugar levels are difficult to control. Such pumps help them to avoid the expensive complications and suffering resulting from uncontrolled diabetes. However, Medicare currently does not cover these pumps, even when they have been prescribed as medically necessary by a patient's physician.

I am, therefore, pleased to introduce today legislation, the Medicare Insulin Pump Coverage Act of 1999, that would expand Medicare coverage to include insulin infusion pumps for certain Type I diabetics.

External insulin pumps are neither investigational nor experimental. They are widely accepted by health care professionals involved in treating parties with diabetes. Moreover, studies such as the Diabetes Control and Complications Trial sponsored by the National Institutes of Health have established that maintaining blood glucose levels as close to normal as possible is the key to preventing devastating complications from this disease. For many patients, the use of an infusion pump is the only way that optimal blood glucose control can be safely achieved. That is why virtually all other third

party payers—including many State Medicaid Programs and CHAMPUS—cover the device. Moreover, there is precedent in Medicare since it currently does cover infusion pumps for numerous cancer drugs, as well as for pain control medications.

The need for this legislation became apparent to me based on my attempts to help one of my constituents, Nona Frederich of Raymond, ME. She is an example of the Medicare patient who would benefit from the pump but who is currently being denied what is for her the most effective form of glucose control. Nona has been an insulin-dependent diabetic since 1962. Because of her extremely volatile insulin sensitivity, her diabetic specialists placed her on an insulin infusion pump in January 1982. Until she reached the age of 65, the cost of the pump and operating supplies were underwritten in large part by her insurer.

In March of 1995 it became necessary for Nona to purchase a new infusion pump. However, by this time, she was now on Medicare and Medicare refused to cover it, even though her doctor had prescribed it as clearly being medically necessary. With the help of my Portland office, the Frederichs worked their way through the Health Care Financing Administration system of appeals. Unfortunately, in January of last year, they received final notification of a negative decision. Their only remaining option is to file a civil suit which they are simply not in a position to pursue.

The Frederichs literally have notebooks filled with documentation of the procedures they followed and the evidence they submitted. Moreover, they personally paid close to $5,000 in original pump costs and supplies for which they received no reimbursement. For a Medicare beneficiary with a limited income, these kinds of costs would be devastating and would place the pump—the medically necessary pump—completely out of reach. In such a case, they would be forced to return to or to continue with conventional insulin therapy which simply just may not be as effective in controlling blood sugar. As a consequence, these patients are admitted to the hospital over and over again, and Medicare now picks up the bill—a far greater bill than if Medicare had simply paid for the pump in the first place.

While potentially devastating for an individual, the financial costs to Medicare of expanding coverage to include the insulin infusion pump will not be great. Under my bill, the pump would have to be prescribed by a physician and the beneficiary would have to be a Type I diabetic experiencing severe swings of high and low blood glucose levels. Of the estimated 3 million Medicare beneficiaries with diabetes, only about 5 percent are Type I, or insulin dependent; of these, it is estimated that the pump would be appropriate for only about 4 percent. Mr. President, what a difference it would make for those individuals.

The American Diabetes Association, the Juvenile Diabetes Foundation, the American Association of Clinical Endocrinologists and the American Association of Diabetes Educators, as well as officials at the Centers for Disease Control, all have advocated expanding Medicare to cover insulin infusion pumps for Type I diabetics who otherwise would have great difficulty in controlling their blood sugars.

I am pleased to introduce legislation today to do just that. I urge all of my colleagues to join me in support of this important legislation, legislation that would not cost much money but would enrich the lives of those diabetics who need these pumps immeasurably.

I ask unanimous consent that the text of the legislation as well as the letters of support from the American Diabetes Association and the Juvenile Diabetes Foundation be printed in the RECORD.

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

S. 617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Insulin Pump Coverage Act of 1999''.

SEC. 2. COVERAGE OF INSULIN PUMPS UNDER MEDICARE.

(a) INCLUSION AS ITEM OF DURABLE MEDICAL EQUIPMENT.—Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by inserting before the semicolon the following: '', and includes insulin infusion pumps (as defined in subsection (uu)) prescribed by the physician of an individual with Type I diabetes who is experiencing severe swings of high and low blood glucose levels and has successfully completed a training program that meets standards established by the Secretary or who has used such a pump without interruption for at least 18 months immediately before enrollment under part B''.

(b) DEFINITION OF INSULIN INFUSION PUMP.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following:

''Insulin Infusion Pump

''(uu) The term 'insulin infusion pump' means an infusion pump, approved by the Federal Food and Drug Administration, that provides for the computerized delivery of insulin for individuals with diabetes in lieu of multiple daily manual insulin injections.''.

(c) PAYMENT FOR SUPPLIES RELATING TO INFUSION PUMPS.—Section 1834(a)(2)(A) of the Social Security Act (42 U.S.C. 1395m(a)(2)(A)) is amended—

(1) in clause (ii), by striking ''or'' at the end;

(2) in clause (iii), by inserting ''or'' at the end; and

(3) by inserting after clause (iii) the following:

''(iv) which is an accessory used in conjunction with an insulin infusion pump (as defined in section 1861(uu)),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to items of durable medical equipment furnished under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) on or after the date of enactment of this Act.

STATEMENT BY THE AMERICAN DIABETES ASSOCIATION IN SUPPORT OF THE MEDICARE INSULIN PUMP COVERAGE ACT

The American Diabetes Association lends its full support to passage of the Medicare Insulin Pump Coverage Act in Congress. Effective maintenance of blood glucose levels is imperative if people with diabetes are to forestall the onset of the complications of diabetes, such as cardiovascular disease, end-stage renal disease, blindness or amputations. External insulin infusion pumps have proven to be more effective in controlling blood glucose levels than conventional injection therapy for insulin-dependent people whose blood sugar levels are difficult to control. Many, including those who have had access to the insulin pump prior to becoming a Medicare beneficiary, need access to the pump for better control. Medicare access to the insulin pump will help Medicare enhance the quality of life for people with diabetes and contain the costly complications of diabetes.

Diabetes is a disease that requires a lifetime of medical care and self-treatment. People with diabetes must have full access to supplies, equipment and education. The Diabetes Control and Complications Trial (DCCT), a 10-year clinical study conducted by the National Institutes of Health, proved that maintaining blood glucose levels as close to normal as possible is the key to preventing the devastating complications associated with diabetes.

''Unfortunately, many health insurance plans, including Medicare, do not provide comprehensive coverage for the supplies and education people with diabetes need to control their disease,'' said Gerald Bernstein, MD, President of the American Diabetes Association. ''For example, Medicare does not provide coverage for the insulin pump,'' Bernstein added.

According to the Health Care Financing Administration (HCFA), the federal agency responsible for administering the Medicare program, the insulin pump is not covered because ''there [is no] medical advantage to using controlled continuous insulin infusion (via infusion pump) rather than conventional multiple daily injections to treat diabetes.''

Bernstein added, ''The use of the insulin pump has proven to be effective for individuals who, despite multiple insulin injections and frequent monitoring, have unstable diabetes. For many of these individuals, use of the insulin pump is a life-enhancing decision.'' The Medicare Insulin Pump Coverage Act will require Medicare to cover insulin pumps for beneficiaries with Type 1 diabetes who are experiencing severe swings of high and low blood glucose levels or who have used an insulin pump without interruption for at least 18 months immediately before enrollment under Medicare Part B.

According to Bernstein, ''This legislation is especially important for those individuals who face the prospect of losing their coverage of the pump upon entering Medicare. Now is the right time for HCFA to move forward with coverage of the insulin pump in these limited circumstances.''

For these reasons the American Diabetes Association strongly supports The Medicare Insulin Pump Coverage Act and applauds Senator Susan M. Collins (R–ME) for introducing this important legislation. Passage of the Collins Bill will dramatically improve the lives of those striving to maintain a healthy life, while at the same time, reducing costly hospital stays.

JUVENILE DIABETES FOUNDATION INTERNATIONAL, THE DIABETES RESEARCH FOUNDATION,

Washington, DC, March 8, 1999.

Hon. SUSAN M. COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the Juvenile Diabetes Foundation International (JDF), I want to express our strong support for your insulin pump legislation which would ensure that pumps are covered by the Medicare program.

Diabetes is a devastating disease that affects 16 million Americans and 120 million people worldwide. A new case of diabetes is diagnosed every forty seconds, and diabetes kills one American every three minutes. Diabetes is the leading cause of kidney failure, adult blindness, and nontraumatic amputations, and it substantially increases the risk of having a heart attack or stroke. In all, the life expectancy of people with diabetes averages 15 years less than that of people without diabetes.

As you know, people with diabetes who use insulin take up to five injections daily to treat their diabetes. However, injection therapy does not work will for many diabetes sufferers. In these and other cases, insulin pumps are an effective and critical tool in assisting persons with diabetes in more closely controlling blood glucose levels. Better control of blood glucose levels is likely to lead to fewer health complications from diabetes, and will result in enormous cost savings to the Medicare system where one in four Medicare dollars presently goes to pay for health care of people with diabetes.

Senator Collins, the JDF applauds you for introducing this important legislation to help our nation's seniors and other Medicare-covered Americans have access to cost-effective and life-improving medical supplies such as the insulin pump.

Sincerely,

LEAH J. MULLIN,
Chairman, JDF Government Relations.

By Mr. MOYNIHAN:

S. 618. A bill to provide for the declassification of the journal kept by Glenn T. Seaborg while serving as chairman of the Atomic Energy Commission; to the Committee on Energy and Natural Resources.

PRIVATE RELIEF BILL

● Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation I introduced in the 105th Congress to require the Department of Energy to return the journal Dr. Glenn T. Seaborg kept as Chairman of the Atomic Energy Commission. Dr. Glenn T. Seaborg, who died on February 25 at the age of 86, was the co-discoverer of plutonium, and led a research team which created a total of nine elements, all of which are heavier than uranium. For this he was awarded the Nobel Prize in Chemistry in 1951 which he shared with Dr. Edwin M. McMillan.

Dr. Seaborg kept a journal while chairman of the AEC. The journal consisted of a diary written at home each evening, correspondence, announcements, minutes, and the like. He was careful about classified matters; nothing was included that could not be made public, and the journal was reviewed by the AEC before his departure in 1971. Nevertheless, more than a decade after his departure from the AEC, the Department of Energy subjected two copies of Dr. Seaborg's journals—one of which it had borrowed—to a number of classification reviews. He came unannounced to my Senate office in September of 1997 to tell me of the problems he was having getting his journal released, saying it was something he wished to have resolved prior to his death. Although he has left us, it is fitting that his journal should finally be returned to his estate. This bill would do just that. I introduced a bill to return to Dr. Seaborg his journal in its original, unredacted form but to no avail, so bureaucracy triumphed. It was never returned. Now he has left us without having the satisfaction of resolving the fate of his journal. It is devastating that a man who gave so much of his life to his country was so outrageously treated by his own government.●

By Mr. WELLSTONE:

S. 619. A bill to provide for a community development venture capital program; to the Committee on Small Business.

THE COMMUNITY DEVELOPMENT VENTURE CAPITAL ASSISTANCE ACT OF 1999

● Mr. WELLSTONE. Mr. President, I rise today to introduce the Community Development Venture Capital Assistance Act of 1999. This bill would create a demonstration program to promote small business development and entrepreneurship in economically distressed communities through support of Community Development Venture Capital funds.

While our nation has enjoyed a historic period of economic growth over the past several years, there are concentrated pockets of poverty, in rural and urban areas, which have not experienced development of jobs and opportunities for its residents. Small businesses, which have led America's economic expansion, have not been able to gain a toehold in these areas. A major reason for this lackluster performance is inability for entrepreneurs in economically distressed areas to access capital.

No business can grow without infusions of capital for equipment purchases, to conduct research, to expand capacity, or to build infrastructure. At some point all successful ventures outgrow incubation in the entrepreneur's garage or living room; additional staff must be hired and the complexity of managing supply and demand increases. Yet it is clear that throughout the country there are small business owners who are being starved of the capital necessary to take this step. They have viable businesses or ideas for businesses but cannot fully transform their aspirations into reality because of this financial roadblock.

Traditional venture capital firms are not meeting the need for equity capital in disadvantaged communities. Such investments are risky in the best of circumstances, but they can and do succeed with adequate time and attention. These communities need patient investors who are willing to work closely with small business owners to realize a financial return over the long term. Often, the investments needed are smaller than those made by traditional sources. Throughout America, organizations known as Community Development Venture Capital funds are making these kinds of equity investments in communities and are producing excellent results.

CDVC funds make equity investments in small businesses for two purposes: to reap a financial return to the fund, and to generate a social benefit for the community through creation of well paying jobs. This ''double bottom line'' is what makes CDVC funds unique. There are around 30 CDVC funds currently operating throughout the country, in both rural and urban areas. These funds are demonstrating the success of socially conscious investment and entrepreneurial solutions to social and economic problems.

My own state of Minnesota is home to a good example of a seasoned, and successful CDVC fund: Northeast Ventures Corporation of Duluth. NEV serves a seven county rural area and focuses on creating good jobs in high value-added industries. NEV targets 50% of the jobs created through investments to women, and to low income and structurally unemployed persons. They also require portfolio companies to offer employees an opportunity to participate in a health care plan to which the employer contributes. The following story illustrates an NEV achievement:

In 1990 a group of entrepreneurs approached Northeast Ventures about setting up a car wash equipment manufacturing facility in Tower, a town of 508 people, in one of the poorest parts of Northeastern Minnesota. While NEV thought that the market opportunity was attractive, the company, called Powerain, had an incomplete business plan and lacked a Chief Operating Officer. NEV also felt that the business provided a good opportunity to create jobs and bring some economic vitality to an area that needed it badly.

Other assistance was needed before NEV could provide financing for the effort. Northeast worked closely with Powerain's founders to revise the business plan and identify a strong CEO candidate for the company. Northeast also invested $200,000 in equity into the business.

Northeast's involvement did not stop after making its first investment. NEV staff conducted the strategic planning sessions of Powerain and continue to be essential in developing the company's strategic plan. They assist in identifying the need for key personnel; recruit the necessary staff; and are integral in qualifying the short list of candidates. Over a multi year period, NEV has talked daily with the Powerain CEO regarding subjects as diverse as sales, distributor relationships and the financial structure of loans. Over an

eight year period, NEV has assisted Powerain in all subsequent rounds of financing totaling $826,932.

Powerain had a record sales year in 1998 and is expecting another record year in 1999. The company currently employs 20 full-time people, and expects to increase that number significantly in the future. The company provides ongoing training to its staff and entry level positions begin at $8 an hour—with full benefits. Most employees earn well in excess of $10 per hour. Success stories such as these are typical for CDVC funds.

The purpose of the Community Development Venture Capital Assistance Act is to grow the capacity of the CDVC fund ''industry'' by authorizing a $20 million four year demonstration program through the Small Business Administration. First, the bill would authorize $15 million for SBA grants to private, nonprofit organizations with expertise in making venture capital investments in poor communities. This will provide hands-on technical assistance to the new and emerging CDVC funds. These grants could also be used to fund the start up and operating costs of new CDVC organizations. Grants to these intermediary organizations would be matched dollar for dollar with funds raised by the intermediary from non-Federal sources. Second, the bill would provide $5 million in SBA grants to colleges, universities, and other firms or organizations—public or private—to create and operate training programs, intern programs, a national conference, and academic research and study dealing with community development venture capital.

This legislation would provide support for entrepreneurial solutions to economic development issues in rural and urban America. It will allow the Federal government to promote what's working in distressed communities. Last year, the Senate approved a nearly identical provision as part of an SBA technical amendments bill. I was pleased that the demonstration program enjoyed bipartisan support last year and I hope it will again.●

By Mr. SARBANES (for himself, Mr. WARNER, Mrs. MURRAY, and Mr. CAMPBELL):

S. 620. A bill to grant a Federal charter to Korean War Veterans Association, Incorporated, and for other purposes; to the Committee on the Judiciary.

LEGISLATION TO GRANT A FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION

● Mr. SARBANES. Mr. President, today I am introducing legislation together with Senators WARNER, CAMPBELL, and MURRAY, which would grant a Federal Charter to the Korean War Veterans Association, Incorporated. This legislation recognizes and honors the 5.7 million Americans who fought and served during the Korean War for their struggles and sacrifices on behalf of freedom and the principles and ideals of our Nation.

Mr. President, the year 2000 will mark the 50th Anniversary of the Korean War. In June 1950 when the North Korea People's Army swept across the 38th Parallel to occupy Seoul, South Korea, members of our Armed Forces—including many from the State of Maryland—immediately answered the call of the U.N. to repel this forceful invasion. Without hesitation, these soldiers travelled to an unfamiliar corner of the world, and joining an unprecedented multinational force comprised of 22 countries, they risked their lives to protect freedom. The Americans who led this international effort were true patriots who fought with remarkable courage.

In battles such as Pork Chop Hill, the Inchon Landing and the frozen Chosin Reservoir, which was fought in temperatures as low as 57 degrees below 0, they faced some of the most brutal combat in history. By the time the fighting had ended, 8,177 Americans were listed as missing or prisoners of war—some of whom are still missing—and 54,246 Americans had died, the most of any American war in the 20th Century. One hundred and thirty-one Korean War Veterans were awarded the Nation's highest commendation for combat bravery, the Medal of Honor. Ninety-four of these soldiers gave their lives in the process. There is an engraving on the Korean War Veterans Memorial which reflects these losses and how brutal a war this was. It reads, ''Freedom is not Free.'' Yet, as a nation, we have done little more than establish this memorial to publicly acknowledge the bravery of those who fought the Korean War. The Korean War has been termed by many as the ''Forgotten War.'' Mr. President, freedom is not free. We owe our Korean War Veterans a debt of gratitude. Granting this federal charter—at no cost to the government—is a small expression of appreciation that we as a nation can offer to these men and women, one which will enable them to work as a unified front to ensure that the ''Forgotten War'' is forgotten no more.

The Korean War Veterans Association was originally incorporated on June 25, 1985. Since its first annual reunion and memorial service in Arlington, Virginia, where its members decided to develop a national focus and strong commitment to service, the association has grown substantially to a membership of over 25,000. At present, the KWVA is the only veterans organization comprised exclusively of Korean War Veterans and one of the few such organizations of its size without a federal charter. Over the years, it has established a strong record of service and commitment to fellow Korean War veterans, ranging from its efforts on behalf of Project Freedom to its successful effort to construct a national Korean War Veterans Memorial on the Mall. A federal charter would allow the Association to continue and grow its mission and further its charitable and benevolent causes. Specifically, it will afford the Korean War Veterans' Association the same status as other major veterans organizations and allow it to participate as part of select committees with other congressionally chartered veterans and military groups. A federal charter will also accelerate the Association's ''accreditation'' with the Department of Veterans Affairs which will enable its members to assist in processing veterans' claims.

Mr. President, the Korean War Veterans have asked for very little in return for their service and sacrifice. I urge my colleagues to join me in supporting this legislation and ask that the text of the measure be printed in the RECORD.

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

S. 620

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

"CHAPTER 1201—[RESERVED]"; and

(2) by inserting the following:

"CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

"Sec.

''120101. Organization.
''120102. Purposes.
''120103. Membership.
''120104. Governing body.
''120105. Powers.
''120106. Restrictions.
''120107. Duty to maintain corporate and tax-exempt status.
''120108. Records and inspection.
''120109. Service of process.
''120110. Liability for acts of officers and agents.
''120111. Annual report.

"§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

"§ 120102. Purposes

''The purposes of the corporation are as provided in its articles of incorporation and include—

''(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

''(2) providing a means of contact and communication among members of the corporation;

''(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

''(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

"§ 120103. Membership

''Eligibility for membership in the corporation, and the rights and privileges of

members of the corporation, are as provided in the bylaws of the corporation.

''§ 120104. Governing body

''(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

''(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

''§ 120105. Powers

''The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''§ 120106. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

''(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

''(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

''§ 120107. Duty to maintain corporate and tax-exempt status

''(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

''(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''§ 120108. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

''(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''§ 120109. Service of process

''The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

''§ 120110. Liability for acts of officers and agents

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''§ 120111. Annual report

''The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

''1201. Korean War Veterans Association, Incorporated .....120101''.

By Mr. ROCKEFELLER (for himself, Mr. DORGAN, Mr. BURNS, Mr. ROBERTS, and Mr. CONRAD):

S. 621. A bill to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition; to the Committee on Commerce, Science, and Transportation.

RAILROAD COMPETITION AND SERVICE IMPROVEMENT ACT OF 1999

• Mr. ROCKEFELLER. Mr. President, I rise today to introduce a bill that will, twenty years after the Staggers Rail Act, finally deliver the benefits of market competition to the railroad industry and its customers—the Railroad Competition and Service Improvement Act of 1999. I am joined in this effort by Senators DORGAN, BURNS, ROBERTS and CONRAD, and I thank them for their leadership on this bill for the benefit not only of rail customers but also the future health of the railroads themselves.

As many of my colleagues know, there are certain issues that I feel especially strongly about, and all of them are issues that have far-reaching consequences for the State of West Virginia and for our nation. Competition—or the lack thereof—in the railroad industry is one of those issues.

In the United States we have a railroad industry that has gone from 63 class I railroads in 1976 to 9 class I railroads today, of which only 5 control the vast majority of rail freight across the country: 2 in the East, 2 in the West, and one down the Mississippi River in the middle of the country. We also have a railroad industry with service problems so expansive and so disruptive that grain and chemical and other manufacturers have lost tens of millions of dollars in recent years, must operate with the vulnerability of future service crises, and have no choice but to constantly be on the lookout for better and more reliable transportation options. And we have a railroad industry that seems continually to assert undue and anti-competitive power over its customers in increasing local monopoly situations.

I believe the railroad industry is at a crossroads. It's been nearly twenty years since the Staggers Rail Act of 1980, which limited the regulation of the railroad industry by allowing government intervention only where a railroad customer has no effective means of competition. By many measures, the railroads are in far better financial health today, and rail freight transportation is far more safe, stable and efficient than in the dire days of the 1970s.

Yet despite these apparent gains, shippers across the nation are broadly discontent. As a significant new report from the General Accounting Office confirms, rail shippers believe that in the aftermath of Staggers—and in direct conflict with the intent of Staggers—we have in fact created a system that very heavily, and with tremendous financial consequences, favors monopoly railroads and shuts shippers out of the regulatory process that is supposed to protect them.

We have put in place a system that leaves 70 percent of shippers with poorer rate and service options than they need to run their businesses cost-efficiently, and a system in which nearly 60 percent of shippers fear retaliation from the railroads should they access the rate relief process—a process which costs between $500,000 and $3 million per complaint and can take up to 16 years to get a resolution. The GAO makes crystal clear that the rate relief process for shippers with no competitive rail options is too costly and too time-consuming to be effective.

Now some would say that customers always want more and better service, always want lower prices, and always are unhappy—so we should discount their railroad customer concerns and leave the system alone. They would say that the railroads are happy with the status quo, so Staggers must be working well.

To my mind, that's a cop-out. The ''shipping community'' is the backbone of our nation—they are our farmers, our auto and chemical manufacturers, our utilities, our coal miners, our forest products workers—and they're not just crying wolf. They have legitimate problems with a skewed system, and they deserve the Congress' full attention and a commitment to deal with increased concentration and a developing pattern of service problems by infusing some degree of real and effective competition into the railroad industry as a whole.

The legislation we introduce today is designed to do just that: it will jump-start competition and uphold the common carrier obligation by requiring railroads to quote a rate on any given segment; it will reduce monopoly routing by facilitating terminal access; it will streamline the rate relief process by simplifying the market dominance test; it will restore the integrity of the Surface Transportation Board by eliminating its annual revenue adequacy pronouncements; it will bolster rail access for small farmers by creating a targeted rate relief process; and it will require the railroads to file monthly service performance reports with the Department of Transportation, similar to what we require of the airline industry, so that rail customers have access to the information they need to make good railroad and transportation choices.

We intend to offer this legislation as an amendment to the Surface Transportation Board reauthorization legislation later this year, and we especially look forward to working with our colleagues on the Commerce and Agriculture Committees to that end.

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. 621

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 ''Railroad Competition and Service Improvement Act of 1999''.

SEC. 2 PURPOSES.

The purposes of this Act are—

(1) to clarify the rail transportation policy of the United States by requiring the Surface Transportation Board to accord greater weight to the need for increased competition between and among rail carriers and consistent and efficient rail service in its decision making;

(2) to eliminate unreasonable barriers to competition among rail carriers serving the same geographic areas and ensure that smaller carload or intermodal shippers are not precluded from accessing rail systems due to volume requirements;

(3) to ensure reasonable rail rates for captive rail shippers;

(4) to provide relief for certain agricultural facilities lacking effective competitive alternatives; and

(5) to remove unnecessary regulatory burdens from the rate reasonableness procedures of the Surface Transportation Board.

SEC. 3. FINDINGS.

The Congress finds that:

(1) Prior to 1976, the Interstate Commerce Commission regulated most of the rates that railroads charged shippers. The Railroad Revitalization and Regulatory Act (1976) and the Staggers Rail Act (1980) limited the regulation of the rail industry by allowing the Interstate Commerce Commission to regulate rates only where railroads have no effective competition and established the Interstate Commerce Commission's process for resolving rate disputes.

(2) In 1976, when the Congress began the process of railroad deregulation, there were 63 class I railroads in the United States. By 1997, through mergers and other factors, the number of class I railroads shrunk to nine.

(3) The nine class I carriers accounted for more than 90 percent of the industry's freight revenue and 71 percent of the industry's mileage operated in 1997.

(4) Rail industry consolidation has diminished competition, creating an even greater dependence upon a rate relief process through a regulatory body such as the Surface Transportation Board.

(5) Agricultural, chemical, and utility industries in particular rely heavily upon rail transportation, and unreasonable rail rates and inadequate service have a dramatic impact on these important industries.

(6) According to a report issued by the General Accounting Office, ''. . . [t]he Surface Transportation Board's standard procedures for obtaining rate relief are highly complex and time-consuming'' and the General Accounting Office estimates that over ''70 percent [of shippers] believe that the time, complexity, and costs of filing complaints are barriers that often preclude them from seeking relief.''

(7) The General Accounting Office analyzed all 41 rate complaints filed with the Interstate Commerce Commission and its successor, the Surface Transportation Board, since 1990 and found that each complaint cost shippers between $500,000 to $3 million apiece and took between a few months and 16 years to resolve.

(8) The General Accounting Office surveyed over 700 shippers and found that—

(A) 75 percent of the shippers believed that they are overcharged with unreasonable rates and

(B) over 70 percent of the shippers believed that the time, complexity, and costs of filing complaints create unsurmountable barriers and therefore preclude them form pursuing the rate relief they are entitled to under the law.

(9) The General Accounting Office survey of shippers identified the following barriers to obtaining rate relief under the current process:

(A) The costs associated with filing complaints outweighs the benefits of winning relief.

(B) The rate complaint process is too complex and too lengthy.

(C) Developing the stand-alone revenue-to-variable cost model is too costly.

(D) Most shippers believe that the STB is most likely to decide in favor of the railroad.

(E) The discovery process is too difficult because the shipper is dependent upon the railroad for all the necessary data.

(F) Responding to the railroads requests for discovery is too difficult and time consuming.

(G) Shippers fear reprisal from the railroad.

(H) The Surface Transportation Board filing fee is too high.

(10) According to the General Accounting Office report, the vast majority of shippers believe that the following changes in the rate relief process are necessary to provide them with the ability to seek the rate relief:

(A) The Surface Transportation Board's time limit for deciding a rate relief case should be shortened.

(B) The complaint fee required upon filing should be eliminated or reduced.

(C) The market dominance requirement should be simplified.

(D) Mandatory binding arbitration should be used to resolve rate disputes.

(E) The Surface Transportation Board's jurisdictional threshold of 180% revenue-to-variable cost should be lowered.

(11) According to the General Accounting Office report, shippers believe that increasing competition in the railroad industry would lower rates and diminish the need for a rate complaint process. Proposals to increase railroad competition identified in the report include the following:

(A) Require the STB to grant trackage rights; require reciprocal switching at the nearest junction or interchange upon request of a shipper or competing railroad; and increase rail access for shortline and regional railroads.

(B) Overturn the STB's ''bottle neck'' decision by requiring railroads to quote a rate for all route segments.

(12) Consolidation in the railroad industry has diminished competition, thwarting the intended objectives of deregulation to allow competition to lower rates and improve service.

(13) The rate protection intended for shippers without effective competition has been de-railed by a complex, costly, and time-consuming maze of discovery, findings, and appeals that take years and cost millions of dollars.

(14) Because of diminished rail competition, a rate relief process plagued with unsurmountable barriers and blanket antitrust immunity unique to the railroad industry, captive shippers have no effective recourse under the current system.

SEC. 4. CLARIFICATION OF RAIL TRANSPORTATION POLICY.

Section 10101 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In regulating''; and

(2) by adding at the end the following:

''(b) PRIMARY OBJECTIVES.—The primary objectives of the rail transportation policy of the United States shall be—

''(1) to ensure effective competition among rail carriers at origin and destination;

''(2) to maintain reasonable rates in the absence of effective competition; and

''(3) to maintain consistent and efficient rail transportation service to shippers, including the timely provision of railcars requested by shippers; and

''(4) to ensure that smaller carload and intermodal shippers are not precluded from accessing rail systems due to volume requirements.''.

SEC. 5. FOSTERING RAIL TO RAIL COMPETITION.

(a) ESTABLISHMENT OF RATE.—Section 11101(a) of title 49, United States Code, is amended by inserting after the first sentence the following: ''Upon the request of a shipper, a rail carrier shall establish a rate for transportation and provide service requested by the shipper between any two points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged. A carrier shall establish a rate and provide service upon such request without regard to—

''(1) whether the rate established is for only part of a movement between an origin and a destination;

''(2) whether the shipper has made arrangements for transportation for any other part of that movement; or

''(3) whether the shipper currently has a contract with any rail carrier for part or all of its transportation needs over the route of movement.

''If such a contract exists, the rate established by the carrier shall not apply to transportation covered by the contract.''.

(b) REVIEW OF REASONABLENESS OF RATES.—Section 10701(d) of title 49, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) A shipper may challenge the reasonableness of any rate established by a rail carrier in accordance with sections 11101(a) and 10701(c) of this title. The Board shall determine the reasonableness of the rate so challenged without regard to—

''(A) whether the rate established is for only part of a movement between an origin and a destination;

''(B) whether the shipper has made arrangements for transportation for any other part of that movement; or

''(C) whether the shipper currently has a contract with a rail carrier for any part of the rail traffic at issue, provided that the rate prescribed by the Board shall not apply to transportation covered by such a contract.''.

SEC. 6. SIMPLIFIED RELIEF PROCESS FOR CERTAIN AGRICULTURAL SHIPPERS.

(a) LIMITATION OF FEES.—Nothwithstanding any other provision of law, the Surface Transportation Board shall not impose fees in excess of $1,000 for services collected from an eligible facility in connection with rail maximum rate complaints under part 1002 of title 49, Code of Federal Regulations.

(b) SIMPLIFIED RATE AND SERVICE RELIEF.—Section 10701 of title 49, United States Code, is amended by adding at the end thereof the following:

''(e) SIMPLIFIED RATES AND SERVICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a rail carrier may not charge a rate for shipments from or to an eligible facility which results in a revenue-to-

variable cost percentage, using system average costs, for the transportation service to which the rate applies that is greater than 180 percent.

''(2) ACCEPTANCE OF REQUESTS.—Nothwithstanding any other provision of law, a rail carrier shall accept all requests, for grain service from an eligible facility up to a maximum of 110 percent of the grain carloads shipped from or to the facility in the immediately preceding calendar year. If, in a majority of instances, a rail carrier does not in any 45-days period, supply the number of grain cars so ordered by an eligible facility or does not initiate service within 30 days of the reasonably specified loading date, the eligible facility may request that an alternative rail carrier provide the service using the tracks of the original carrier. If the alternative rail carrier agrees to provide such service, and such service can be provided without substantially impairing the ability of the carrier whose tracks reach the facility to use such tracks to handle its own business, the Board shall order the alternative carrier to commence service and to compensate the other carrier for the use of its tracks. The alternative carrier shall provide reasonable compensation to the original carrier for the use of the original carrier's tracks.

''(3) CANCELLATION PENALTIES.—A carrier may accept car orders under paragraph (2) subject to reasonable penalties for service requests that are canceled by the requester. If the carrier fills such orders more than 15 days after the reasonably specified loading date, the carrier may not assess a penalty for canceled car orders.

''(4) DAMAGES.—A rail carrier that fails to provide service under the requirements of paragraph (2) is liable for damages to an eligible facility that does not have access to an alternative carrier, including lost profits, attorney's fees, and any other consequences attributable to the carrier's failure to provide the ordered service. A claim for such damage may be brought in an appropriate United States District Court or before the Board.

''(5) TIMETABLE FOR BOARD PROCEEDING.—The Board shall conclude any proceeding brought under this subsection no later than 180 days from the date a complaint is filed.

''(6) DEFINITIONS.—In this subsection:

''(A) ELIGIBILITY FACILITY.—The term 'eligible facility' means a shipper facility that—

''(i) is the origin or destination for not more than 4,000 carloads annually of grain as defined in section 3(g) of the United States Grain Standards Act (7 U.S.C. 75(g));

''(ii) is served by a single rail carrier at its origin;

''(iii) has more than 60 percent of the facility's inbound or outbound grain and grain product shipments (excluding the delivery of grain to the facility by producers), measured by weight or bushels moved via a rail carrier in the immediately preceding calendar year; and

''(iv) the rate charged by the rail carrier for the majority of shipments of grain and grain products from or to the facility, excluding premium for special service programs, results in a revenue-to-variable cost percentage, using system average costs, for the transportation to which the rate applies that is equal to or greater than 180 percent.

''(B) REASONABLE COMPENSATION.—The term 'reasonable compensation' shall mean an amount no greater than the total shared costs of the original carrier and the alternative carrier incurred, on a usage basis, for the provision of service to an eligible facility. If the carriers are unable to agree on compensation terms within 15 days after the facility requests service from the alternative carrier, the alternative carrier or the eligible facility may request the Board to establish the compensation and the Board shall establish the compensation within 45 days after such request is made.

''(C) ORIGINAL CARRIER.—The term 'original carrier' means a rail carrier which provides the only rail service to an eligible facility using its own tracks or provides such service over an exclusive lease of the tracks serving the eligible facility.

''(D) ALTERNATIVE CARRIER.—The term 'alternative carrier' means a rail carrier that is not an original carrier to an eligible facility.''.

SEC. 7. COMPETITIVE RAIL SERVICE IN TERMINAL AREAS.

(a) TRACKAGE RIGHTS.—Section 11102(a) of title 49, United States Code, is amended—

(1) by striking ''may'' in the first sentence and inserting ''shall'';

(2) by inserting [as a new second sentence] after ''business.'' the following: ''In making this determination, the Board shall not require evidence of anticompetitive conduct by the rail carrier from which access is sought.''; and

(3) by striking ''may establish'' in the next-to-last sentence and inserting ''shall.''

(b) RECIPROCAL SWITCHING.—Section 11102(c)(1) of title 49, United States Code, is amended—

(1) by striking ''may'' in the first sentence and inserting ''shall'';

(2) by inserting after ''service.'' the following: ''In making this determination, the Board shall not require evidence of anticompetitive conduct by the rail carrier from which access is sought.''; and

(3) by striking ''may establish'' in the last sentence and inserting ''shall''.

SEC. 8. SIMPLIFIED STANDARDS FOR MARKET DOMINANCE.

Section 10707(d)(1)(A) of title 49, United States Code, is amended by adding at the end thereof the following: ''The Board shall not consider evidence of product or geographic competition in making a market dominance determination under this section.''.

SEC. 9. REVENUE ADEQUACY DETERMINATIONS.

(a) RAIL TRANSPORTATION POLICY.—Section 10101(3) of title 49, United States Code, is amended by striking ''revenues, as determined by the Board;'' and inserting ''revenues;''.

(b) STANDARDS FOR RATES.—Section 10701(d)(2) is amended by striking ''revenues, as established by the Board under section 10704(a)(2) of this title'' and inserting ''revenues.''.

(c) REVENUE ADEQUACY DETERMINATIONS.—Section 10704(a) of title 49, United States Code, is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)''; and

(2) by striking paragraphs (2) and (3).

SEC. 10. RAIL CARRIER SERVICE QUALITY PERFORMANCE REPORTS.

(a) IN GENERAL.—Chapter 5 of subtitle I of title 49, United States Code, is amended by adding at the end thereof the following:

''SUBCHAPTER III. PERFORMANCE REPORTS

''§541. Rail carrier service quality performance reports

''(a) IN GENERAL.—The Secretary of Transportation shall require, by regulation, each rail carrier to submit a monthly report to the Secretary, in such a uniform format as the Secretary may be regulation prescribe, containing information about—

''(1) its on-time performance;

''(2) its car availability deadline performance;

''(3) its average train speed;

''(4) its average terminal dwell time;

''(5) the number of its cars loaded (by major commodity group); and

''(6) such other aspects of its performance as a rail carrier as the Secretary may require.

''(b) INFORMATION FURNISHED TO STB; THE PUBLIC.—The Secretary shall furnish a copy of each report required under subsection (a) to the Surface Transportation Board no later than the next business day following its receipt by the Secretary, and shall make each such report available to the public.

''(c) ANNUAL REPORT TO THE CONGRESS.—The Secretary shall transmit to the Congress an annual report based upon information received by the Secretary under this section.

''(d) DEFINITIONS.—In this section, the definitions in section 10102 apply.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 5 of subtitle I of title 49, United States Code, is amended by adding at the end thereof the following:

''Subchapter III. Performance Reports

''541. Rail carrier service quality performance reports''.●

● Mr. DORGAN. Mr. President, I am very pleased to join Senators ROCKEFELLER, BURNS, and ROBERTS today in introducing the ''Railroad Competition and Service improvement Act of 1999.'' This legislation is designed to stimulate railroad competition and level the field for shippers who need relief from unreasonable rates. Earlier this month, the General Accounting Office (GAO) issued a report on the barriers to rate relief that prevent small captive shippers from unreasonable rates. That report, outlined below, identified a number of remedies that would give captive shippers a fighting chance at rate relief. This legislation closely mirrors the GAO's findings and if enacted, would go a long way to improve rail service and promote competition.

In my home state of North Dakota over fifty percent of the state economy is dependent upon agriculture. Our ability to move its agricultural production to distant markets affects large sectors of North Dakota's economy. Over eighty percent of all the grain shipped out-of-state moves by rail and 97 percent of North Dakota's grain elevators have access to only one railroad. Those who survive on farming and those who live in states like North Dakota whose main business is agriculture have a great deal at stake when it comes to rail transportation. Overcharges cost us millions of dollars a year, adding a substantial cost to a product that already operates at very low margins.

Since virtually all of the shippers in North Dakota are subject to monopoly service, our farmers and county grain elevators are paying a premium for a service they cannot afford to live without. Rail service in this country is supposed to be competitive where the forces of competition determine shipping rates and in the absence of competition, the STB is suppose to have a process that will protect captive shippers from overcharges. Unfortunately, rail competition is more of an exception than the rule and the process that is designed to protect captive shippers is so costly and time-consuming that shippers are without recourse; left to the mercy of monopoly railroads who not only determine whether or not their product will get to market but

also how much they will charge to deliver that product. This is a circumstance that must be addressed as the Congress considers the reauthorization of the STB this year.

Prior to 1976, the ICC regulated almost all the rates that railroads charged shippers. The Railroad Revitalization and Regulatory Act (1976) and the Staggers Rail Act (1980) limited the regulation of the rail industry by allowing the ICC to regulate rates only where railroads have no effective competition and established the ICC's process for resolving rate disputes.

At the time when the Congress began the process of railroad deregulation (1976) there were 63 class I railroads in the United States. By 1997, through mergers and other factors, the number of class I railroads shrunk to nine. These nine carriers accounted for more than 90 percent of the industry's freight revenue and 71 percent of the industry's mileage operated in 1997. In July, 1998, the STB approved another Class I merger by splitting the assets of Conrail between CSX and Norfolk Southern (reducing the Class I count to 8 once implemented). Another merger between Canadian National Railway and Illinois Central is pending before the STB.

This consolidation has diminished competition, creating an even greater dependence upon a rate relief process through a regulatory body such as the STB. Agricultural, utility, and chemical industries in particular rely heavily upon rail transportation and the cost of unreasonable rail rates has a dramatic impact on these important industries.

According to GAO/RCED–99–46, ''Railroad Regulation: Current Issues Associated With the Rate Relief Process,'' February 1999, ''[t]he Surface Transportation Board's standard procedures for obtaining rate relief are highly complex and time-consuming'' and the GAO estimates that over ''70 percent [of shippers] believe that the time, complexity, and costs of filing complaints are barriers that often preclude them from seeking relief.'' The report documents that the process for a small captive shipper to obtain rate relief under the current regulatory and legal framework is broken and unworkable. The reasons for these barriers are multiple:

(A) Historical regulatory precedence has created a complex web of hurdles an barriers building an insurmountable maze for a small shipper to seek rate relief;

(B) contradictory statutorily directives based on a statute that was designed to protect the financial health of railroads while at the same time attempt to protect the needs of shippers to challenge unreasonable rates; and

(C) the time and cost entailed in filing a rate complaint has reached absurd levels, far outweighing the potential savings that could be achieved through a successful challenge to an unreasonable rate.

The STB rate complaint process involves an up front filing fee cost of $54,500 ($5,400 for the simplified guidelines)—plus the costs of pursuing the case through years of negotiation through a complex maze of discovery; evidentiary hearings; rebuttals; and administrative appeals.

Seeking rate relief under the current process is very costly to shippers. The rate relief cases analyzed by the GAO cost shippers between $500,000 to $3 million each to file and wade through the process and took between a few months and 16 years to resolve. For example, the McCarty Farms case took over 16 years to resolve and ended up in Federal District Court.

The GAO surveyed over 700 shippers and found that (a) 75 percent of the shippers believed that they are overcharged with unreasonable rates; and (b) over 70 percent of the shippers believed that the time, complexity, and costs of filing complaints create unsurmountable barriers and therefore preclude them from pursuing the rate relief they are entitled to under the law. (It is not surprising that the GAO found that the railroad monopolies unanimously support the current process and see no need for change.)

The report reviewed all the rate relief filings pending before the STB (and its predecessor, the ICC) since 1990. The GAO found that only 41 rate relief filings were either pending or have been filed since 1990. About half of these complaints were settled outside of the STB's process and therefore dismissed. Of the remaining complaints, 7 were decided in favor of the railroad and only 2 have been decided in favor of the shipper; 9 are still pending; and 5 were dismissed without settlement.

The GAO also found that, in 1997, only 18 percent of the total tonnage shipped via rail in this country is subject to rate regulation by the STB. About 70 percent of all shipments is exempt because it is shipped under contract and the STB has exempted another 12 percent. Thus, the GAO's analysis of barriers to shippers only relates to a portion of the total tonnage of rail shipments in the United States.

The ICC Terminations Act required the STB to develop simplified procedures for rate complaint filings. While the STB has developed those simplified procedures, the railroad industry has already challenged them in court and not a single shipper has filed a complaint under these new procedures since the STB issued the simplified guidelines in December 1996.

The GAO survey of shippers found that the vast majority of shippers (over 70%) believe that the STB rate relief process is too costly, complex, and time consuming. Shippers identified the following barriers to obtaining rate relief under the current process:

The legal costs associated with filing complaints outweighs the benefits of winning relief.

The rate complaint process is too complex and takes too long.

Developing the stand alone revenue to variable cost model (shippers are required to calculate that the rate they are charged exceeds 180% of the revenue to variable cost of a hypothetical railroad to provide them service) is too costly.

Most shippers believe that the STB is most likely to decide in favor of the railroad so the effort is not worth its costs.

The discovery process is too difficult because the shipper is dependent upon the railroad for all the necessary data to calculate the revenue to variable cost ratio.

Responding to the railroad requests for discovery is too difficult and time consuming (note: the GAO identified instances in its analysis of the 41 cases filed since 1990 that railroads often extended the complaint process through lengthy discovery requests).

Fear of reprisal from the railroads.

The STB filing fee in itself is too high to consider filing a rate complaint.

The GAO report found that shippers desire to see (1) a more simplified rate complaint process and (2) increased competition in the railroad industry that would lower rates and diminish the need for a rate complaint process.

According to the GAO report, the vast majority of shippers believe that the following changes in the rate relief process are necessary to provide them with the ability to seek the rate relief—

The STB's time limit for deciding a rate relief case should be shortened (the current limit is 16 months).

The complaint fee required upon fining should be eliminated or reduced.

The market dominance requirement should be simplified.

Use mandatory binding arbitration between shippers and railroads to resolve rate disputes.

Lower the STB's jurisdictional threshold from the current level of 180% of revenue to variable cost.

While shippers contend that the rate complaint process needs serious repair, shippers believe that increasing competition in the railroad industry would do more to lower rates and diminish the need for a rate complaint process. Proposals to increase railroad competition identified in this report include the following:

Require the STB to grant trackage rights; require reciprocal switching at the nearest junction or interchange upon request of a shipper or competing railroad; and increase rail access for shortline and regional railroads.

Overturn the STB's ''bottle neck'' decision by requiring railroads to quote a rate for all route segments.

Consolidation in the railroad industry has diminished competition, thwarting the intended objectives of deregulation to allow competition to lower rates and improve service. The rate protection intended for shippers without effective competition has been de-railed by a complex; costly; and

time consuming web of discoveries, findings, and appeals that take years and cost millions of dollars. The result is that we have more captive shippers whose only recourse for rate protection is an impossible process that is simply not worth the expense. This cannot continue.

Small shippers are forced to take on well financed railroad corporations populated with hundreds of lawyers who can use the complex system to make rate relief an impossible maze of endless filings, appeals, and delays. In the GAO's survey, shippers emphasized the time, cost, and complexity involved in filing a rate complaint as significant enough barriers as to prevent them from attempting to seek rate relief through the STB process. Since the railroad industry has blanket antitrust immunity—which is a status not enjoyed by another industry—captive shippers have no recourse and will remain overcharged unless Congress takes some action to level the field.

I urge my colleagues to support this legislation. Attached is a summary of the bill's provisions. I ask unanimous consent that the summary be printed in the RECORD.

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

RAILROAD COMPETITION AND SERVICE IMPROVEMENT ACT—SUMMARY

SECTION 1. SHORT TITLE

The ''Railroad Competition and Service Improvement Act of 1999''

SECTION 2. PURPOSES

The purpose of the legislation is to require the STB to accord greater weight to increase rail competition; to eliminate unreasonable barriers to competition; ensure reasonable rates in the absence of competition; and remove unnecessary regulatory barriers that impede the ability of rail shippers to obtain rate relief.

SECTION 3. FINDINGS

The Congress finds that the railroad industry has become concentrated and that rail industry consolidation has diminished competition, creating a greater dependence upon the Surface Transportation Board's rate relief process, whose procedures for obtaining rate relief, according to a report issued by the General Accounting Office, ''are highly complex and time-consuming.''

The GAO also found that—

75 percent of the shippers believed that they are overcharged with unreasonable rates and over 70 percent of the shippers believed that the time, complexity, and costs of filing complaints create unsurmountable barriers and therefore precluded them from pursuing the rate relief they are entitled to under the law;

The STB rate relief process cost shippers between $500,000 to $3 million per complaint and took between a few months and 16 years to resolve;

Over ''70 percent [of shippers] believe that the time, complexity, and costs of filing complaints are barriers that often preclude them from seeking relief''; and

While shippers contend that the rate complaint process needs serious repair, shippers believe that increasing competition in the railroad industry would do more to lower rates and diminish the need for a rate complaint process.

Consolidation in the railroad industry has diminished competition, thwarting the intended objectives of deregulation to allow completion to lower rates and improve service. The rate protection intended for shippers without effective competition has been derailed by a complex; costly; and time consuming web of discoveries, findings, and appeals that take years and cost millions of dollars.

SECTION 4. CLARIFICATION OF TRANSPORTATION POLICY

The legislation requires the STB to give priority to the following policy objectives:

(1) ensuring effective competition among rail carriers;

(2) maintaining reasonable rates where there is an absence of effective competition;

(3) maintaining consistent and efficient service to shippers, including the timely provision of railcars requested by shippers.

SECTION 5. FOSTERING RAIL COMPETITION

The bill overturns the STB's ''bottle neck'' decision that has been disappointing for shippers. Under the legislation, rail carriers would have to quote a rate for transportation over a segment of line upon the request of a shipper. If the rail carrier refuses, the STB shall establish the rate.

SECTION 6. RELIEF FOR CERTAIN AGRICULTURAL SHIPPERS

Places a $1,000 limit on filing fees on rate complaints filed by small, captive agricultural shippers; establishes a simplified and streamlines rate complaint process for small, captive agricultural shippers; and would allow a small, captive agricultural shipper to request service from another railroad or file for damages when their carrier fails to honor railcar orders.

SECTION 7. COMPETITIVE RAIL SERVICE IN TERMINAL AREAS

Eliminates the requirement that evidence of anti-competitive conduct be produced when the STB determines the outcome of requests to allow another railroad access to rail customer facilities within an area served by the tracks of more than one railroad.

SECTION 8. SIMPLIFIED STANDARDS FOR MARKET DOMINANCE

The market dominance standard (which establishes the terms in which rail shippers may have standing to challenge the reasonableness of a rate) is simplified in a goal to minimize the regulatory burdens confronting captive rail shippers. Under this legislation, a rail carrier will be presumed to have market dominance if the shipper is served by only one rail carrier and if the rail shipper can demonstrate that the carrier's rate is above 180% revenue to variable cost. [Currently, a shipper must demonstrate—in addition to the above criteria—there is no geographic or product competition. This legislation would eliminate those hurdles for the shipper.]

SECTION 9. REVENUE ADEQUACY DETERMINATIONS

Repeals the revenue adequacy test [which is a determination by the STB on the financial fitness of the railroads and creates another obstacle for shippers seeking rate relief from the STB].

SECTION 10. SERVICE PERFORMANCE REPORTS

Requires the railroads to submit service performance reports to the Department of Transportation.●

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. DEWINE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 110

At the request of Mr. SMITH, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Illinois [Mr. DURBIN], the Senator from North Carolina [Mr. HELMS], the Senator from Illinois [Mr. FITZGERALD], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 110, a bill to amend title XIX of the Social Security Act to provide medical assistance for breast and cervical cancer-related treatment services to certain women screened and found to have breast or cervical cancer under a federally- funded screening program.

S. 249

At the request of Mr. HATCH, the names of the Senator from Michigan [Mr. ABRAHAM] and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of S. 249, a bill to provide funding for the National Center for Missing and Exploited Children, to reauthorize the Runaway and Homeless Youth Act, and for other purposes.

S. 261

At the request of Mr. SPECTER, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 261, a bill to amend the Trade Act of 1974, and for other purposes.

S. 322

At the request of Mr. CAMPBELL, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 322, a bill to amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed.

S. 327

At the request of Mr. HAGEL, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 327, a bill to exempt agricultural products, medicines, and medical products from U.S. economic sanctions.

S. 329

At the request of Mr. ROBB, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 329, a bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes.

S. 335

At the request of Ms. COLLINS, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Wisconsin [Mr. KOHL], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Alabama [Mr. SESSIONS], the Senator from South Dakota [Mr. JOHNSON], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 335, a bill to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to