S. 1093

At the request of Mr. ROCKEFELLER, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1093, a bill to amend title 38, United States Code, to exclude certain income from annual income determinations for pension purposes, to limit provision of benefits for fugitive and incarcerated veterans, to increase the home loan guaranty amount for construction and purchase of homes, to modify and enhance other authorities relating to veterans' benefits, and for other purposes.

S. 1161

At the request of Mr. CRAIG, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1161, a bill to amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers; to provide a stable, legal, agricultural work force; to extend basic legal protections and better working conditions to more workers; to provide for a system of one-time, earned adjustment to legal status for certain agricultural workers; and for other purposes.

S. 1220

At the request of Mr. BREAUX, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1220, a bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track.

S. 1226

At the request of Mr. CAMPBELL, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1226, a bill to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1232

At the request of Mr. MCCONNELL, the names of the Senator from North Carolina (Mr. HELMS), the Senator from New Hampshire (Mr. SMITH), the Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. KYL), the Senator from Iowa (Mr. GRASSLEY), the Senator from Ohio (Mr. DEWINE), the Senator from Alabama (Mr. SHELBY), and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 1232, a bill to provide for the effective punishment of online child molesters, and for other purposes.

S. 1256

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1256, a bill to provide for the reauthorization of the breast cancer research special postage stamp, and for other purposes.

S. 1275

At the request of Mr. KENNEDY, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1275, a bill to amend the Public Health Service Act to provide grants for public access defibrillation programs and public access defibrillation demonstration projects, and for other purposes.

S. 1286

At the request of Mrs. CARNAHAN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1286, a bill to provide for greater access to child care services for Federal employees.

S. 1295

At the request of Mr. LEVIN, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1295, a bill to amend title 18, United States Code, to revise the requirements for procurement of products of Federal Prison Industries to meet needs of Federal agencies, and for other purposes.

S. 1313

At the request of Mr. KENNEDY, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1313, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, and for other purposes.

S. 1341

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1341, a bill to amend the Internal Revenue Code of 1986 to expand human clinical trials qualifying for the orphan drug credit, and for other purposes.

S. 1343

At the request of Mr. CHAFEE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1343, a bill to amend title XIX of the Social Security Act to provide States with options for providing family planning services and supplies to individuals eligible for medical assistance under the medicaid program.

S. RES. 138

At the request of Mr. BURNS, the names of the Senator from New Hampshire (Mr. GREGG) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. Res. 138, a resolution designating the month of September 2001 as ''National Prostate Cancer Awareness Month.''

S. RES. 143

At the request of Mr. BIDEN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 143, a resolution expressing the sense of the Senate regarding the development of educational programs on veterans' contributions to the country and the designation of the week of November 11 through November 17, 2001, as ''National Veterans Awareness Week.''

At the request of Mr. ALLEN, his name was added as a cosponsor of S. Res. 143, supra.

S. RES. 145

At the request of Mr. KENNEDY, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 145, a resolution recognizing the 4,500,000 immigrants helped by the Hebrew Immigrant Aid Society.

S. CON. RES. 59

At the request of Mr. HUTCHINSON, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Idaho (Mr. CRAIG), the Senator from South Dakota (Mr. DASCHLE), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Alabama (Mr. SESSIONS), and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. Con. Res. 59, a concurrent resolution expressing the sense of Congress that there should be established a National Community Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers.

AMENDMENT NO. 1157

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 1157 intended to be proposed to H.R. 2500, a bill making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2002, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mr. HATCH, Mr. SCHUMER, Mr. SPECTER, Mrs. CLINTON, Mr. MCCAIN, and Mr. FEINGOLD):

S. 1348. A bill to designate the Federal building located at 10th Street and Constitution Avenue, NW, in Washington, District of Columbia, as the ''Robert F. Kennedy Department of Justice Building''; to the Committee on Environment and Public Works.

Mr. LEAHY. Mr. President, I am pleased to introduce, with Senators HATCH, SCHUMER, SPECTER, CLINTON, and MCCAIN, a bipartisan bill to name the Department of Justice building in honor of the late Robert F. Kennedy. I am also pleased to join the bipartisan efforts of Congressmen ROEMER and SCARBOROUGH, who are introducing companion legislation in the House of Representatives today.

Robert F. Kennedy was a man of great courage and conviction. Of his many accomplishments during his life, the one we honor today is his tenure as Attorney General of the United States. Appointed by his brother, President John F. Kennedy, on January 21, 1961, he served his country admirably in the office of Attorney General until September 3, 1964.

During his tenure as Attorney General, Robert Kennedy led the fight against injustice and championed civil rights for all Americans. He ordered United States Marshals to protect the Freedom Riders in Montgomery, Alabama. He sent Federal troops to open

the doors for James Meredith to walk with dignity as the first African-American to attend the University of Mississippi. He pushed Congress to enact the Civil Rights Act of 1964 to guarantee basic freedoms for all our citizens, regardless of race, religion or creed.

Robert F. Kennedy's commitment to justice for all echoed in his fond saying: ''Some men see things as they are and ask why; I dream of things that never were and ask why not.''

Attorney General Kennedy also was a determined prosecutor. His investigated organized crime throughout America and became the first attorney general to establish coordinated federal law programs for the prosecution of organized crime. From 1960 to 1963, Department of Justice convictions against organized crime rose 800 percent because of his efforts and dedication to bring organized crime figures to justice.

As Attorney General, Bobby Kennedy represented President Kennedy in foreign affairs and closely advised the President in times of trouble. Attorney General Kennedy's wise counsel during the Cuban Missile Crisis in October of 1962, as well as secret negotiations with the Soviet Embassy, helped bring a peaceable end to the crisis.

The memory of Robert F. Kennedy lives on in the work of others who care as much for justice as he did. As Attorney General, Robert Kennedy wrote these words: ''What happens to the country, to the world, depends on what we do with what others have left us.'' It is in that spirit that we honor him today.

I am proud to led this bipartisan effort to name the Department of Justice Building after Robert F. Kennedy with the greatest respect, admiration and appreciation for his service to his country.

By Mr. ENSIGN (for himself and Mr. BROWNBACK):

S. 1349. A bill to provide for a National Stem Cell Donor Bank regarding qualifying human stem cells, and for the conduct and support of research using such cells; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I rise to join my colleague JOHN ENSIGN of Nevada in proud support of The Responsible Stem Cell Research Act of 2001, legislation aimed at committing our Nation to a bold investment in promising, ethical medical research with which we all can live.

As my colleagues well know, the issue of stem cell research has been the subject of rigorous debate in Congress, within the medical, bioethical, legal, and patient advocacy communities, and on the pages and airwaves of the local and national media.

Over the past several months in particular the American public has been witness and subject to a maddening barrage of charges and countercharges about how our public conscience may or may not countenance the deliberate destruction of a human embryo for the purpose of research.

If one thing is clear on this controversial issue, it is that the country is divided about this wrenching dilemma, about whether or not the Federal Government ought to lend support—and thus communal moral sanction—to the speculative potential of stem cell research which involves the destruction of human embryos. This is a profound policy question which is fraught with considerable ethical, moral and legal questions. It requires that our body politic make the monumental determination that will forever brand our public conscience as to whether a human embryo is a life, or conversely, a property which can be destroyed and exploited for the advancement of science and research.

I fervently believe that fertilization produces a new member of the human species, that it is a categorical imperative that human life be treated as an end and not a means. To use a human being, even a newly conceived one, as a commodity is never morally acceptable. Each person must be treated as an end in himself, not as a means to improve someone else's life.

Indeed, current Federal law explicitly prohibits Federal funding of experiments that destroy embryos outside the womb precisely because individual human life begins at fertilization.

But while President Bush continues to review the stem cell guidelines issued under the previous administration to determine whether or not they violate current Federal law barring the use of Federal funds in research that leads to the destruction of embryos, and it is my hope that President bush will uphold current Federal law and reject any semantical nuances or euphemisms with regard to what embryonic stem cell research is all about, the field of promising research behind which all Americans can unite, which is ethical and beyond controversy, is that which involves embryonic-type post-natal stem cells.

Unfortunately, the opportunities for developing successful therapies from stem cells that do not require the destruction of human embryos have been given relative short shrift by the media. But adult and other post-natal stem cells have been successfully extracted from umbilical cord blood, placentas, fat, cadaver brains, bone marrow, and tissues of the spleen, pancreas, and other organs. They can be located in numerous cell and tissue types and can be transformed into virtually all cell and tissue types. And perhaps most important of all, these alternative cell therapies are already treating cartilage defects in children, systemic lupus, and helping restore vision to patients who were legally blind, just to name a few. By contrast, embryonic stem cell research has no equivalent record of success even in animal studies. Embryonic cells have never ameliorated one human malady.

In order to move forward with and build upon the successes of this promising research, the Responsible Stem Cell Research Act would authorize $275 million for this ethical stem cell research which is actually proven to help hundreds of thousands of patients, with new clinical uses expanding almost weekly. This represents a 50 percent increase in current NIH funding being devoted to this stem cell research.

This legislation would also establish a National Stem Cell Donor Bank for umbilical cord blood and human placenta to generate a source of versatile, embryonic-type stem cells that could be matched with people who need stem cells for treatment. These stem cells would be available for biomedical research and clinical purposes.

No matter where one stands on the divisive issue of embryonic stem cell research, this issue and many others dealing with the rapid advancements in biotechnology are coming to define the very important choices which confront us as a society and the courses we must choose as policymakers. With stem cell research moving forward so rapidly, we have a duty to be well educated to be able to make informed decisions about these issues. For this reason, and because of biotechnology's prospects for affecting positive change in other areas of our lives such as in our agriculture community, I have recently joined as a member of the bipartisan Senate Biotechnology Caucus. Co-chaired by our colleagues TIM HUTCHINSON of Arkansas and CHRIS DODD of Connecticut, the Biotechnology Caucus regularly hosts educational forums for members of the Senate and their staff about a broad scope of biotech issues, from the increasing availability of genetically-engineered products to research, trade, and bioethics. The group also acts as a resource for information about biotechnology and encourage committee hearings on the topic.

The possibility that biotechnology may help improve the health humankind holds great promise and must be examined closely. But there is no reason for our Nation to lie fallow with respect to the federal government's support for type of stem cell research which is life-friendly and beyond controversy. It is my hope that our colleagues here in the Senate and in the House will pause from the rancor that has surrounded the stem cell research debate and come to support the Responsible Stem Cell Research Act, an aggressive initiative to fund and develop promising medical research with which we all can live.

By Mr. DAYTON:

S. 1350. A bill to amend the title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes; to the Committee on Finance.

Mr. DAYTON. Mr. President, today I rise to introduce the Medicare Access

to Ambulance Service Act of 2001. Reliable ambulance service is often a matter of life and death. This bill is designed to head off growing problems that are putting ambulance providers in Minnesota and across the country in financial jeopardy and affecting their ability to deliver emergency services to patients.

The Medicare Access to Ambulance Service Act of 2001 will help ambulance providers whose service quality is threatened by inadequate Medicare payments and the inappropriate payment denials by Medicare claims processors. The continuing difficulties jeopardize the quality of care, and ultimately may increase the time it takes to respond to emergencies.

Recently my staff in Minnesota met with ambulance providers and Medicare beneficiaries in Hibbing, Duluth, Moorhead, St. Cloud, Bemidji, Marshall, and Harmony, Minnesota to listen to their concerns over Medicare ambulance service. In every part of the State the stories were the same. The biggest concern was Medicare's denial of ambulance claims. Medicare has denied claims for such medical emergencies as cardiac arrest, heart attack, and stroke. One elderly woman from Duluth, Minnesota was so upset with the Medicare process and the year it took to get her claim paid, that when she needed an ambulance again she called a taxi. This is unacceptable.

To make matters worse, when Congress enacted the Balanced Budget Act of 1997 it required that ambulance payments be moved to a fee schedule on a cost-neutral basis. Moving to a fee-schedule makes sense, but not on a cost-neutral basis for a system that is already underfunded. The proposed fee-schedule is especially unfair to rural areas and will mean the end of small ambulance providers in Minnesota and throughout the country.

My bill includes four components to address these problems. First, the bill requires that the Medicare fee schedule be based on the national average cost of providing the service. Second, the bill requires the General Accounting Office to determine a reasonable definition for how to identify rural ambulance providers and higher payments for rural ambulance services. Third, the bill includes a ''prudent layperson'' standard for the payment of emergency ambulance claims. Simply stated, this provision means that if a reasonable person believed an emergency medical problem existed when the ambulance was requested then Medicare would pay the claim. Minnesota already leads the nation with this successfully implemented standard for all other patients, with the exception of those covered by Medicare. And finally, the bill requires Medicare to adopt a ''condition coding'' to be used by the ambulance provider.

Medicare beneficiaries deserve more from the health insurance system than additional anxiety in an emergency situation for a system into which they have paid. When people in Minnesota and across the country have an emergency requiring an ambulance, they want to know that they will quickly and reliably get the care they need. However, current Medicare policies and procedures are putting quality ambulance service at risk and are forcing many ambulance providers to struggle to stay in business, especially in rural communities. My legislation addresses problems that threaten quality ambulance service for patients in Minnesota and across the country.

By Mr. THURMOND (for himself, Mr. BIDEN, and Mr. HATCH):

S. 1351. A bill to provide administrative subpoena authority to apprehended fugitives; to the Committee on the Judiciary.

Mr. THURMOND. Mr. President, I rise today to introduce legislation that would help Federal law enforcement track down and apprehend dangerous fugitives who are roaming the streets of America.

I am pleased to have as original cosponsors Senator BIDEN and Senator HATCH. Both of them are distinguished members of this Body with extensive knowledge in crime issues, and I greatly appreciate their support on this important legislation.

Fugitives from justice pose a serious threat to public safety. These criminals are evading the criminal justice system with impunity, and many of them are committing more crimes while they are free. We should help law enforcement bring them to justice and prevent future crime.

It has been estimated that fifty percent of the crime in America is committed by five percent of the offenders. It is these serious, repeat criminals, many of whom are fugitives, that law enforcement must address today.

There are over 550,000 felony or other serious Federal and State fugitives listed in the National Crime Information Center database. The number has more than doubled since 1987, and is growing every year.

This bill would respond to the growing fugitive threat by providing the Justice Department administrative subpoena authority for fugitives. Federal officers already have this crime-fighting tool in other areas, and this legislation would fill a serious gap that currently exists for fugitive investigations. Information such as telephone or apartment records may provide the missing link to track down a fugitive. Also, it can be critical to track down leads very quickly because fugitives are often transient and the trail can quickly become cold.

The grand jury is routinely available to obtain information about the whereabouts of those who are suspected of committing crimes. Surprisingly, the same cannot be said for those who were caught but got away. The grand jury is generally not an option to get information about known fugitives who are evading justice.

It is true that a Federal prosecutor can seek the approval of a judge for a administrative subpoena under the All Writs Act. However, it is a long, time-consuming process to get overworked federal judges with crowded dockets to act on these requests, especially if they are not rare. In any event, it may be too late by the time the court responds. Administrative subpoenas can prevent costly delays.

Last year, we worked hard to give law enforcement tools to address the serious fugitive threat, holding hearings and moving important legislation. The Congress authorized $40 million over three years to create task forces led by the Marshals Service to apprehend dangerous fugitives. As part of this effort, the Senate passed administrative subpoena authority twice by unanimous consent last year. However, this authority was not included in the final legislation because it stalled in the House last year. I hope that, as we explain the need for this authority and how it is really a very narrow expansion beyond current law, we will receive widespread support in both Houses of Congress.

Administrative subpoenas are not new to federal law enforcement. They have existed for years to help authorities solve various crimes, including drug offenses, child pornography, and even health care fraud. However, this bill places greater restrictions on the use of the subpoenas than currently exist in these other areas. These subpoenas could be used only to obtain documents and records, not testimony.

None of us want a subpoena issued unless it is needed and fully complies with the law. This bill contains procedures for people to challenge the subpoena that they receive and have a judge review whether it should be issued. Judicial review is required in any case where the person requests it.

The subpoena authority has no impact on the Fourth Amendment and its general prohibition on searches and seizures without a court-approved warrant. Courts have routinely upheld administrative subpoenas as entirely consistent with the Fourth Amendment. Administrative subpoenas do not allow law enforcement to enter a home or business to conduct any search. They only allow the government to receive documentary information that they can show will help them find felons who are on the run.

In summary, this legislation would help authorities get the information they need to find dangerous fugitives before it is too late. I am pleased that this proposal has the endorsement of law enforcement organizations, including the Fraternal Order of Police, the National Association of Police Organizations, and the Federal Law Enforcement Officers Association.

I encourage my colleagues to stand up for law enforcement and support this important legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1351

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 ''Fugitive Apprehension Act of 2001''.

SEC. 2. ADMINISTRATIVE SUBPOENAS TO APPREHEND FUGITIVES.

(a) IN GENERAL.—Chapter 49 of title 18, United States Code, is amended by adding at the end the following:

''§ 1075. Administrative subpoenas to apprehend fugitives

''(a) DEFINITIONS.—In this section:

''(1) FUGITIVE.—The term 'fugitive' means a person who—

''(A) having been accused by complaint, information, or indictment under Federal law or having been convicted of committing a felony under Federal law, flees or attempts to flee from or evades or attempts to evade the jurisdiction of the court with jurisdiction over the felony;

''(B) having been accused by complaint, information, or indictment under State law or having been convicted of committing a felony under State law, flees or attempts to flee from, or evades or attempts to evade, the jurisdiction of the court with jurisdiction over the felony;

''(C) escapes from lawful Federal or State custody after having been accused by complaint, information, or indictment or having been convicted of committing a felony under Federal or State law; or

''(D) is in violation of subparagraph (2) or (3) of the first undesignated paragraph of section 1073.

''(2) INVESTIGATION.—The term 'investigation' means, with respect to a State fugitive described in subparagraph (B) or (C) of paragraph (1), an investigation in which there is reason to believe that the fugitive fled from or evaded, or attempted to flee from or evade, the jurisdiction of the court, or escaped from custody, in or affecting, or using any facility of, interstate or foreign commerce, or as to whom an appropriate law enforcement officer or official of a State or political subdivision has requested the Attorney General to assist in the investigation, and the Attorney General finds that the particular circumstances of the request give rise to a Federal interest sufficient for the exercise of Federal jurisdiction pursuant to section 1075.

''(b) SUBPOENAS AND WITNESSES.—

''(1) SUBPOENAS.—In any investigation with respect to the apprehension of a fugitive, the Attorney General may subpoena witnesses for the purpose of the production of any records (including books, papers, documents, electronic data, and other tangible and intangible items that constitute or contain evidence) that the Attorney General finds, based on articulable facts, are relevant to discerning the whereabouts of the fugitive. A subpoena under this subsection shall describe the records or items required to be produced and prescribe a return date within a reasonable period of time within which the records or items can be assembled and made available.

''(2) WITNESSES.—The attendance of witnesses and the production of records may be required from any place in any State or other place subject to the jurisdiction of the United States at any designated place where the witness was served with a subpoena, except that a witness shall not be required to appear more than 500 miles distant from the place where the witness was served. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

''(c) SERVICE.—

''(1) AGENT.—A subpoena issued under this section may be served by any person designated in the subpoena as the agent of service.

''(2) NATURAL PERSON.—Service upon a natural person may be made by personal delivery of the subpoena to that person or by certified mail with return receipt requested.

''(3) CORPORATION.—Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

''(4) AFFIDAVIT.—The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

''(d) CONTUMACY OR REFUSAL.—

''(1) IN GENERAL.—In the case of the contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records if so ordered.

''(2) CONTEMPT.—Any failure to obey the order of the court may be punishable by the court as contempt thereof.

''(3) PROCESS.—All process in any case to enforce an order under this subsection may be served in any judicial district in which the person may be found.

''(4) RIGHTS OF SUBPOENA RECIPIENT.—Not later than 20 days after the date of service of an administrative subpoena under this section upon any person, or at any time before the return date specified in the subpoena, whichever period is shorter, such person may file, in the district within which such person resides, is found, or transacts business, a petition to modify or quash such subpoena on grounds that—

''(A) the terms of the subpoena are unreasonable or oppressive;

''(B) the subpoena fails to meet the requirements of this section; or

''(C) the subpoena violates the constitutional rights or any other legal rights or privilege of the subpoenaed party.

''(e) GUIDELINES.—

''(1) IN GENERAL.—The Attorney General shall issue guidelines governing the issuance of administrative subpoenas pursuant to this section.

''(2) REVIEW.—The guidelines required by this subsection shall mandate that administrative subpoenas may be issued only after review and approval of senior supervisory personnel within the respective investigative agency or component of the Department of Justice and of the United States Attorney for the judicial district in which the administrative subpoena shall be served.

''(f) NONDISCLOSURE REQUIREMENTS.—

''(1) IN GENERAL.—Except as otherwise provided by law, the Attorney General may apply to a court for an order requiring the party to whom an administrative subpoena is directed to refrain from notifying any other party of the existence of the subpoena or court order for such period as the court deems appropriate.

''(2) ORDER.—The court shall enter such order if it determines that there is reason to believe that notification of the existence of the administrative subpoena will result in—

''(A) endangering the life or physical safety of an individual;

''(B) flight from prosecution;

''(C) destruction of or tampering with evidence;

''(D) intimidation of potential witnesses; or

''(E) otherwise seriously jeopardizing an investigation or undue delay of a trial.

''(g) IMMUNITY FROM CIVIL LIABILITY.—Any person, including officers, agents, and employees, who in good faith produce the records or items requested in a subpoena shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer, in compliance with the terms of a court order for nondisclosure.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 49 of title 18, United States Code, is amended by adding at the end the following:

''1075. Administrative subpoenas to apprehend fugitives.''.

Mr. BIDEN. Mr. President, I am pleased today to be able to join with Senators THURMOND and HATCH in introducing the Fugitive Apprehension Act of 2001. This bill authorizes the Attorney General to issue administrative subpoenas in cases involving fugitives. Its passage will provide law enforcement with the tools it needs to more effectively track and apprehend fugitives from justice, and I look forward to its prompt consideration.

Crime across the country continues to trend downwards, though we have seen some mixed statistical signals of late. As chairman of the newly-created Judiciary Subcommittee on Crime and Drugs, I am extremely concerned by the Nation's fugitive problem. According to estimates from the Department of Justice, there are approximately 54,000 fugitives from justice in Federal cases. A total of 565,611 fugitives, including state and local felony cases, have been entered into the database of the National Crime Information Center, up from 340,000 10 years ago. But this figure only begins to measure the problem, as the National Crime Information Center receives just 20 percent of all outstanding State and local felony warrants.

These fugitives from justice are a very real and dangerous concern. For example, last December, there was a shooting in Wilmington, DE. The shooter was charged with attempted murder and weapons violations and was jailed in Chester, PA, on a separate, earlier shooting charge. He then posted $500 bail on those charges, and promptly fled the jurisdiction. Members of Delaware's Violent Fugitive Task Force soon determined this violent criminal was hiding out in West Los Angeles. They alerted local FBI agents, who soon located the fugitive in a car and tried to stop him. He led the agents on a two-mile, high-speed chase, crashed into a pole, then tried to escape on foot. He was eventually captured, arrested, and he was recently returned to Delaware to face charges. This fugitive is particularly dangerous: he has a long record of drug and other offenses, including 52 arrests in Delaware dating all the way back to when he was 13.

Unfortunately, this incident from my home State is not an isolated one, and we should not hamstring law enforcement when they try to catch these criminals. To better equip our Federal law enforcement agents with the resources they need to track and apprehend dangerous fugitives from justice, we need to make some changes to our criminal laws. The Fugitive Apprehension Act of 2001 gives the Attorney General, principally through the United States Marshals Service, authority to issue administrative subpoenas in cases involving fugitives. Last year, the Director of the Marshals Service testified as to the need for these subpoenas in fugitive cases; he noted that seldom is a grand jury available to issue a subpoena in these instances. In fugitive cases, time is often of the essence and successful investigations depend on real-time information, such as telephone subscriber and credit records. The time required to get a court order can make the difference between whether a fugitive is apprehended or remains at large.

Given the privacy concerns that rightfully arise whenever Fourth Amendment protections are impacted, I want to take a moment to describe some of the safeguards in the bill we introduce today. First, and importantly, the bill's provisions apply only to those fugitives charged with or convicted of violent felonies or trafficking in drugs.

Second, the bill in no way authorizes searches by law enforcement agencies; the subpoenas envisioned by the bill may be used only to obtain documents. Witness testimony and searches still must meet the Constitution's warrant requirement.

Third, each administrative subpoena issued must be approved by the local United States Attorney for the district in which the subpoena will be served. I realize the Marshals Service and other law enforcement groups would rather this safeguard not be in the bill, but I insisted upon its inclusion at this point so as to ensure this new investigative power is not abused. I look forward to continuing my discussions with the Marshals Service and others concerning the effect this safeguard could have on their fugitive apprehensions.

Fourth, the bill allows the person on whom an administrative subpoena is served to request to a court that it be overturned—judicial review is mandated each time an administrative subpoena is challenged.

I am mindful of the fact that Federal law enforcement already has administrative subpoena power in other types of cases, including drug enforcement, child abuse and child pornography investigations. The need for administrative subpoena authority should be more clear in fugitive cases; there, the criminal being pursued has already proven his danger to society by committing a very serious crime. The bill we are introducing today is quite limited in scope, and its built in safeguards coupled with the opportunity for judicial review I believe balance well the rights of individuals with the clear need to catch those violent criminals on the lam, criminals whose very presence on our streets threatens us all. I thank Senator THURMOND for his leadership in this area, and I look forward to working with him and Senator HATCH to see this bill signed into law.

By Mr. SANTORUM:

S. 1352. A bill to amend the National and Community Service Act of 1990 to carry out the Americorps program as a voucher program that assists charities serving low-income individuals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, today I am introducing a bill which reforms and expands service opportunities through the AmeriCorps program by transitioning the service program toward an individual model with voucher-like awards to individuals desiring to serve low-income individuals or communities. The goal is to decrease dependency on large, more permanent group service locations and dramatically increase the scope of service opportunities and charitable locations which would be eligible for voucher recipients to serve communities and to require that site locations be predominantly serving low-income communities or people.

Under the leadership of former Senator Harris Wofford and the States, significant steps were taken to improve the management of the AmeriCorps program of the Corporation for National Service, CNS, and I recognize the dedication and contributions of AmeriCorps participants. I also believe that more can be done to expand the effectiveness of the AmeriCorps by expanding the opportunities for service and have been looking at a number of options for more than a year.

The bill's approach to reform should better enable participants to get to know the communities that they are serving. It is also a goal of this initiative to place an additional emphasis on the importance of leveraging volunteers and providing technical assistance and capacity building skills for these organizations. This will increase the long-term benefit which the organizations and the communities that they serve receive. The new proposal has some similarities to AmeriCorpsVISTA under the CNS but the scope of the proposed authorization is limited to AmeriCorps, although I believe that other restructuring may well be warranted.

The reform proposal includes the following elements: The individual award or voucher would be for use at charitable organizations predominantly serving the poor (like the current AmeriCorpsVISTA focus). All eligible qualifying charities (consistent with IRS requirements for 501(c)(3)'s) predominantly serving the poor would be eligible locations for service. All receiving locations must comply with the current supervisory and reporting requirements (e.g., web-based reporting system) of the Corporation for National Service. The voucher is awarded to the individual who chooses a qualified location for service and not the charitable organization. The current education and stipend benefits of AmeriCorps would remain the same and be included with the new voucher. The education award may be given to another individual chosen by the AmeriCorps volunteer without impacting the ability of the donee to receive other sources of grant and scholarship assistance, increasing the attractiveness for older Americans to participate. If the number of applicants exceeds the available vouchers, a lottery system established by the Corporation for National Service would be used to determine the selection of qualified voucher recipients. The bill provides for consolidation of Americans and AmeriCorpsVISTA state offices to better leverage resources. A one-year transition period to the new system is provided.

I urge my colleagues to consider this opportunity to reform AmeriCorps participants. I believe that refocusing the program on poverty alleviation efforts, expanded choice, and placing a greater emphasis on serving charities and the needy communities they serve through provision of expanded technical assistance and capacity building services will provide a brighter future for AmeriCorps and a more strategic contribution from this federally supported program for Americans in need.

By Mr. DURBIN (for himself, Mr. KENNEDY, Mr. REED, and Mr. SCHUMER):

S. 1355. A bill to prevent children from having access to firearms; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today with my colleagues Senator KENNEDY, LEVIN, REED, and SCHUMER to introduce the Children's Firearm Access Prevention Act of 2001.

My legislation is modeled after similar legislation that Texas enacted into law under then Governor George W. Bush in 1995. It is my sincere hope that President Bush will work with Congress to enact this important bill.

While many in Congress have argued that the Second Amendment guarantees individuals the right to bear arms, there has been far less discussion about the corresponding responsibilities of gun owners to keep their firearms away from children.

The Children's Firearm Access Prevention, CAP, Act of 2001 subjects gun owners to a prison sentence of up to 1 year and a fine of up to $4,000 when they fail to use a secure gun storage or safety device for their firearms and a juvenile under the age of 18 uses that firearm to cause serious bodily injury to themselves or others. The CAP bill also subjects gun owners to a fine of up

to $500 when they fail to use a secure gun storage or safety device for their firearm and a juvenile obtains access to the firearm.

My legislation includes commonsense exceptions. Gun owners would not be subject to criminal or civil liability when a juvenile uses a firearm in an act of lawful self-defense; takes the firearm off the person of a law enforcement official; obtains the firearm as a result of an unlawful entry; or obtains the firearm during a time when the juvenile was engaged in agricultural enterprise. Gun owners would also not be liable if they had no reasonable expectation that juveniles would be on the premises, or if the juvenile was supervised by a person older than 18 years of age and was engaging in hunting, sporting, or other lawful purposes.

CAP laws have reduced unintentional shootings in states that have enacted these laws. In Florida, the first State to pass a CAP law, unintentional shooting deaths dropped by more than 50 percent in the first year following enactment. 17 states, including my home state of Illinois, have enacted CAP laws.

A study published in the Journal of the American Medical Association, JAMA, in October of 1997 found a 23 percent decrease in unintentional firearm related deaths among children younger than 15 in those States that had implemented CAP laws. According to the JAMA article, if all 50 States had CAP laws during the period of 1990–1994, 216 children might have lived.

While I understand that some Americans feel safer with a gun in the home, the sad reality is that a gun in the home is far more likely to be used to kill a family member or a friend than to be used in self-defense. Over 90 percent of handguns involved in unintentional shootings are obtained in the home where these shootings occur. Many unintentional shootings could be prevented if firearms were safely stored.

Children and easy access to guns are a recipe for tragedy. I ask my Senate colleagues to join me in this effort to protect children from the dangers of gun violence.

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. 1355

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children's Firearm Access Prevention Act''.

SEC. 2. CHILDREN AND FIREARMS SAFETY.

(a) DEFINITION.—Section 921(a)(34)(A) of title 18, United States Code, is amended by inserting ''or removing'' after ''deactivating''.

(b) PROHIBITION.—Section 922 of title 18, United States Code, is amended by inserting after subsection (y) the following:

''(z) PROHIBITION AGAINST GIVING JUVENILES ACCESS TO CERTAIN FIREARMS.—

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

''(A) JUVENILE.—The term 'juvenile' means an individual who has not attained the age of 18 years.

''(B) CRIMINAL NEGLIGENCE.—The term 'criminal negligence' pertains to conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless.

''(2) PROHIBITION.—Except as provided in paragraph (3), it shall be unlawful for any person to keep a loaded firearm, or an unloaded firearm and ammunition for a firearm, any of which has been shipped or transported in interstate or foreign commerce or otherwise substantially affects interstate or foreign commerce, within any premises that is under the custody or control of that person if that person knows or, with criminal negligence, should know that a juvenile is capable of gaining access to the firearm without the permission of the parent or legal guardian of the juvenile, and fails to take steps to prevent such access.

''(3) EXCEPTIONS.—Paragraph (2) does not apply if—

''(A) the person uses a secure gun storage or safety device for the firearm;

''(B) the person is a peace officer, a member of the Armed Forces, or a member of the National Guard, and the juvenile obtains the firearm during, or incidental to, the performance of the official duties of the person in that capacity;

''(C) the juvenile obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of one or more other persons;

''(D) the person has no reasonable expectation, based on objective facts and circumstances, that a juvenile is likely to be present on the premises on which the firearm is kept;

''(E) the juvenile obtains the firearm as a result of an unlawful entry by any person;

''(F) the juvenile was supervised by a person older than 18 years of age and was engaging in hunting, sporting, or another lawful purpose; or

''(G) the juvenile gained the gun during a time that the juvenile was engaged in an agricultural enterprise.''.

(c) PENALTIES.—Section 924(a) of title 18, United States Code, is amended by adding at the end the following:

''(7)(A) Whoever violates section 922(z), if a juvenile (as defined in section 922(z)) obtains access to the firearm that is the subject of the violation and thereby causes death or serious bodily injury to the juvenile or to any other person, shall be fined not more than $4,000, imprisoned not more than 1 year, or both.

''(B) Whoever violates section 922(z), if a juvenile (as defined in section 922(z)) obtains access to the firearm that is the subject of the violation shall be fined not more than $500.''.

(d) ROLE OF LICENSED FIREARMS DEALERS.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d) CONTENTS OF FORM.—The Secretary shall ensure that a copy of section 922(z) appears on the form required to be obtained by a licensed dealer from a prospective transferee of a firearm;

''(e) NOTICE OF CHILDREN'S FIREARM ACCESS PREVENTION ACT.—A licensed dealer shall post a prominent notice in the place of business of the licensed dealer as follows:

''IT IS UNLAWFUL AND A VIOLATION OF THE CHILDREN'S FIREARM ACCESS PREVENTION ACT TO STORE, TRANSPORT, OR ABANDON AN UNINSURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM.''.

(e) NO EFFECT ON STATE LAW.—Nothing in this section or the amendments made by this section shall be construed to preempt any provision of the law of any State, the purpose of which is to prevent juveniles from injuring themselves or others with firearms.

By Mr. FEINGOLD (for himself, Mr. GRASSLEY, and Mr. KENNEDY):

S. 1356. A bill to establish a commission to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and European refugees during World War II; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I rise today to introduce the Wartime Treatment of European Americans and Refugees Study Act. This bill would create a Commission to review the United States Government's treatment during World War II of German Americans, Italian Americans, certain Latin Americans, and refugees of Nazi Germany.

I am very pleased that my distinguished colleagues, Senators GRASSLEY and KENNEDY, have joined me as cosponsors of this important bill. I particularly want to thank them for their input and valuable contributions to this bill.

The allied victory in the Second World War was an American triumph, and most of all, a triumph for human freedom. Today we rightly celebrate the contributions of what Tom Brokaw has called the Greatest Generation, the courage displayed by so many Americans in that terrible struggle should be a source of pride for every American.

Those Americans fought, and often gave their lives, to restore freedom and democracy abroad. But, as brave Americans fought enemies in Europe and the Pacific, here at home the U.S. government was curtailing the freedom of its own people. Of course, every nation has the duty to protect its homefront in wartime. But, even in war, we must respect the basic freedoms for which so many Americans have given their lives, including untold numbers of German and Italian Americans.

Many Americans are by now aware that during World War II, under the authority of Executive Order 9066, our government forced more than 100,000 ethnic Japanese from their homes and into camps. This evacuation policy forced Japanese Americans to endure great hardship. Approximately 15,000 additional ethnic Japanese were selectively interned in government operated internment camps. They often lost their basic freedoms, their livelihood, and perhaps worst of all, suffered the shame and humiliation of being locked behind barbed wire and military guard, by their own government. Under the Civil Liberties Act of 1988, this shameful episode in American history received the official condemnation it deserved. Under the Act, people of Japanese ancestry who suffered either relocation or selective internment received an apology and reparations, on behalf of the people of the United States.

But, while the treatment of Japanese Americans has finally received the attention it deserves by the public, most Americans have never even heard about the approximately 11,000 ethnic Germans living in America, the 3,200 ethnic Italians living in America, or the scores of ethnic Bulgarians, Hungarians, Rumanians or other European Americans who were taken from their homes and placed into internment camps during World War II. Hundreds remained interned for up to three years after the war was over.

Today I introduce legislation to convene an independent commission to examine this tragic history, try to understand why it happened, and to try to ensure that it never happens again. We must learn the lessons of history, however painful they might be for us, and for the families that endured this shameful treatment. In a time of American heroism abroad, here at home we faltered. We failed to protect the liberty of all Americans. Through our restrictive immigration policies, we also failed to offer safe harbor to European refugees fleeing Nazi genocide. We turned away thousands of refugees fleeing Germany, delivering many of them to their deaths.

As a Nation we have been slow to address our conduct during the war. There has finally been some measure of justice for Japanese Americans who suffered in the United States, however little or however late. And Congress has finally begun to address the treatment of Italian Americans. Last year, the President signed into law The Wartime Violation of Italian American Civil Liberties Act, which called for a report from the Department of Justice detailing injustices suffered by Italian-Americans during World War II. I believe that this is a step in the right direction, but an independent panel should be convened to conduct a full and thorough review.

I think many Americans would be surprised to learn that, to this day, more than 50 years later, there has been no recognition of the ordeal of thousands of German Americans during and after the Second World War. There has been no justice for ethnic Germans living in America who were branded ''enemy aliens'' by their own government. The U.S. government limited their travel, imposed curfews and seized their personal property. Thousands were interned in camps, often separated from other members of their family, living in miserable conditions. Many of these families, including American children, were later shipped back to war-torn Europe in exchange for Americans held there, and suffered terribly. It is past time for the U.S. Government to recognize the pain and anguish these actions caused.

And there has been no justice for European Latin Americans, including German and Austrian Jews, who were actually repatriated or deported to hostile, war-torn European Axis powers, often as part of an exchange for Americans being held in those countries. The U.S. government uprooted these people from their homes and forced them into camps in the United States, essentially kidnaping them from nations not even directly involved in the War. Again, many were then shipped for exchange to Europe.

And finally, there has been no justice for Europeans, often Jews, who sought refuge from the Nazis on our shores. We must examine the U.S. immigration policies of the 1930s and 1940s that turned these people away, and often delivered them into the hands of the Third Reich.

This legislation proposes an independent commission to look at U.S. policies during World War II, including the policies regarding German and Italian Americans, European Latin Americans, and the refugee immigration policies of the World War II era.

In the 1940s, Germans and Italians were the two largest foreign-born populations in the United States. Under the policy put in place by the U.S. government, thousands of aliens were simply arrested by the FBI. Far more often than not, these arrests were based on highly questionable evidence. Those arrested were held indefinitely pending a hearing. Many times their families did not know where they had been taken for weeks, and if both parents were taken, children were often left to fend for themselves until family members or local governments took custody of them.

They received a brief hearing before local hearing boards during which the local U.S. Attorney acted as prosecutor. The hearing boards then recommended to the Department of Justice whether they should be released, paroled, or interned for the duration of the War. Despite the serious nature of this proceeding, those arrested did not have the right to have their own lawyer and did not have the right to confront witnesses against them. The hearing boards would then send their recommendations to the Department of Justice, where a final determination could take months. Internment orders were issued for the duration of the war. Ironically, many were interned on Ellis Island, where immigrants had been welcomed for decades.

Families, often left destitute, struggled to survive and often lost their homes. Finally, the government would permit families to join their loved ones in a family camp, where they would live indefinitely behind barbed wire. These spouses and children were frequently American citizens.

In addition to internment, all enemy aliens during World War II were subject to strict regulations affecting their daily lives. Enemy aliens were required to carry photo-bearing identification booklets at all times, were forbidden to travel beyond a five mile radius of their homes, were required to turn in any short wave radios and cameras they owned. They were required to given the government a full-week's notice if they planned to spend a night away from home, and could not ride in airplanes. Thousands of enemy aliens were prohibited from entering military zones, some even evacuated from their homes. Many aliens and European American citizens were also subject to restrictions in or excluded from military areas that collectively covered one-third of the country.

As I've said, there has been some recognition of the wrongs done to Italian Americans during the war, but there has yet to be any formal recognition of the pain that German American families went through. So I want to take a few moments to give examples to help my colleagues and the public understand the kind of harassment they endured.

The FBI searched tens of thousands of alien residences between 1943 and 1945. The stories of homes ransacked, or people being taken from their families for years, are chilling. Take the case of Guenther Greis. Mr. Greis, as U.S. citizen, was 17 years old when World War II began in 1941. On December 7, 1941 Guenther's father, a German citizen who had lived in the U.S. for at least 15 years, and worked in the chemical industry, was arrested.

Weeks passed before Guenther, his mother, and his family of four boys, three born in the United States, finally learned where their missing father had been taken. He was to be interned for the duration of the war. In the meantime, Guenther's family had struggled to keep their home. Even as their father was being detained by the government, two sons enlisted in the merchant Marines and served in the Pacific War Zone on behalf of the United States. The remaining family eventually was sent to the internment camp in Crystal City, TX, until Guenther and his brother were released in 1946. Guenther's parents remained interned until 1947, two years after the end of the war. To this day, the Greis family does not have explanation of why their father was interned.

Or take the story of Anton Schroeger, a German citizen who came to America at the age of 16, and by the time World War II began, had lived half his life in America. When World War II broke out, Anton was lucky to have a relatively high paying job as a skilled painter at the Milwaukee Road repair shops. Based on what Anton believed to be a false tip from somebody who wanted his job, however, Anton was arrested while at work, and taken to a series of interment camps. After his arrest, his wife, Anna, insisted on joining him in the internment camps, and, in fact, gave birth to a daughter in a camp in Texas. After World War II, Anton earned a living working at lower paying jobs. Despite this ordeal, Anton eventually became a U.S. citizen in 1952. His family is certain that Anton did not engage in any activity that deserved such treatment.

Let me say here that there may have been people affected by these policies

who harbored sympathy for our adversaries, and was potentially dangerous. And every government must take steps to protect its homefront in a time of war. But even the people who may have posed a threat to our security should have had the basic protections enshrined in our Constitution. War tests all of our principles and values, without question. But it is during these times of conflict, and fear, that we need to protect those principles the most.

At least 11,000 German-Americans were placed in internment camps during WWII. Thousands more were denied basic freedoms that most of us today take for granted. These Germans and German-Americans deserve a full fact-finding review and acknowledgement from the U.S. government, and they deserve to have their story told so that we may strive to ensure that the individual rights of all Americans will remain free from arbitrary persecution.

The work of the commission created by this bill would include a review of The Alien Enemy Act of 1798, which permitted this treatment under U.S. law and remains on the books today. So, the first act of the Commission would involve a full and thorough review of the federal government's treatment of European Americans and European Latin Americans.

The second part of the Commission's work would be to study America's treatment of refugees from Nazi Germany. After Hitler took power in 1933, the freedoms of German Jews were eroded until many of them sought desperately to flee the country. First came an economic boycott, the loss of civil rights, citizenship, and jobs.

Then, in November 1938, came the Kristallnacht pogrom, and ultimately, incarceration and systematic murder in concentration camps. Unfortunately, as restrictions began to tighten and many Jews sought refuge outside of Nazi Germany, America, instead of acting as a haven for these refugees, was tightening its immigration rules. Between 1933 and 1939, 300,000 Germans, mostly Jews fleeing Nazi persecution, applied for visas to America. Yet only about 90,000 applicants were ever admitted into our nation.

The requirements just to be considered for a visa were formidable. An applicant had to submit an application, a birth certificate, a certificate of good conduct from the German police, affidavits of good conduct, submit to a physical exam, proof of permission to leave a country of origin, proof of booked passage to the U.S., two sponsors in America, and on and on. These requirements made immigrating to the U.S. very difficult. Then, in 1941, a new regulation forbidding the granting of a visa to anyone who had relatives in an Axis-occupied territory essentially made seeking refuge in America impossible for many Jews.

Thanks to research conducted by the United States Holocaust Museum and other American scholars, we now have a fuller understanding of the ramifications of U.S. immigration policies. To put the tragic results of those policies into perspective, I'll recount the fate of the passengers aboard a ship called the *St. Louis*. The *St Louis* sailed from Hamburg in April 1939 with 937 passengers aboard. Over 900 of those passengers were Jews, attempting to flee Germany. America denied entry to the refugees on the ship, and it eventually sailed back to Antwerp in June 1939. From there, the refugees frantically searched for new countries to offer them protection. Some of them succeeded, while many did not, and were later detained and killed at Auschwitz.

Some attempts were made to allow the most vulnerable of these refugees, children, into the United States. On February 9, 1939 the Wagner-Rogers refugee bill was introduced in this very Senate. The bill would have allowed admission to the United States of 20,000 German refugee children under the age of 14 over a period of two years, in addition to the immigration normally permitted. But sadly, that bill was not even considered by the full Senate.

The United States' failure to offer refuge to Jews attempting to flee the Nazis is one of the most shameful periods in our history. We closed our borders to people fleeing persecution, and at the same time, within those borders, we treated too many people of ''enemy ethnicity'' as threats to a national security. The purpose of this proposed commission, is to understand and acknowledge the United States' actions during this period. As a Nation, we have repeatedly called on other countries to acknowledge their wartime offenses against civilians. Today we have to ask of ourselves what we ask of other nations—why did we do it, and how can we prevent it from happening again?

During the Second World War, we defeated terrible enemies abroad, but we also lost something of ourselves as we denied freedoms to people at home. For many, the nation they called home would never be the same to them after their loyalty was questioned, and their lives were ripped apart. Too many German and Italian Americans were harassed and humiliated by the country where they lived, struggled, raised children, ran businesses, and built their dreams for a better life. This was the country they chose, like millions before them, and like each and every one of us. I hope by establishing a commission we can better understand how we allowed such a gross injustice, and how we can guard against implementing similar policies in the future.

No American can justify using ethnicity as a basis for the terrible treatment these people endured. And there's no way we can justify the policy which allowed European Latin Americans to be torn from their homes, brought here to the U.S. under deplorable conditions to be interned, and sometimes deported back to hostile European nations. Finally, there's surely no way we can justify our World War II era immigration policy, which undoubtedly led to the deaths of thousands of people—people who turned to the U.S., in fear and desperation, for a safe harbor, and were tragically turned away.

We cannot learn from this troubling history unless we first seek to acknowledge it and understand it. Coming to terms with these events will be difficult, but for the families who suffered under these wartime policies, it will be, at long last, a recognition of the ordeal they went through at the hands of their own government. I urge my colleagues to support this legislation, so that we can learn from this painful past, and ensure that we will never again let our worst fears drive us to neglect our most cherished freedoms. Thank you, Mr. President.

I ask unanimous consent that the full text of the Wartime Treatment of European Americans and Refugees Study Act be printed in the RECORD.

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

S. 1356

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 ''Wartime Treatment of European Americans and Refugees Study Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States has long encouraged other nations to acknowledge their wartime offenses against civilians. Now, the United States Government should fully assess its treatment of European Americans and European Latin Americans during World War II and its effect on Italian American, German American, and other European American communities.

(2) The United States Government should also fully assess its treatment of European refugees who fled persecution and genocide in Europe to seek refuge in the United States prior to and during World War II.

(3) During World War II, the United States Government branded as ''enemy aliens'' more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families and required them to carry Certificates of Identification, limited their travel, and seized their personal property. At that time, these groups were the two largest foreign-born groups in the United States.

(4) During World War II, the United States Government arrested, interned or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including American-born children, to hostile, war-torn European Axis nations, many to be exchanged for Americans held in those nations.

(5) Pursuant to a policy coordinated by the United States with Latin American countries, many European Latin Americans, including German and Austrian Jews, were captured, shipped to the United States and interned. Many were later expatriated, repatriated or deported to hostile, war-torn European Axis nations during World War II, most to be exchanged for Americans and Latin Americans held in those nations.

(6) Millions of European Americans served in the armed forces and thousands sacrificed their lives in defense of the United States.

(7) The wartime policies of the United States Government were devastating to the Italian Americans and German American communities, individuals and their families. The detrimental effects are still being experienced.

(8) Prior to and during World War II, the United States restricted the entry of European refugees who were fleeing persecution and sought safety in the United States. During the 1930's and 1940's, the quota system, immigration regulations, visa requirements, and the time required to process visa applications affected the number of European refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(9) Time is of the essence for the establishment of a Commission, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

SEC. 3. DEFINITIONS.

In this Act:

(1) DURING WORLD WAR II.—The term ''during World War II'' refers to the period between September 1, 1939, through December 31, 1948.

(2) EUROPEAN AMERICANS.—

(A) IN GENERAL.—The term ''European Americans'' refers to United States citizens and permanent resident aliens of European ancestry, including Italian Americans, German Americans, Hungarian Americans, Romanian Americans, and Bulgarian Americans.

(B) ITALIAN AMERICANS.—The term ''Italian Americans'' refers to United States citizens and permanent resident aliens of Italian ancestry.

(C) GERMAN AMERICANS.—The term ''German Americans'' refers to United States citizens and permanent resident aliens of German ancestry.

(3) EUROPEAN REFUGEES.—The term ''European refugees'' refers to European nationals who desired to flee persecution and genocide in Europe and to enter the United States during the period between January 1, 1933 and December 31, 1945 but were denied entry.

(4) EUROPEAN LATIN AMERICANS.—The term ''European Latin Americans'' refers to persons of European ancestry, including Italian or German ancestry, residing in a Latin American nation during World War II.

SEC. 4. ESTABLISHMENT OF COMMISSION.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of European Americans and Refugees (referred to in this Act as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall be composed of 11 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Five members shall be appointed by the President.

(2) Three members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Three members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the Commission. A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The Commission shall include 2 members from the Italian American community and 2 members from the German American community representing their wartime treatment interests. The Commission shall also include 2 members representing the interests of European refugees.

(e) MEETINGS.—The President shall call the first meeting of the Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 5. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—It shall be the duty of the Commission to review—

(1) the United States Government's wartime treatment of European Americans and European Latin Americans as provided in subsection (b)(1); and

(2) the United States Government's refusal to allow European refugees fleeing persecution in Europe entry to the United States as provided in subsection (b)(2).

(b) SCOPE OF REVIEW.—

(1) EUROPEAN AMERICANS AND EUROPEAN LATIN AMERICANS.—The Commission's review shall include, but not be limited to, the following:

(A) A comprehensive review of the facts and circumstances surrounding United States Government actions during World War II which violated the civil liberties of European Americans and European Latin Americans pursuant to the Alien Enemy Act (50 U.S.C. 21–24), Presidential Proclamations 2526, 2527, 2655, 2662, Executive Orders 9066 and 9095, and any directive of the United States Armed Forces pursuant to such law, proclamations, or executive orders respecting the registration, arrest, exclusion, internment, exchange, or deportment of European Americans and European Latin Americans. This review shall include an assessment of the underlying rationale of the United States Government's decision to develop related programs and policies, the information the United States Government received or acquired suggesting the related programs and policies were necessary, the perceived benefit of enacting such programs and policies, and the immediate and long-term impact of such programs and policies on European Americans and European Latin Americans and their communities.

(B) A review of United States Government action with respect to European Americans pursuant to the Alien Enemy Act (50 U.S.C. 21–24) and Executive Order 9066 during World War II, including registration requirements, travel and property restrictions, establishment of restricted areas, raids, arrests, internment, exclusion, policies relating to the families and property that excludees and internees were forced to abandon, internee employment by American companies (including a list of such companies and the terms and type of employment), exchange, repatriation, and deportment, and the immediate and long-term effect of such actions, particularly internment, on the lives of those affected. This review shall include a list of all temporary detention and long-term internment facilities.

(C) A brief review of the participation by European Americans in the United States Armed Forces including the participation of European Americans whose families were excluded, interned, repatriated, or excluded.

(D) A recommendation of appropriate remedies, including how civil liberties can be better protected during war, or an actual, attempted, or threatened invasion or inclusion, an assessment of the continued viability of the Alien Enemy Act (50 U.S.C. 21–24), and public education programs related to the United States Government's wartime treatment of European Americans, European Latin Americans, and European refugees during World War II.

(2) EUROPEAN REFUGEES.—The Commission's review shall cover the period between January 1, 1933, through December 31, 1945, and shall include, to the greatest extent practicable, the following:

(A) A review of the United States Government's refusal to allow European refugees entry to the United States, including a review of the underlying rationale of the United States Government's decision to refuse the European refugees entry, the information the United States Government received or acquired suggesting such refusal was necessary, the perceived benefit of such refusal, and the impact of such refusal on European refugees.

(B) A review of Federal refugee policy relating to those fleeing persecution or genocide, including recommendations for making it easier for future victims of persecution or genocide to obtain refuge in the United States.

(c) FIELD HEARINGS.—The Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section 4(e).

SEC. 6. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law, including information collected as a result of Public Law 96–317 and Public Law 106–451. For purposes of the Privacy Act (5 U.S.C. 552a(b)(9)), the Commission shall be deemed to be a committee of jurisdiction.

SEC. 7. ADMINISTRATIVE PROVISIONS.

The Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, 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 such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

From funds currently authorized to the Department of Justice, there are authorized to be appropriated not to exceed $850,000 to carry out the purposes of this Act.

SEC. 9. SUNSET.

The Commission shall terminate 60 days after it submits its report to Congress.

Mr. KENNEDY. Mr. President, I am honored to join Senator FEINGOLD and my other colleagues in the Senate in introducing the Wartime Treatment of European Americans and Refugees Study Act. This legislation will authorize the study of U.S. policies and practices during World War II that resulted in severe civil liberties violations against European Americans and European Latin Americans. The bill also authorizes an investigation into U.S. refugee policy during World War II that caused many persons seeking safe haven to be turned away from our shores.

This bill will examine these issues by establishing a commission to investigate U.S. policies and programs during that period. Other countries are reexamining their own policies, and so must the United States. Identifying the abuses of the past is one of the best ways to ensure that they never happen again. I urge the Senate to adopt this important legislation.

By Mr. WELLSTONE (for himself and Mr. FEINGOLD):

S. 1357. A bill to provide for an examination of how schools are implementing the policy guidance of the Department of Education's Office for Civil Rights relating to sexual harassment directed against gay, lesbian, bisexual, and transgender students; to the Committee on the Judiciary.

Mr. WELLSTONE. Mr. President, today I am introducing a modest bill that can help us take an important step toward providing all of America's students physically and psychologically safe school environments so they can live up to their full potential as students. I appreciate that Senator FEINGOLD is joining me as an original co-sponsor.

Unfortunately, there is increasing evidence that schools are anything but safe havens for American students who are gay and lesbian, or for those who are perceived to be gay or lesbian. Two studies in recent months have focused on the issue of school harassment of gay and lesbian students. A 7-State study of abuses of gay and lesbian students by their peers, conducted by Human Rights Watch, found that these students often were not protected by school officials, and that in some cases harassment was even condoned by teachers and administrators. That report's troubling summation was that, ''Gay youth spend an inordinate amount of energy plotting how to get safely to and from school, how to avoid the hallways when other students are present so they can avoid slurs and shoves, how to cut gym class to escape being beaten up, in short, how to become invisible so they will not be verbally and physically attacked. Too often, students have little energy left to learn.'' A second, more general report on school bullying, conducted by the American Association of University Women, AAUW, found that 61 percent of students had seen fellow students bullied for being gay or lesbian, whether or not the students actually were gay or lesbian. Boys were the most likely target of such teasing, according to the report.

Further, the recent Surgeon General's Call to Action to Promote Sexual Health and Responsible Behavior notes that ''anti-homosexual attitudes are associated with psychological distress for homosexual persons and may have a negative impact on mental health, including a greater incidence of depression and suicide, lower self-acceptance and a greater likelihood of hiding sexual orientation.'' That report finds that: ''Averaged over two dozen studies, 80 percent of gay men and lesbians have experienced verbal or physical harassment on the basis of their orientation, 45 percent had been threatened with violence, and 17 percent had experienced a physical attack.''

These studies and numerous journalistic reports describe the verbal, physical and psychological abuse that becomes part of two many gay, lesbian, bisexual and transgendered students' daily lives.

We should seek to provide equal learning experiences for gay and lesbian students. We should also be concerned about the widespread bullying of students with sexual orientation-based epithets in view of the growing evidence that students who are bullied are more likely to harm their fellow students.

The Department of Education's ''Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,'' issued in 1997 by the Assistant Secretary for Civil Rights, includes in one section the following statement: ''sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX.'' This guidance was revised in 2001, clarifying that school officials have a responsibility to respond to ''acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping.''

In spite of the Department's existing guidance, evidence is clear that harassment of gay students remains a serious problem. Even so, the AAUW study cited earlier points out that many schools and universities have not established grievance procedures or designate any representative to address complaints of sex discrimination, including harassment.

To better understand the true level of sexual harassment against gay and lesbian students by peers and school officials in schools, as well as the degree to which schools are employing the Office of Civil Rights, OCR, standard in reacting against such cases of harassment, this bill calls for a study by the Commission on Civil Rights. The study would seek to answer five questions:

What is the best estimate of the true level of harassment against gay and lesbian students in America's schools and universities, applying the OCR standard?

What is the best estimate of the level of gender-based harassment such as that described in the 2001 update of the policy guidance that negatively affects the learning environment of gay and lesbian students?

To what degree are school officials and teachers aware of the alteration of the guidelines in 1997 that now includes certain harassment of gay and lesbian students?

Are the 1997 guidelines being accurately and aggressively enforced by schools?

What are the Commission's recommendations for an alternation in policy or enforcement based on the findings of the study?

The bill calls for completion of the study within 18 months so that Congress can act thoughtfully in working to create safe learning environments for all our students, gay and straight alike. It is endorsed by a number of the groups focused on promoting learning environments that are safe ones for gay students. I hope my colleagues will support it also.

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. 1357

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

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Although title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) does not prohibit discrimination on the basis of sexual orientation, one section of the Department of Education's Office for Civil Rights' 1997 final policy guidance, entitled ''Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties'' published in the Federal Register on March 13, 1997, 62 Fed. Reg. 12034, included a determination that ''sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by title IX under the circumstances described in this guidance.''. This language was unchanged in a 2001 update of the policy guidance entitled ''Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties'' for which a notice of availability was published in the Federal Register on January 19, 2001, 66 Fed. Reg. 5512.

(2) That section of the 2001 ''Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties'' went on to state: ''Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to the level that denies or limits a student's ability to participate in or benefit from the educational program.... A school must respond to such harassment in accordance with the standards and procedures described in this guidance.''.

(3) There is evidence that brings into question the degree to which the policy guidance on sexual harassment against gay, lesbian, bisexual, and transgender students is being implemented. For example, a 7-State study by Human Rights Watch of the abuses suffered by gay, lesbian, bisexual, and transgender students at the hands of their peers, published in ''Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools'' found that such students were often the victims of abuses.

(4) A 2000 study by the American Association of University Women focused on implementation of title IX of the Education Amendments of 1972 more generally, and the findings of that study, published in ''A License for Bias: Sex Discrimination, Schools, and Title IX'', included a finding that many schools and universities have not established procedures for handling title IX-based grievances.

(5) The 2001 report of the Surgeon General, entitled ''Surgeon General's Call to Action to Promote Sexual Health and Responsible Sexual Behavior'' notes that ''antihomosexual attitudes are associated with psychological distress for homosexual persons and may have a negative impact on mental health, including a greater incidence of depression and suicide, lower self-acceptance and a greater likelihood of hiding sexual orientation.''. It goes on to report: ''Averaged over two dozen studies, 80 percent of gay men and lesbians had experienced verbal or physical harassment on the basis of their orientation, 45 percent had been threatened with violence, and 17 percent had experienced a physical attack.''.

(b) PURPOSE.—The purpose of this Act is to provide for an examination of how secondary schools are implementing the policy guidance of the Department of Education's Office for Civil Rights related to sexual harassment directed against gay, lesbian, bisexual, and transgender students.

SEC. 2. STUDY OF HOW EDUCATIONAL INSTITUTIONS ARE IMPLEMENTING THE POLICY GUIDANCE RELATING TO SEXUAL HARASSMENT.

(a) IN GENERAL.—The United States Commission on Civil Rights (hereafter in this Act referred to as the ''Commission'') shall conduct a study of the 1997 final policy guidance entitled ''Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties'' published in the Federal Register on March 13, 1997, 62 Fed. Reg. 12034, and the application of such policy guidance.

(b) SCOPE.—

(1) NATIONWIDE.—The study shall be conducted nationwide.

(2) ELEMENTS OF STUDY.—The study shall examine, at a minimum, with regard to secondary schools—

(A) the extent to which there exists sexual harassment against gay and lesbian students in secondary schools, using the applicable standards in the policy guidance of the Office for Civil Rights described in subsection (a);

(B) the extent to which there exists gender-based harassment that negatively affects the learning environment of gay, lesbian, bisexual, and transgender students in secondary schools, applying the definition of such gender-based harassment contained in the 2001 update of the policy guidance entitled ''Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties'' for which a notice of availability was published in the Federal Register on January 19, 2001, 66 Fed. Reg. 5512;

(C) the level of awareness by school officials and students of the policy guidance described in subsection (a); and

(D) the level of implementation of such policy guidance.

(c) DEFINITION.—In this section, the term ''secondary school'' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 3. REPORTING OF FINDINGS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Commission shall transmit to Congress and to the Secretary of Education—

(1) a report of the Commission's findings under section 2; and

(2) any policy recommendations developed by the Commission based upon the study carried out under section 2.

(b) DISSEMINATION.—The report and recommendations shall be disseminated, in a manner that is easily understandable, to the public by means that include the Internet.

SEC. 4. COOPERATION OF FEDERAL AGENCIES.

(a) IN GENERAL.—The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study under section 2.

(b) INFORMATION.—The head of each Federal department or agency shall provide to the Commission, to the extent permitted by law, such data, reports, and documents concerning the subject matter of such study as the Commission may request.

(c) DEFINITION.—In this section, the term ''Federal department or agency'' means any agency as defined in section 551 of title 5, United States Code.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act, such sums as may be necessary for fiscal year 2002.

(b) AVAILABILITY.—Any amount appropriated under the authority of subsection (a) shall remain available until expended.

By Mr. BAYH:

S. 1358. A bill to revise Federal building energy efficiency performance standards, to establish the Office of Federal Energy Productivity within the Department of Energy, to amend Federal Energy Management Program requirements under the National Energy Conservation Policy Act, to enact into law certain requirements of Executive Order No. 13123, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BAYH. 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. 1358

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 ''Federal Facility Energy Management Act of 2001''.

SEC. 2. PURPOSE.

The purpose of this Act is to increase the energy efficiency of facilities of Federal agencies by—

(1) establishing the Office of Federal Energy Productivity within the Department of Energy to provide for interagency coordination in evaluating opportunities for, and implementation of, energy efficiency measures and programs;

(2) updating energy reduction goals;

(3) expanding Federal agency resources for energy measurement and improving accountability by providing for—

(A) energy metering and monitoring;

(B) transparent energy spending; and

(C) rigorous interagency and congressional oversight;

(4) promoting the acquisition and operation of more efficient facilities by extending the authority and eligibility of a Federal agency to enter into energy savings performance contracts; and

(5) establishing a reliable and steady source of funding for permanent energy capital improvement available to supplement appropriations for use by Federal agencies and the Architect of the Capitol—

(A) to fund energy efficiency projects; and

(B) to leverage funding for energy savings performance contracts.

SEC. 3. REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.

Section 305 of the Energy Conservation and Production Act (42 U.S.C. 6834) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the International Residential Code''; and

(B) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

''(i) new commercial buildings and multifamily high rise residential buildings be constructed so as—

''(I) to have, in the aggregate, a level of energy efficiency that is 10 percent greater than the level of energy efficiency required under the standards established under paragraph (1); and

''(II) to meet or exceed the most recent ASHRAE Standard 90.1, approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;

''(ii) new residential buildings (other than those described in clause (i)) be constructed so as to exceed the level of energy efficiency required under the most recent version of the International Residential Code by not less than 10 percent.

''(B) ADDITIONAL REVISIONS.—Not later than 180 days after the date of approval of amendments to ASHRAE Standard 90.1 or the International Residential Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

''(C) COMPUTER SOFTWARE.—The Secretary of Energy shall develop computer software to facilitate compliance with the revised standards established under this paragraph.

''(D) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

''(i) a list of all new Federal buildings of the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph, including a metering and commissioning component that is in compliance with the measurement and verification protocols of the Department of Energy.

''(E) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this paragraph and to implement the revised standards established under this paragraph.''; and

(2) by adding at the end the following:

''(e) ENERGY LABELING PROGRAM.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency, shall develop an energy labeling program for new Federal buildings that exceed the revised standards established under subsection (a)(3) by 15 percent or more.

''(f) COLLECTION OF INTERVAL SOLAR DATA.—The Secretary of Commerce shall collect interval solar data at all weather stations under the jurisdiction of the Secretary of Commerce for use in determining building energy efficiency performance under this section.''.

SEC. 4. OFFICE OF FEDERAL ENERGY PRODUCTIVITY OF THE DEPARTMENT OF ENERGY.

(a) IN GENERAL.—Title II of the Department of Energy Organization Act is amended by inserting after section 211 (42 U.S.C. 7141) the following:

''SEC. 212. OFFICE OF FEDERAL ENERGY PRODUCTIVITY.

''(a) ESTABLISHMENT.—There is established, within the Department, the Office of Federal Energy Productivity (referred to in this section as the 'Office').

''(b) ASSISTANT SECRETARY FOR FEDERAL ENERGY PRODUCTIVITY.—

''(1) IN GENERAL.—The Office shall be headed by the Assistant Secretary for Federal Energy Productivity (referred to in this section as the 'Assistant Secretary'), who shall report directly to the Secretary.

''(2) DUTIES.—The Assistant Secretary shall—

''(A) ensure compliance with the energy use and expenditure requirements applicable to Federal agencies under Federal law (including Executive orders);

''(B) perform all duties assigned to the Director of the Federal Energy Management Program of the Department of Energy, including duties assigned to the Director by the President by any Executive order in effect on the date of enactment of this subparagraph;

''(C) coordinate implementation of energy efficiency requirements by Federal agencies using staff of the Office that have expertise in the mission of each Federal agency;

''(D) coordinate compilation of, and review, energy-use reports required to be submitted by Federal agencies under this Act and other Federal law (including Executive orders);

''(E) serve as a liaison from the Federal Government to the private sector to identify opportunities and obstacles to expanded private and Federal markets for energy management technologies, energy efficiency technologies, and renewable energy technologies;

''(F) operate the Federal Energy Bank established by section 552 of the National Energy Conservation Policy Act;

''(G)(i) not later than 120 days after the date of enactment of this subparagraph, issue such guidelines for Federal agency energy preparedness and energy emergency response as the Secretary determines to be appropriate; and

''(ii) in accordance with paragraph (3), receive, review, and report on plans submitted by Federal agencies in conformance with the guidelines; and

''(H)(i) not later than 180 days after the date on which the first Assistant Secretary takes office, identify and submit to Congress a list of the principal conservation officers under section 656; and

''(ii) annually update the list.

''(3) ENERGY PREPAREDNESS AND ENERGY EMERGENCY RESPONSE PLANS.—

''(A) SUBMISSION BY FEDERAL AGENCIES.—The head of each Federal agency shall submit to the Assistant Secretary annually (or at such intervals as the Secretary determines to be appropriate) an energy preparedness and energy emergency response plan for the Federal agency that is in conformance with the guidelines issued under paragraph (2)(G)(i).

''(B) REVIEW BY ASSISTANT SECRETARY.—The Assistant Secretary shall review each plan submitted under subparagraph (A) for effectiveness and feasibility.

''(C) REPORT TO CONGRESS.—The Assistant Secretary shall submit to the President and Congress an annual report on the ability of each Federal agency—

''(i) to reduce energy use on an emergency basis; and

''(ii) to perform the mission of the Federal agency during such a period of emergency reduced energy use.

''(c) LIAISON TO DEPARTMENT OF DEFENSE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Assistant Secretary shall appoint an individual employed by the Office to serve as a liaison to the Department of Defense.

''(2) DUTIES.—The individual appointed under paragraph (1) shall coordinate energy efficiency measures, and energy efficiency reporting to the President and Congress, into the operation of the Department of Defense without compromising national security or the defense mission of the Department of Defense.

''(3) SECURITY CLEARANCE.—The individual appointed under paragraph (1) shall have appropriate security clearance.

''(d) REPORT TO CONGRESS.—The Secretary, acting through the Office, shall submit to Congress an annual report that—

''(1) describes the energy expenditures, investments, and savings of each Federal agency;

''(2) describes the obstacles to meeting the energy efficiency requirements under Federal law (including Executive orders) that are faced by each Federal agency; and

''(3) includes an accounting of energy-consuming products procured by each Federal agency that indicates—

''(A) which energy-consuming products procured by the Federal agency during the preceding year were Energy Star products or FEMP designated products (as those terms are defined in section 551(a) of the National Energy Conservation Policy Act); and

''(B) which energy-consuming products procured by the Federal agency during the preceding year were neither Energy Star products nor FEMP designated products.

''(e) AUDITS OF FEDERAL ENERGY MANAGEMENT PROGRAMS.—

''(1) IN GENERAL.—The Assistant Secretary may require the Inspector General of each Federal agency to conduct audits of the energy management programs of the Federal agency every 3 years.

''(2) GUIDELINES.—The Assistant Secretary shall—

''(A) issue guidelines for the conduct of audits described in paragraph (1); and

''(B) conduct training for Inspectors General on use of the guidelines.''.

(b) LIAISON FROM DEPARTMENT OF DEFENSE.—The Secretary of Defense shall—

(1) establish as a senior level position within the Department of Defense the position of energy management liaison; and

(2) assign to the official appointed to that position by the Secretary of Defense the duty to coordinate with appropriate officials of the Department of Defense and appropriate officials of the Department of Energy concerning energy use and expenditure requirements applicable to the Department of Defense under Federal law (including Executive orders).

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in the first section of the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended —

(1) in the item relating to section 209, by striking ''Section'' and inserting ''Sec.'';

(2) by inserting after the item relating to section 211 the following:

''Sec. 212. Office of Federal Energy Productivity.'';

and

(3) in the items relating to each of sections 213 through 216, by inserting ''Sec.'' before the section designation.

SEC. 5. ENERGY REDUCTION GOALS.

(a) IN GENERAL.—Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in calendar years 2002 through 2011 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in calendar year 2000, by the percentage specified in the following table:

''Calendar year:	Percentage reduction:
2002	2
2003	4
2004	6
2005	8

''Calendar year:	Percentage reduction:
2006	10
2007	12
2008	14
2009	16
2010	18
2011	20.'';

(B) by striking ''(2) An'' and inserting the following:

''(2) EXCLUSION OF CERTAIN FEDERAL BUILDINGS.—An''; and

(C) by adding at the end the following:

''(3) REVIEW AND REVISION OF ENERGY PERFORMANCE REQUIREMENT.—Not later than December 31, 2010, the Secretary shall—

''(A) review the results of the implementation of the energy performance requirement established under paragraph (1); and

''(B) submit to Congress recommendations concerning energy performance requirements for calendar years 2012 through 2021.''; and

(2) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—

''(A) EXCLUSIONS.—An agency may exclude, from the energy performance requirement for a calendar year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if—

''(i) the head of the agency finds that compliance with those requirements would be impracticable; and

''(ii) the agency has—

''(I) completed and submitted all federally required energy management reports;

''(II) achieved compliance with the energy efficiency requirements of—

''(aa) this Act;

''(bb) subtitle F of title I of the Energy Policy Act of 1992 (42 U.S.C. 8262 et seq.);

''(cc) Executive orders; and

''(dd) other Federal law; and

''(III) implemented all practicable, cost-effective, life-cycle projects with respect to the Federal building or collection of Federal buildings to be excluded.

''(B) FINDING OF IMPRACTICABILITY.—A finding of impracticability under subparagraph (A)(i) shall be based on—

''(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

''(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.'';

(B) in paragraph (2)—

(i) by striking ''(2) Each agency'' and inserting the following:

''(2) REVIEW BY SECRETARY.—Each agency''; and

(ii) in the second sentence—

(I) by striking ''impracticability standards'' and inserting ''standards for exclusion''; and

(II) by striking ''a finding of impracticability'' and inserting ''the exclusion''; and

(C) by adding at the end the following:

''(3) CRITERIA.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).''.

(b) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting ''THE PRESIDENT AND'' before ''CONGRESS''; and

(2) by inserting ''President and'' before ''Congress''.

(c) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking ''the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).'' and inserting ''each of the energy reduction goals established under section 543(a).''.

SEC. 6. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

(a) IN GENERAL.—Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:

''(e) METERING OF ENERGY USE.—

''(1) IN GENERAL.—Subject to paragraph (2), each agency shall meter or submeter the energy use in each Federal building, industrial process, and energy-using structure of the agency.

''(2) GUIDELINES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall issue guidelines concerning the extent of the metering and submetering required under paragraph (1).

''(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

''(i) take into consideration—

''(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

''(II) the extent to which metering and submetering are expected to result in—

''(aa) increased potential for energy management;

''(bb) increased potential for energy savings and energy efficiency improvement; and

''(cc) cost and energy savings due to utility contract aggregation; and

''(III) the measurement and verification protocols of the Department of Energy;

''(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

''(iii) establish 1 or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirement specified in paragraph (1) shall take effect; and

''(iv) establish exclusions from the requirement specified in paragraph (1) based on the de minimus quantity of energy use of a Federal building, industrial process, or structure.

''(f) USE OF INTERVAL DATA IN FEDERAL BUILDINGS.—

''(1) IN GENERAL.—Beginning not later than January 1, 2003, each agency shall use, to the maximum extent practicable, for the purposes of efficient use of energy and reduction in the cost of electricity used in the Federal buildings of the agency, interval consumption data that measure on a real-time or daily basis consumption of electricity in the Federal buildings of the agency.

''(2) PLAN.—As soon as practicable after the date of enactment of this subsection, in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirement of paragraph (1), including how the agency will designate personnel primarily responsible for achieving the requirement.''.

(b) BUDGET SUBMISSIONS TO THE PRESIDENT.—Section 545 of the National Energy Conservation Policy Act (42 U.S.C. 8255) is amended—

(1) by inserting ''(a) BUDGET SUBMISSION TO CONGRESS.—'' before ''The President''; and

(2) by adding at the end the following:

''(b) BUDGET SUBMISSIONS TO THE PRESIDENT.—The head of each agency shall submit to the President, as part of the budget request of the agency for each fiscal year, a statement of the amount of appropriations requested in the budget for the electric and other energy costs and compliance costs described in subsection (a).''.

(c) ENERGY AND WATER CONSERVATION INCENTIVE PROGRAM.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following:

''(e) ENERGY AND WATER CONSERVATION INCENTIVE PROGRAM.—

''(1) IN GENERAL.—In addition to the other incentive programs established under this section, the Secretary shall establish an incentive program under which, for any fiscal year, of the amounts made available to each agency to pay the costs of providing energy and water for Federal buildings under the jurisdiction of the agency, the agency may retain, without fiscal year limitation, such amounts as are determined under paragraph (2) to have been saved because of energy and water management and conservation projects carried out by the agency.

''(2) DETERMINATION OF RETAINED AMOUNTS.—In cooperation with the Secretary of Defense and the Director of the Office of Management and Budget, the Secretary shall issue guidelines and establish methodologies for—

''(A) retention of amounts saved as described in paragraph (1) for a period ending not more than 3 years after the date of completion of the project that resulted in the savings;

''(B) establishment of a baseline amount of energy and water expenditures, consisting of the amounts that would be expended on energy or water but for implementation of the project; and

''(C) use by agencies of the baseline amounts established under subparagraph (B) in submitting to the President budget requests for appropriated amounts equal to the amounts of savings that an agency is expected to be entitled to retain under paragraph (1).

''(3) USE OF RETAINED AMOUNTS.—Amounts retained under paragraph (1) may be used to carry out energy or water management and conservation projects, invest in renewable energy systems, and purchase electricity from renewable energy sources for use, at the Federal building at which the project that resulted in the savings was carried out.

''(4) ANNUAL REPORT ON USE OF AMOUNTS.—Each report submitted by an agency under section 548(a) shall describe—

''(A)(i) the amounts retained under paragraph (1) during the period covered by the report; and

''(ii) the use of the amounts retained; and

''(B) if no amounts were retained under paragraph (1), why no amounts were retained and the plans of the agency for retaining such amounts in the future.''.

(d) REPORTS.—Section 548 of the National Energy Conservation Policy Act (42 U.S.C. 8258) is amended—

(1) in subsection (a)—

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

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) the quantity of greenhouse gases emitted by the Federal buildings of the agency during each fiscal year, as measured by the agency in consultation with the Assistant Secretary for Federal Energy Productivity of the Department of Energy.'';

(2) in subsection (b)(1)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the semicolon at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(D) the quantity of greenhouse gases emitted by the Federal buildings of each agency during each fiscal year;''; and

(3) by adding at the end the following:

''(d) RECOMMENDATIONS ON MEANS OF ACCOUNTING FOR ENERGY USE.—

''(1) IN GENERAL.—The Secretary, in cooperation with the Administrator of the Energy Information Agency, the Administrator of General Services, and the Secretary of Defense, shall conduct a study to develop recommendations on the most accurate means of accounting for energy use in Federal facilities.

''(2) REQUIRED RECOMMENDATIONS.—Recommendations shall include a recommendation concerning whether a uniform performance measure based on British thermal units per gross square foot is preferable to an agency-specific performance measure or any other performance-based metric.

''(3) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall submit to Congress a report on the results of the study.''.

SEC. 7. FEDERAL GOVERNMENT PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is amended—

(i) by redesignating section 551 (42 U.S.C. 8259) as section 554; and

(ii) by inserting after section 550 (42 U.S.C. 8258b) the following:

''SEC. 551. FEDERAL GOVERNMENT PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

''(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

''(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means a program administered by the Administrator of the Environmental Protection Agency that involves voluntary cooperation between that agency and an industry to enhance the energy efficiency of the energy consuming products of the industry so as to reduce—

''(A) burdens on air conditioning and electrical systems of buildings that result from the use of the products in the buildings; and

''(B) air pollution caused by utility power generation.

''(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

''(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

''(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

''(A) an Energy Star product; or

''(B) if there is no Energy Star product that meets the requirements of the executive agency and that is reasonably available, a FEMP designated product.

''(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if—

''(A) an Energy Star product or FEMP designated product is not cost effective over the life cycle of the product; or

''(B) no Energy Star product or FEMP designated product is reasonably available that meets the requirements of the executive agency.

''(3) PROCUREMENT PLANNING.—

''(A) REQUIREMENT.—The head of an executive agency shall incorporate into the specifications for a procurement involving energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with—

''(i) the criteria for energy efficiency used for rating products under the applicable Energy Star program; and

''(ii) the criteria used for designating products under the Federal Energy Management Program of the Department of Energy.

''(B) APPLICABILITY.—The requirement of subparagraph (A) shall apply to—

''(i) a contract for new construction or renovation of a building;

''(ii) a basic ordering agreement;

''(iii) a blanket purchasing agreement;

''(iv) a Government-wide procurement contract; and

''(v) any other contract for a procurement described in that subparagraph.

''(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—

''(1) DEVELOPMENT.—The Administrator of General Services and the Director of the Defense Logistics Agency of the Department of Defense shall—

''(A) develop, and revise if appropriate, catalog listings of Energy Star products and FEMP designated products; and

''(B) clearly identify in the listings the products that are Energy Star products and the products that are FEMP designated products.

''(2) AVAILABILITY OF LISTINGS.—The Administrator and the Director shall make the listings available in printed and electronic formats.

''(d) GSA AND DLA INVENTORIES AND LISTINGS.—No energy consuming product may be made available to any executive agency from an inventory or listing of products by the General Services Administration or the Defense Logistics Agency unless—

''(1) the product is an Energy Star product;

''(2) the product is a FEMP designated product and no equivalent Energy Star product is reasonably available; or

''(3) no equivalent Energy Star product or FEMP designated product is reasonably available.

''(e) REGULATIONS.—The Secretary of Energy shall promulgate regulations to carry out this section, including policies and conditions for exercising authority under this section to procure energy consuming products other than Energy Star products and FEMP designated products.''.

(B) CONFORMING AMENDMENTS.—

(i) The table of contents in section 1(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note) is amended by striking the item relating to section 551 and inserting the following:

''Sec. 551. Federal Government procurement of energy efficient products.
''Sec. 552. Federal Energy Bank.
''Sec. 553. Energy and water savings measures in congressional buildings.
''Sec. 554. Definitions.''.

(ii) Section 151(5) of the Energy Policy Act of 1992 (42 U.S.C. 8262(5)) is amended by striking ''section 551(4)'' and inserting ''section 554(4)''.

(iii) Section 164(a) of the Energy Policy Act of 1992 (42 U.S.C. 8262h note; Public Law 102–486) is amended by striking ''section 551(5)'' and inserting ''section 554(5)''.

(2) IMPLEMENTATION.—

(A) REGULATIONS.—Not later than 180 days after the effective date specified in subsection (d), the Secretary of Energy shall promulgate regulations to carry out section 551 of the National Energy Conservation Policy Act (as added by paragraph (1)(A)(ii)).

(B) DISPOSAL OF EXISTING INVENTORIES.—An energy consuming product that, on the effective date specified in subsection (d), is in an inventory of products offered by the General Services Administration or the Defense Logistics Agency may be made available to an executive agency out of that inventory without regard to section 551(d) of the National Energy Conservation Policy Act.

(C) PROCUREMENT OF REPLACEMENT INVENTORY.—On and after the effective date specified in subsection (d), the Administrator of General Services and the Director of the Defense Logistics Agency of the Department of Defense may not list or procure for an inventory of products offered by the General Services Administration or the Defense Logistics Agency an energy consuming product that, under section 551(d) of the National Energy Conservation Policy Act, may not be made available to executive agencies out of that inventory.

(b) PROCUREMENT GUIDELINES.—The Secretary of Energy, in cooperation with the Secretary of Defense, shall issue guidelines that the Secretary of Defense may apply to the procurement of energy consuming products by the Department of Defense to ensure that, to the maximum extent feasible consistent with the performance of the national security missions of the Department of Defense, the products selected for procurement are energy efficient products.

(c) DESIGNATION OF ENERGY STAR PRODUCTS.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall—

(1) expedite the process of designating products as Energy Star products (as defined in section 551(a) of the National Energy Conservation Policy Act (as added by subsection (a)(1)(A)(ii))); and

(2) merge the efficiency rating procedures used by the Environmental Protection Agency and the Department of Energy under the Energy Star programs (as defined in section 551(a) of that Act).

(d) EFFECTIVE DATE.—Subsection (a) and the amendment made by that subsection take effect on the date that is 180 days after the date of enactment of this Act.

SEC. 8. FEDERAL ENERGY BANK.

Part 3 of title V of the National Energy Conservation Policy Act is amended by inserting after section 551 (as added by section 7(a)(1)(A)(ii)) the following:

''SEC. 552. FEDERAL ENERGY BANK.

''(a) DEFINITIONS.—In this section:

''(1) BANK.—The term 'Bank' means the Federal Energy Bank established by subsection (b).

''(2) ENERGY OR WATER EFFICIENCY PROJECT.—The term 'energy or water efficiency project' means a project that assists a Federal agency in meeting or exceeding the energy or water efficiency requirements of—

''(A) this part;

''(B) title VIII;

''(C) subtitle F of title I of the Energy Policy Act of 1992 (42 U.S.C. 8262 et seq.); or

''(D) any applicable Executive order, including Executive Order No. 13123 (42 U.S.C. 8251 note (June 3, 1999)).

''(3) FEDERAL AGENCY.—The term 'Federal agency' means—

''(A) an Executive agency (as defined in section 105 of title 5, United States Code);

''(B) the United States Postal Service;

''(C) the United States Patent and Trademark Office;

''(D) Congress and any other entity in the legislative branch; and

''(E) a Federal court and any other entity in the judicial branch.

''(4) UTILITY PAYMENT.—The term 'utility payment' means a payment made to supply electricity, natural gas, or any other form of energy to provide the heating, ventilation, air conditioning, lighting, or other energy needs of a facility of a Federal agency.

''(b) ESTABLISHMENT OF BANK.—

''(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the 'Federal Energy Bank', consisting of—

''(A) such amounts as are deposited in the Bank under paragraph (2);

''(B) such amounts as are repaid to the Bank under subsection (c)(2)(D); and

''(C) any interest earned on investment of amounts in the Bank under paragraph (3).

''(2) DEPOSITS IN BANK.—

''(A) IN GENERAL.—Subject to the availability of appropriations and to subparagraph (B), the Secretary of the Treasury shall deposit in the Bank an amount equal to 2.5 percent for fiscal year 2003 and 5 percent for each fiscal year thereafter of the total amount of utility payments made by all Federal agencies for the preceding fiscal year.

''(B) MAXIMUM AMOUNT IN BANK.—Deposits under subparagraph (A) shall cease beginning with the fiscal year following the fiscal year in which the amounts in the Bank (including amounts on loan from the Bank) become equal to or exceed $1,000,000,000.

''(C) LIMITATION.—No funds made available to any Federal agency (other than to the Department of the Treasury under subsection (f)) shall be deposited in the Bank.

''(3) INVESTMENT OF AMOUNTS.—The Secretary of the Treasury shall invest such portion of the Bank as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

''(c) LOANS FROM THE BANK.—

''(1) IN GENERAL.—The Secretary of the Treasury shall transfer from the Bank to the Secretary such amounts as are appropriated to carry out the loan program under paragraph (2).

''(2) LOAN PROGRAM.—

''(A) ESTABLISHMENT.—

''(i) IN GENERAL.—In accordance with subsection (d), the Secretary, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Management and Budget, shall establish a program to make loans of amounts in the Bank to any Federal agency that submits an application satisfactory to the Secretary in order to pay the costs of a project described in subparagraph (C).

''(ii) COMMENCEMENT OF OPERATIONS.—The Secretary may begin—

''(I) accepting applications for loans from the Bank in fiscal year 2002; and

''(II) making loans from the Bank in fiscal year 2003.

''(B) ENERGY SAVINGS PERFORMANCE CONTRACTING FUNDING.—The Secretary shall not make a loan from the Bank to a Federal agency for a project for which funding is available and is acceptable to the Federal agency under title VIII.

''(C) PURPOSES OF LOAN.—

''(i) IN GENERAL.—A loan from the Bank may be used to pay—

''(I) the costs of an energy or water efficiency project, or a renewable or alternative energy project, for a new or existing Federal building (including selection and design of the project);

''(II) the costs of an energy metering plan developed in accordance with the measurement and verification protocols of the Department of Energy, or energy metering equipment, for the purpose of—

''(aa) a new or existing building energy system; or

''(bb) verification of the energy savings under an energy savings performance contract under title VIII; or

''(III) at the time of contracting, the costs of development or cofunding of an energy savings performance contract (including a utility energy service agreement) in order to shorten the payback period of the project that is the subject of the energy savings performance contract.

''(ii) LIMITATION.—A Federal agency may use not more than 10 percent of the amount of a loan under subclause (I) or (II) of clause (i) to pay the costs of administration and proposal development (including data collection and energy surveys).

''(iii) RENEWABLE AND ALTERNATIVE ENERGY PROJECTS.—Not more than 25 percent of the amount on loan from the Bank at any time may be loaned for renewable energy and alternative energy projects (as defined by the Secretary in accordance with applicable law (including Executive orders)).

''(D) REPAYMENTS.—

''(i) IN GENERAL.—Subject to clauses (ii) through (iv), a Federal agency shall repay to the Bank the principal amount of a loan plus interest at a rate determined by the President, in consultation with the Secretary and the Secretary of the Treasury.

''(ii) WAIVER OR REDUCTION OF INTEREST.—The Secretary may waive or reduce the rate of interest required to be paid under clause (i) if the Secretary determines that payment of interest by a Federal agency at the rate determined under that clause is not required to fund the operations of the Bank.

''(iii) DETERMINATION OF INTEREST RATE.—The interest rate determined under clause (i) shall be at a rate that is sufficient to ensure that, beginning not later than October 1, 2007, interest payments will be sufficient to fully fund the operations of the Bank.

''(iv) INSUFFICIENCY OF APPROPRIATIONS.—

''(I) REQUEST FOR APPROPRIATIONS.—As part of the budget request of the Federal agency for each fiscal year, the head of each Federal agency shall submit to the President a request for such amounts as are necessary to make such repayments as are expected to become due in the fiscal year under this subparagraph.

''(II) SUSPENSION OF REPAYMENT REQUIREMENT.—If, for any fiscal year, sufficient appropriations are not made available to a Federal agency to make repayments under this subparagraph, the Bank shall suspend the requirement of repayment under this subparagraph until such appropriations are made available.

''(E) FEDERAL AGENCY ENERGY BUDGETS.—Until a loan is repaid, a Federal agency budget submitted by the President to Congress for a fiscal year shall not be reduced by the value of energy savings accrued as a result of any energy conservation measure implemented using amounts from the Bank.

''(F) NO RESCISSION OR REPROGRAMMING.—A Federal agency shall not rescind or reprogram loan amounts made available from the Bank except as permitted under guidelines issued under subparagraph (G).

''(G) GUIDELINES.—The Secretary shall issue guidelines for implementation of the loan program under this paragraph, including selection criteria, maximum loan amounts, and loan repayment terms.

''(d) SELECTION CRITERIA.—

''(1) IN GENERAL.—The Secretary shall establish criteria for the selection of projects to be awarded loans in accordance with paragraph (2).

''(2) SELECTION CRITERIA.—

''(A) IN GENERAL.—The Secretary may make loans from the Bank only for a project that—

''(i) is technically feasible;

''(ii) is determined to be cost-effective using life cycle cost methods established by the Secretary by regulation;

''(iii) includes a measurement and management component, based on the measurement and verification protocols of the Department of Energy, to—

''(I) commission energy savings for new and existing Federal facilities;

''(II) monitor and improve energy efficiency management at existing Federal facilities; and

''(III) verify the energy savings under an energy savings performance contract under title VIII; and

''(iv)(I) in the case of renewable energy or alternative energy project, has a simple payback period of not more than 15 years; and

''(II) in the case of any other project, has a simple payback period of not more than 10 years.

''(B) PRIORITY.—In selecting projects, the Secretary shall give priority to projects that—

''(i) are a component of a comprehensive energy management project for a Federal facility; and

''(ii) are designed to significantly reduce the energy use of the Federal facility.

''(e) REPORTS AND AUDITS.—

''(1) REPORTS TO THE SECRETARY.—Not later than 1 year after the completion of installation of a project that has a cost of more than $1,000,000, and annually thereafter, a Federal agency shall submit to the Secretary a report that—

''(A) states whether the project meets or fails to meet the energy savings projections for the project; and

''(B) for each project that fails to meet the energy savings projections, states the reasons for the failure and describes proposed remedies.

''(2) AUDITS.—The Secretary may audit, or require a Federal agency that receives a loan from the Bank to audit, any project financed with amounts from the Bank to assess the performance of the project.

''(3) REPORTS TO CONGRESS.—At the end of each fiscal year, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the operations of the Bank, including a statement of—

''(A) the total receipts by the Bank;

''(B) the total amount of loans from the Bank to each Federal agency; and

''(C) the estimated cost and energy savings resulting from projects funded with loans from the Bank.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Treasury such sums as are necessary to fund—

''(1) deposits required under subsection (b)(2); and

''(2) the costs to the Treasury associated with the loan program established under subsection (c)(2), as determined in accordance with guidelines issued by the Office of Management and Budget.''.

SEC. 9. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is amended by inserting after section 552 (as added by section 8) the following:

''SEC. 553. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

''(a) IN GENERAL.—The Architect of the Capitol—

''(1) shall develop and implement a cost-effective energy conservation strategy for all facilities administered by Congress (referred to in this section as 'congressional buildings') to meet the mandatory standards for Federal buildings established under title III of the Energy Conservation and Production Act (42 U.S.C. 6831 et seq.);

''(2) shall submit to Congress, not later than 120 days after the date of enactment of this section, a revised comprehensive energy conservation and management plan that includes life cycle cost methods to determine the cost-effectiveness of proposed energy efficiency projects;

''(3) shall submit to Congress annually a report on congressional energy management and conservation programs that describes in detail—

''(A) energy expenditures and cost estimates for each facility;

''(B) energy management and conservation projects; and

''(C) future priorities to ensure compliance with this section;

''(4) shall perform energy surveys of all congressional buildings and update the surveys as necessary;

''(5) shall use the surveys to determine the cost and payback period of energy and water conservation measures likely to achieve the energy consumption levels specified in the strategy developed under paragraph (1);

''(6) shall install energy and water conservation measures that will achieve those levels through life cycle cost methods and procedures included in the plan submitted under paragraph (2);

''(7) may contract with nongovernmental entities and use private sector capital to finance energy conservation projects and achieve energy consumption targets;

''(8) may develop innovative contracting methods that will attract private sector funding for the installation of energy efficient and renewable energy technology to meet the requirements of this section, such as energy savings performance contracts described in title VIII;

''(9) may participate in the Financing Renewable Energy and Efficiency (FREE) Savings contracts program for Federal Government facilities established by the Department of Energy;

''(10) not later than 100 days after the date of enactment of this section, shall submit to Congress the results of a study of the installation of submetering in congressional buildings;

''(11) shall produce information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars;

''(12) shall ensure that state-of-the-art energy efficiency technologies are used in the construction of the Visitor Center; and

''(13) shall include in the Visitor Center an exhibit on the energy efficiency measures used in congressional buildings.

''(b) ENERGY AND WATER CONSERVATION INCENTIVE.—

''(1) IN GENERAL.—For any fiscal year, of the amounts made available to the Architect of the Capitol to pay the costs of providing energy and water for congressional buildings, the Architect may retain, without fiscal year limitation, such amounts as the Architect determines were not expended because of energy and water management and conservation projects.

''(2) USE OF RETAINED AMOUNTS.—Amounts retained under paragraph (1) may be used to carry out energy and water management and conservation projects.

''(3) ANNUAL REPORT ON USE OF AMOUNTS.—As part of each annual report under subsection (a)(3), the Architect of the Capitol shall submit to Congress a report on the amounts retained under paragraph (1) and the use of the amounts.''.

(b) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

SEC. 10. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) COST SAVINGS FROM REPLACEMENT FACILITIES.—Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:

''(3) COST SAVINGS FROM REPLACEMENT FACILITIES.—

''(A) IN GENERAL.—In the case of an energy savings performance contract that provides for energy savings through the construction and operation of 1 or more buildings or other facilities to replace 1 or more existing buildings or other facilities, benefits ancillary to the purpose of achieving energy savings under the contract may include, for the purpose of paragraph (1), savings resulting from reduced costs of operation and maintenance at the replacement buildings or other facilities as compared with the costs of operation and maintenance at the buildings or other facilities being replaced.

''(B) DETERMINATION OF PAYMENTS.—Notwithstanding paragraph (2)(B), the aggregate annual payments by a Federal agency under an energy savings performance contract described in subparagraph (A) may take into account (through the procedures developed under this section) savings resulting from reduced costs of operation and maintenance as described in subparagraph (A).''.

(b) REPEAL OF SUNSET.—Section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) is amended by striking subsection (c).

(c) DEFINITIONS.—The National Energy Conservation Policy Act is amended by striking section 804 (42 U.S.C. 8287c) and inserting the following:

''SEC. 804. DEFINITIONS.

''In this title:

''(1) ENERGY CONSERVATION MEASURE.—The term 'energy conservation measure' has the meaning given the term in section 554.

''(2) ENERGY SAVING.—The term 'energy saving' means a reduction, from a baseline cost established through a methodology set forth in an energy savings performance contract, in the cost of energy or water used in—

''(A) 1 or more existing federally owned buildings or other federally owned facilities, that results from—

''(i) the lease or purchase of operating equipment, an improvement, altered operation or maintenance, or a technical service;

''(ii) increased efficiency in the use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for a building that is not a federally owned building or a facility that is not federally owned facility; or

''(iii) increased efficiency in the use of existing water sources or treatment of wastewater or stormwater; or

''(B) a replacement facility under section 801(a)(3).

''(3) ENERGY SAVINGS PERFORMANCE CONTRACT.—The term 'energy savings performance contract' means a contract that provides for—

''(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an energy conservation measure or water conservation measure (or series of such measures) at 1 or more locations; or

''(B) energy savings through the construction and operation of 1 or more buildings or other facilities to replace 1 or more existing buildings or other facilities.

''(4) FEDERAL AGENCY.—The term 'Federal agency' means each authority of the United States Government, regardless of whether the authority is within or subject to review by another agency.

''(5) WATER CONSERVATION MEASURE.—The term 'water conservation measure' means a conservation measure that—

''(A) improves the efficiency of use of water;

''(B) is cost-effective over the life cycle of the water conservation measure; and

''(C) involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, an improvement in operation or maintenance efficiency, a retrofit activity, or any other related activity, that is carried out at a building or other facility that is not a Federal hydroelectric facility.''.

SEC. 11. FEDERAL FLEET FUEL ECONOMY AND USE OF ALTERNATIVE FUELS.

(a) IN GENERAL.—Section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

''(f) FEDERAL FLEET FUEL ECONOMY AND USE OF ALTERNATIVE FUELS.—

''(1) DEFINITIONS.—

''(A) AVERAGE FUEL ECONOMY.—The term 'average fuel economy' has the meaning given the term in section 32901 of title 49, United States Code.

''(B) COVERED VEHICLE.—

''(i) IN GENERAL.—The term 'covered vehicle' means a passenger automobile or light duty motor vehicle.

''(ii) EXCLUSIONS.—The term 'covered vehicle' does not include—

''(I) a military tactical vehicle of the Armed Forces; or

''(II) any law enforcement, emergency, or other vehicle class or type determined to be excluded under guidelines issued by the Secretary of Energy under paragraph (6).

''(C) FEDERAL AGENCY.—The term 'Federal agency' means an Executive agency (as defined in section 105 of title 5, United States Code) (including each military department (as specified in section 102 of that title)) that operates 20 or more motor vehicles in the United States.

''(D) PASSENGER AUTOMOBILE.—The term 'passenger automobile' has the meaning given the term in section 32901 of title 49, United States Code.

''(2) MINIMUM AVERAGE FUEL ECONOMY.—In fiscal year 2005 and each fiscal year thereafter, the average fuel economy of the covered vehicles acquired by each Federal agency shall be not less than 3 miles per gallon greater than the average fuel economy of the covered vehicles acquired by the Federal agency in fiscal year 2000.

''(3) USE OF ALTERNATIVE FUELS.—

''(A) IN GENERAL.—Subject to subparagraph (B), in fiscal year 2005 and each fiscal year thereafter, each Federal agency shall use alternative fuels for at least 50 percent of the total annual volume of motor fuel used by the Federal agency to operate covered vehicles.

''(B) INCLUSION OF MOTOR FUEL PURCHASED BY STATE AND LOCAL GOVERNMENTS.—Not more than 25 percent of the motor fuel purchased by State and local governments at federally-owned refueling facilities may be included by a Federal agency in meeting the requirement of subparagraph (A).

''(4) IMPLEMENTATION PLAN.—Not later than 1 year after the date of enactment of this paragraph, each Federal agency shall develop and submit to the President and Congress an implementation plan for meeting the requirements of this subsection that

takes into account the fleet configuration and fleet requirements of the Federal agency.

''(5) ANNUAL REPORT.—

''(A) IN GENERAL.—Each Federal agency shall submit to the President and Congress an annual report on the progress of the Federal agency in meeting the requirements of this subsection.

''(B) GUIDELINES.—The Secretary of Energy, acting through the Assistant Secretary for Federal Energy Productivity and in consultation with the Administrator of the Energy Information Administration, shall issue guidelines for the preparation by Federal agencies of reports under paragraph (1), including guidelines concerning—

''(i) methods for measurement of average fuel economy; and

''(ii) the collection and annual reporting of data to demonstrate compliance with this subsection.

''(6) GUIDELINES CONCERNING EXCLUSION OF CERTAIN VEHICLES.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy, in consultation with the Assistant Secretary for Federal Energy Productivity, shall issue guidelines for Federal agencies to use in the determination of vehicles to be excluded under paragraph (1)(B)(ii).''.

(b) ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES.—Section 400AA of the Energy Policy and Conservation Act (42 U.S.C. 6374) is amended—

(1) in subsection (a)(3)(E)—

(A) by striking ''(E) Dual'' and inserting the following:

''(E) OPERATION OF DUAL FUELED VEHICLES.—

''(i) IN GENERAL.—Subject to clause (ii), dual''; and

(B) by adding at the end the following:

''(ii) MINIMUM ALTERNATIVE FUEL USE.—For fiscal year 2005 and each fiscal year thereafter, not less than 50 percent of the total annual volume of fuel used to operate dual fueled vehicles acquired pursuant to this section shall consist of alternative fuels.''; and

(2) in subsection (g)(4)(B), by inserting before the semicolon at the end the following: '', including any 3-wheeled enclosed electric vehicle that has a vehicle identification number''.

By Mr. BURNS (for himself, Mr. BREAUX, Mr. HAGEL, Mrs. LINCOLN, and Mr. ENZI):

S. 1359. A bill to amend the Communications Act of 1934 to promote deployment of advanced services and foster the development of competition for the benefit of consumers in all regions of the Nation by relieving unnecessary burdens on the Nation's two percent local exchange telecommunications carrier, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. 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. 1359

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 ''Facilitating Access to Speedy Transmissions for Networks, E-commerce and Telecommunications (FASTNET) Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The Telecommunications Act of 1996 was enacted to foster the rapid deployment of advanced telecommunications and information technologies and services to all Americans by promoting competition and reducing regulation in telecommunications markets nationwide.

(2) The Telecommunications Act of 1996 specifically recognized the unique abilities and circumstances of local exchange carriers with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide.

(3) Given the markets two percent carriers typically serve, such carriers are uniquely positioned to accelerate the deployment of advanced services and competitive initiatives for the benefit of consumers in less densely populated regions of the Nation.

(4) Existing regulations are typically tailored to the circumstances of larger carriers and therefore often impose disproportionate burdens on two percent carriers, impeding such carriers' deployment of advanced telecommunications services and competitive initiatives to consumers in less densely populated regions of the Nation.

(5) Reducing regulatory burdens on two percent carriers will enable such carriers to devote additional resources to the deployment of advanced services and to competitive initiatives to benefit consumers in less densely populated regions of the Nation.

(6) Reducing regulatory burdens on two percent carriers will increase such carriers' ability to respond to marketplace conditions, allowing them to accelerate deployment of advanced services and competitive initiatives to benefit consumers in less densely populated regions of the Nation.

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

(1) to accelerate the deployment of advanced services and the development of competition in the telecommunications industry for the benefit of consumers in all regions of the Nation, consistent with the Telecommunications Act of 1996, by reducing regulatory burdens on local exchange carriers with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide;

(2) to improve such carriers' flexibility to undertake such initiatives; and

(3) to allow such carriers to redirect resources from paying the costs of such regulatory burdens to increasing investment in such initiatives.

SEC. 3. DEFINITION.

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by redesignating paragraphs (51) and (52) as paragraphs (52) and (53), respectively; and

(2) by inserting after paragraph (50) the following:

''(51) TWO PERCENT CARRIER.—The term 'two percent carrier' means an incumbent local exchange carrier within the meaning of section 251(h) whose access lines, when aggregated with the access lines of any local exchange carrier that such incumbent local exchange carrier directly or indirectly controls, is controlled by, or is under common control with, are fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide.''.

SEC. 4. REGULATORY RELIEF FOR TWO PERCENT CARRIERS.

Title II of the Communications Act of 1934 is amended by adding at the end thereof a new part IV as follows:

''PART IV—PROVISIONS CONCERNING TWO PERCENT CARRIERS

''SEC. 281. REDUCED REGULATORY REQUIREMENTS FOR TWO PERCENT CARRIERS.

''(a) COMMISSION TO TAKE INTO ACCOUNT DIFFERENCES.—In adopting rules that apply to incumbent local exchange carriers (within the meaning of section 251(h)), the Commission shall separately evaluate the burden that any proposed regulatory, compliance, or reporting requirements would have on two percent carriers.

''(b) EFFECT OF COMMISSION'S FAILURE TO TAKE INTO ACCOUNT DIFFERENCES.—If the Commission adopts a rule that applies to incumbent local exchange carriers and fails to separately evaluate the burden that any proposed regulatory, compliance, or reporting requirement would have on two percent carriers, the Commission shall not enforce the rule against two percent carriers unless and until the Commission performs such separate evaluation.

''(c) ADDITIONAL REVIEW NOT REQUIRED.—Nothing in this section shall be construed to require the Commission to conduct a separate evaluation under subsection (a) if the rules adopted do not apply to two percent carriers, or such carriers are exempted from such rules.

''(d) SAVINGS CLAUSE.—Nothing in this section shall be construed to prohibit any size-based differentiation among carriers mandated by this Act, chapter 6 of title 5, United States Code, the Commission's rules, or any other provision of law.

''(e) EFFECTIVE DATE.—The provisions of this section shall apply with respect to any rule adopted on or after the date of enactment of this section.

''SEC. 282. LIMITATION OF REPORTING REQUIREMENTS.

''(a) LIMITATION.—The Commission shall not require a two percent carrier—

''(1) to file cost allocation manuals or to have such manuals audited or attested, but a two percent carrier that qualifies as a class A carrier shall annually certify to the Commission that the two percent carrier's cost allocation complies with the rules of the Commission; or

''(2) to file Automated Reporting and Management Information Systems (ARMIS) reports, except for purposes of section 224.

''(b) PRESERVATION OF AUTHORITY.—Except as provided in subsection (a), nothing in this Act limits the authority of the Commission to obtain access to information under sections 211, 213, 215, 218, and 220 with respect to two percent carriers.

''SEC. 283. INTEGRATED OPERATION OF TWO PERCENT CARRIERS.

''The Commission shall not require any two percent carrier to establish or maintain a separate affiliate to provide any common carrier or noncommon carrier services, including local and interexchange services, commercial mobile radio services, advanced services (within the meaning of section 706 of the Telecommunications Act of 1996), paging, Internet, information services or other enhanced services, or other services. The Commission shall not require any two percent carrier and its affiliates to maintain separate officers, directors, or other personnel, network facilities, buildings, research and development departments, books of account, financing, marketing, provisioning, or other operations.

''SEC. 284. PARTICIPATION IN TARIFF POOLS AND PRICE CAP REGULATION.

''(a) NECA POOL.—The participation or withdrawal from participation by a two percent carrier of one or more study areas in the common line tariff administered and

filed by the National Exchange Carrier Association or any successor tariff or administrator shall not obligate such carrier to participate or withdraw from participation in such tariff for any other study area. The Commission may require a two percent carrier to give 60 days notice of its intent to participate or withdraw from participation in such common line tariff with respect to a study area. Except as permitted by section 310(f)(3), a two percent carrier's election under this subsection shall be binding for one year from the date of the election.

''(b) PRICE CAP REGULATION.—A two percent carrier may elect to be regulated by the Commission under price cap rate regulation, or elect to withdraw from such regulation, for one or more of its study areas. The Commission shall not require a carrier making an election under this subsection with respect to any study area or areas to make the same election for any other study area. Except as permitted by section 310(f)(3), a two percent carrier's election under this subsection shall be binding for one year from the date of the election.

''SEC. 285. DEPLOYMENT OF NEW TELECOMMUNICATIONS SERVICES BY TWO PERCENT COMPANIES.

''(a) ONE-DAY NOTICE OF DEPLOYMENT.—The Commission shall permit two percent carriers to introduce new interstate telecommunications services by filing a tariff on one day's notice showing the charges, classifications, regulations, and practices therefor, without obtaining a waiver, or make any other showing before the Commission in advance of the tariff filing. The Commission shall not have authority to approve or disapprove the rate structure for such services shown in such tariff.

''(b) DEFINITION.—For purposes of subsection (a), the term 'new interstate telecommunications service' means a class or subclass of service not previously offered by the two percent carrier that enlarges the range of service options available to ratepayers of such carrier.

''SEC. 286. ENTRY OF COMPETING CARRIER.

''(a) PRICING FLEXIBILITY.—Notwithstanding any other provision of this Act, any two percent carrier shall be permitted to deaverage its interstate switched or special access rates, file tariffs on one day's notice, and file contract-based tariffs for interstate switched or special access services immediately upon certifying to the Commission that a telecommunications carrier unaffiliated with such carrier is engaged in facilities-based entry within such carrier's service area. A two percent carrier subject to rate-of-return regulation with respect to an interstate switched or special access service, for which pricing flexibility has been exercised pursuant to this subsection, shall compute its interstate rate of return based on the nondiscounted rate for such service.

''(b) STREAMLINED PRICING REGULATION.—Notwithstanding any other provision of this Act, upon receipt by the Commission of a certification by a two percent carrier that—

''(1) a local exchange carrier, or its affiliate, or

''(2) a local exchange carrier operated by, or owned in whole or part by, a governmental authority,

is engaged in facilities-based entry within the two percent carrier's service area, the Commission shall regulate the two percent carrier as non-dominant and shall not require the tariffing of the interstate service offerings of the two percent carrier.

''(c) PARTICIPATION IN EXCHANGE CARRIER ASSOCIATION TARIFF.—A two percent carrier that meets the requirements of subsection (a) or (b) of this section with respect to one or more study areas shall be permitted to participate in the common line tariff administered and filed by the National Exchange Carrier Association or any successor tariff or administrator, by electing to include one or more of its study areas in such tariff.

''(d) DEFINITIONS.—For purposes of this section:

''(1) FACILITIES-BASED ENTRY.—The term 'facilities-based entry' means, within the service area of a two percent carrier—

''(A) the provision or procurement of local telephone exchange switching or its equivalent; and

''(B) the provision of telephone exchange service to at least one unaffiliated customer.

''(2) CONTRACT-BASED TARIFF.—The term 'contract-based tariff' shall mean a tariff based on a service contract entered into between a two percent carrier and one or more customers of such carrier. Such tariff shall include—

''(A) the term of the contract, including any renewal options;

''(B) a brief description of each of the services provided under the contract;

''(C) minimum volume commitments for each service, if any;

''(D) the contract price for each service or services at the volume levels committed to by the customer or customers;

''(E) a brief description of any volume discounts built into the contract rate structure; and

''(F) a general description of any other classifications, practices, and regulations affecting the contract rate.

''(3) SERVICE AREA.—The term 'service area' has the same meaning as in section 214(e)(5).

''SEC. 287. SAVINGS PROVISIONS.

''(a) COMMISSION AUTHORITY.—Nothing in this part shall be construed to restrict the authority of the Commission under sections 201 through 208.

''(b) RURAL TELEPHONE COMPANY RIGHTS.—Nothing in this part shall be construed to diminish the rights of rural telephone companies otherwise accorded by this Act, or the rules, policies, procedures, guidelines, and standards of the Commission as of the date of enactment of this section.

''(c) STATE AUTHORITY.—Nothing in this Part shall be construed to limit or affect any authority (as of August 1, 2001) of the States over charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier.''.

SEC. 5. LIMITATION ON MERGER REVIEW.

(a) AMENDMENT.—Section 310 of the Communications Act of 1934 (47 U.S.C. 310) is amended by adding at the end the following:

''(f) DEADLINE FOR MAKING PUBLIC INTEREST DETERMINATION.—

''(1) TIME LIMIT.—In connection with any merger between two percent carriers, or the acquisition, directly or indirectly, by a two percent carrier or its affiliate of securities or assets of another carrier or its affiliate, if the merged or acquiring carrier remains a two percent carrier after the merger or acquisition, the Commission shall make any determinations required by this section and section 214, and shall rule on any petition for waiver of the Commission's rules or other request related to such determinations, not later than 60 days after the date an application with respect to such merger or acquisition is submitted to the Commission.

''(2) APPROVAL ABSENT ACTION.—If the Commission does not approve or deny an application as described in paragraph (1) by the end of the period specified, the application shall be deemed approved on the day after the end of such period. Any such application deemed approved under this subsection shall be deemed approved without conditions.

''(3) ELECTION PERMITTED.—The Commission shall permit a two percent carrier to make an election pursuant to section 284 with respect to any local exchange facilities acquired as a result of a merger or acquisition that is subject to the review deadline established in paragraph (1) of this subsection.''.

(b) EFFECTIVE DATE.—The provisions of this section shall apply with respect to any application that is submitted to the Commission on or after the date of enactment of this Act. Applications pending with the Commission on the date of enactment of this Act shall be subject to the requirements of this section as if they had been filed with the Commission on the date of enactment of this Act.

SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RECONSIDERATION OR WAIVER.

(a) AMENDMENT.—Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by adding to the end the following:

''(c) EXPEDITED ACTION REQUIRED.—

''(1) TIME LIMIT.—Within 90 days after receiving from a two percent carrier a petition for reconsideration or other review filed under this section or a petition for waiver of a rule, policy, or other Commission requirement, the Commission shall issue an order granting or denying such petition. If the Commission fails to act on a petition for waiver subject to the requirements of this section within this 90-day period, the relief sought in such petition shall be deemed granted. If the Commission fails to act on a petition for reconsideration or other review subject to the requirements of this section within such 90-day period, the Commission's enforcement of any rule the reconsideration or other review of which was specifically sought by the petitioning party shall be stayed with respect to that party until the Commission issues an order granting or denying such petition.

''(2) FINALITY OF ACTION.—Any order issued under paragraph (1), or any grant of a petition for waiver that is deemed to occur as a result of the Commission's failure to act under paragraph (1), shall be a final order and may be appealed.''.

(b) EFFECTIVE DATE.—The provisions of this section shall apply with respect to any petition for reconsideration or other review or petition for waiver that is submitted to the Commission on or after the date of enactment of this Act. Petitions for reconsideration or petitions for waiver pending with the Commission on the date of enactment of this Act shall be subject to the requirements of this section as if they had been filed on the date of enactment of this Act.

SEC. 7. NATIONAL SECURITY AND LAW ENFORCEMENT EXCEPTIONS.

Notwithstanding sections 310 and 405 of the Communications Act of 1934 (47 U.S.C. 310 and 405), the 60-day time period under section 310(f)(1) of that Act, as added by section 5 of this Act, and the 90-day time period under section 405(c)(1) of that Act, as added by section 6 of this Act, shall not apply to a petition or application under section 310 or 405 if an Executive Branch agency with cognizance over national security, law enforcement, or public safety matters, including the Department of Defense, Department of Justice, and the Federal Bureau of Investigation, submits a written filing to the Federal Communications Commission advising the Commission that the petition or application may present national security, law enforcement, or public safety concerns that may not be resolved within the 60-day or 90-day time period, respectively.

By Mr. VOINOVICH (for himself, Mr. INHOFE, Mr. SMITH of New Hampshire, and Mr. CRAPO):

S. 1360. To reauthorize the Price-Anderson provisions of the Atomic Energy Act of 1954; to the Committee on Environment and Public Works.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation to reauthorize the Price Anderson Act, which provides the insurance program for our Nation's commercial nuclear reactor fleet. In 1954, Congress passed the Atomic Energy Act which ended the government monopoly over possession, use, and manufacturing of ''special nuclear material''. While the Act allowed the private sector access to the nuclear market, due to concerns over liability, the private sector was extremely hesitant to invest in the new market.

Due to these liability concerns, Congress passed the Price-Anderson Act in 1957, the Act was reauthorized on three occasions, most recently in 1988. The Act is due to be reauthorized in 2002. In 1998 the NRC issued their report to Congress called ''The Price Anderson Act—Crossing the Bridge to the Next Century: A Report to Congress.'' In that report the NRC recommended renewal of the Price Anderson Act because the Act provides a valuable public benefit by establishing a system for prompt and equitable steelement of public liability claims resulting from a nuclear accident.

While the report originally suggested that consideration be given to doubling the maximum annual retrospective premium installment from each power reactor license, the NRC has reconsidered this suggestion and now recommends that original premium level be retained. They expressed this view in a letter to me, as the Chairman of the Nuclear Safety Subcommittee on May 11th of this year.

The reason for the change is that in 1998 the NRC had projected that many of the existing commercial reactors would not file for license renewal. The drop in the number of reactors would cause a corresponding drop in the contributions to the fund. There is now heightened interest in extending the operating license of most of the commercial reactors. Therefore an increase in the premium from each reactor is no longer necessary. This has occurred because of the growing interest in nuclear energy. Nuclear energy is a clean, emissions-free source of electricity which currently provides almost twenty percent of our nation's energy supply.

This legislation will help further the commercial application of nuclear energy for electricity, as well as the growing number of medical applications of nuclear medicine. Nuclear energy is vital to supplying cost-efficient and environmentally sound power to the American consumer. This legislation will continue to ensure the availability of our commercial nuclear reactor program. I am joined in introducing this legislation by the ranking members of the Senate Environment and Public Works Committee, Senator SMITH, and the Nuclear Safety Subcommittee Senator INHOFE, as well as an important member of the Subcommittee Senator CRAPO.

By Mr. BENNETT:

S. 1361. A bill to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I rise today to introduce legislation that would amend the Central Utah Project Completion Act, CUPCA, as originally enacted in 1992. CUPCA re-authorized and provided funding for the completion of the Central Utah Project, CUP, a project that develops Utah's share of water from the Colorado River for use in ten central Utah counties. The CUP was originally authorized in 1956 as part of the Colorado River Storage Project Act and includes five units. The Bureau of Reclamation began construction of this project in 1964. However, in 1992 CUPCA conferred CUP planning and construction responsibilities to the Central Utah Water Conservancy District, which has cultivated an excellent working relationship with the Office of CUP Completion in the Interior Department.

The legislation I am introducing would amend CUPCA to clarify the relationship between the Department of the Interior and the CUP by ensuring that the Secretary of the Interior continue to retain full responsibility for the CUP after the completion of the project's construction phase. It only makes sense that the decisions regarding future operations and maintenance, contract negotiations, and program oversight functions of the Interior Department are consistent with the cooperative decisions made during the project's planning and construction stages. As such, language is needed to clarify the Secretary's further involvement.

Since 1992, numerous changes in the project have occurred to better reflect contemporary water needs. Certain project features were downsized or eliminated while other water management programs grew in size. The 106th Congress, in an effort to address these changes, approved a CUPCA amendment that allowed unused funding authorization resulting from the redesign of the Bonneville Unit to be used ''to acquire water and water rights for project purposes including in stream flows, to complete project facilities authorized in this title and title III, to implement water conservation measure . . .'' In light of the continuing need to address the redesign replacement projects originally designed in the sixties, my legislation would again extend the unused authorization provision to all CUP units.

Finally, this legislation also extends a CUPCA provision that authorizes the Secretary of the Interior to accept prepayment of parts of the project's Municipal and Industrial repayment debt. The original provision's expiration was to occur in 2002 for reasons relating to the Federal Budget scoring process. This provision has enabled the Central Utah Water Conservancy District to prepay over $138 million to the federal treasury, while also avoiding unnecessary interest charges. The legislation introduced today would remove the 2002 expiration provision and extends the provision to allow the repayment of obligations associated with projects relating to the Uinta Basin.

The water supplied by CUP's many water diversion projects is crucial to the livelihoods of Utah's rural residents and to Utah's burgeoning population. I believe that legislation will serve to better facilitate the timely, economically responsible, and fiscally efficient completion of the Central Utah Project.

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

S. 1362. A bill to amend title XVIII of the Social Security Act and title VII of the Public Health Service Act to expand medical residency training programs in geriatrics, and for other purposes; to the Committee on Finance.

Mr. HUTCHINSON. Mr. President, I am pleased today to be joined by my colleague, Senator CRAIG, In introducing the Advancement of Geriatric Education Act of 2001, or AGE Act is comprehensive legislation which seeks to prepare physicians and other health care professionals to care for our Nation's growing aging population.

It is a know fact that children cannot be treated like little adults and prescribed the same medications in the same dosage amounts. For this reason, we have pediatricians. But just as there are differences between children and adults, so are there differences between middle aged adults and seniors. Many people are unaware that aging individuals often exhibit different symptoms than younger adults with the same illness. For example, an older person who has a heart attack may not experience excruciating chest pain, but rather, show signs of dizziness and confusion. Similarly, older people often exhibit different responses to medications than younger people.

The demographic reality is that there is an enormous segment of the population which will soon be age 65 or older, and there is serious doubt that the U.S. health system will be equipped to handle the multiple needs and demand of an aging population. By 2030, it is projected that one in five Americans will be over age 65.

Geriatricians are physicians who are experts in aging-related issues and the

study of the aging process itself. They are specially trained to prevent and manage the unique and often multiple health problems of older adults. Geriatric training can provide health care professionals with the skills and knowledge to recognize special characteristics of older patients and distinguish between disease states and the normal physiological changes associated with aging. Our health care system must increase its focus in this vital area.

Today, there are 9,000 practicing, certified geriatricians in the United States, far short of the 20,000 geriatricians estimated to be necessary to meet the needs of the current aging population. By the year 2030, it is estimated that at least 36,000 geriatricians will be needed to manage the complex health and social needs of the elderly. These figures, as astounding as they sound, say nothing of the geriatrics training needed for all health care professionals who are facing such an increasingly older patient population.

Unfortunately, out of 125 medical schools in our country, only 3 have actual Departments of Geriatrics, including the University of Arkansas for Medical Sciences. Moreover, only 14 schools include geriatrics as a required course, and one-third of medical schools do not even offer geriatrics as a separate course elective.

Congress has taken some positive steps to increase our focus on geriatrics, including the establishment of Geriatric Education Centers and Geriatric Training Programs, which seek to train all health professionals in the area of geriatrics. Congress has also established the Geriatric Academic Career Award program, which promotes the development of academic geriatricians.

It is clear to me, however, that more steps need to be taken, which is why I have introduced the AGE Act today. The AGE Act encourages more physicians to specialize in the area of geriatrics and enhances the current federal programs relating to geriatrics under the Public Health Service Act. The AGE Act is supported by the American Geriatrics Society, the International Longevity Center, and the American Association of Geriatric Psychiatry. I ask unanimous consent that a summary of the AGE Act and the text of the bill be printed in the RECORD.

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

S. 1362

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Advancement of Geriatric Education Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Disregard of certain geriatric residents and fellows against graduate medical education limitations.
Sec. 3. Extension of eligibility periods for geriatric graduate medical education.
Sec. 4. Study and report on improvement of graduate medical education.
Sec. 5. Improved funding for education and training relating to geriatrics.

SEC. 2. DISREGARD OF CERTAIN GERIATRIC RESIDENTS AND FELLOWS AGAINST GRADUATE MEDICAL EDUCATION LIMITATIONS.

(a) DIRECT GME.—Section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)) is amended by adding at the end the following new clause:

''(iii) INCREASE IN LIMITATION FOR GERIATRIC RESIDENCIES AND FELLOWSHIPS.—For cost reporting periods beginning on or after the date that is 6 months after the date of enactment of the Advancement of Geriatric Education Act of 2001, in applying the limitations regarding the total number of full-time equivalent residents in the field of allopathic or osteopathic medicine under clause (i) for a hospital, the Secretary shall not take into account a maximum of 5 residents enrolled in a geriatric residency or fellowship program approved by the Secretary for purposes of paragraph (5)(A) to the extent that the hospital increases the number of geriatric residents or fellows above the number of such residents or fellows for the hospital's most recent cost reporting period ending before the date that is 6 months after the date of enactment of such Act.''.

(b) INDIRECT GME.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding at the end the following new clause:

''(ix) Clause (iii) of subsection (h)(4)(F) shall apply to clause (v) in the same manner and for the same period as such clause (iii) applies to clause (i) of such subsection.''.

SEC. 3. EXTENSION OF ELIGIBILITY PERIODS FOR GERIATRIC GRADUATE MEDICAL EDUCATION.

(a) DIRECT GME.—Section 1886(h)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(G)) is amended by adding at the end the following new clause:

''(vi) GERIATRIC RESIDENCY AND FELLOWSHIP PROGRAMS.—In the case of an individual enrolled in a geriatric residency or fellowship program approved by the Secretary for purposes of subparagraph (A), the period of board eligibility and the initial residency period shall be the period of board eligibility for the subspecialty involved, plus 1 year.''.

(b) CONFORMING AMENDMENT.—Section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) is amended by striking ''subparagraph (G)(v)'' and inserting ''clauses (v) and (vi) of subparagraph (G)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after the date that is 6 months after the date of enactment of this Act.

SEC. 4. STUDY AND REPORT ON IMPROVEMENT OF GRADUATE MEDICAL EDUCATION.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study to determine how to improve the graduate medical education programs under subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) so that such programs prepare the physician workforce to serve the aging population of the United States. Such study shall include a determination of whether the establishment of an initiative to encourage the development of individuals as academic geriatricians would improve such programs.

(b) REPORT.—Not later than the date that is 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations for legislative and administrative action as the Secretary determines appropriate.

SEC. 5. IMPROVED FUNDING FOR EDUCATION AND TRAINING RELATING TO GERIATRICS.

(a) GERIATRIC FACULTY FELLOWSHIPS.—Section of 753(c)(4) of the Public Health Service Act (42 U.S.C. 294c(c)(4)) is amended—

(1) in subparagraph (A), by striking ''$50,000 for fiscal year 1998'' and inserting ''$75,000 for fiscal year 2002''; and

(2) in subparagraph (B), by striking ''shall not exceed 5 years'' and inserting ''shall be 5 years''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 757 of the Public Health Service Act (42 U.S.C. 294g) is amended—

(1) in subsection (a)—

(A) by striking ''IN GENERAL.—There are authorized'' and inserting ''AUTHORIZATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), there are authorized''; and

(B) by adding at the end the following:

''(2) EDUCATION AND TRAINING RELATING TO GERIATRICS.—There are authorized to be appropriated to carry out section 753 such sums as may be necessary for each of fiscal years 2002 through 2006.''; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking ''and'' at the end; and

(ii) by striking subparagraph (C) and inserting the following:

''(C) not less than $22,631,000 for awards of grants and contracts under—

''(i) section 753 for fiscal years 1998 through 2001; and

''(ii) sections 754 and 755 for fiscal years 1998 through 2002; and

''(D) for awards of grants and contracts under section 753 after fiscal year 2001—

''(i) in 2002, not less than $20,000,000;

''(ii) in 2003, not less than $24,000,000;

''(iii) in 2004, not less than $28,000,000;

''(iv) in 2005, not less than $32,000,000; and

''(v) in 2006, not less than $36,000,000.'';

(B) in paragraph (2), by striking ''subparagraphs (A) through (C)'' and inserting ''subparagraphs (A) through (D)''; and

(C) in paragraph (3), by striking ''subparagraphs (A) through (C) of paragraph (2)'' and inserting ''subparagraphs (A) through (D) of paragraph (1)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2001.

ADVANCEMENT OF GERIATRIC EDUCATION (AGE) ACT OF 2001—LEGISLATIVE SUMMARY

I. PROVIDES AN EXCEPTION TO THE CAP ON RESIDENTS FOR GERIATRIC RESIDENTS

The AGE Act amends the Medicare graduate medical education (GME) resident cap imposed under BBA 97 to provide exceptions for geriatric residents in approved training programs. The 1997 BBA instituted a per-hospital cap based on the number of GME residency slots in existence on or before December 31, 1996. As geriatrics is a relatively new specialty, the cap has resulted in either the elimination or reduction of geriatric of geriatric training programs. This is because a lower number of geriatric residents existed prior to December 31, 1996. The AGE Act provides for an exception from the cap for up to 5 geriatric residents.

II. REQUIRES MEDICARE GME PAYMENT FOR THE 2ND YEAR OF GERIATRIC FELLOWSHIP TRAINING

Under current law, hospitals receive 100 percent GME reimbursement for an individuals's initial residency period, up to five years. The law also includes a geriatric exception allowing programs training geriatric fellows to receive full funding for an

additional period comprised of the first and second years of fellowship training. Programs training non-geriatric fellows receive 50 percent of GME funding for fellowship training. In 1998, the period of board eligibility for geriatrics was decreased to one year, in an effort to encourage more geriatrics specialists. However, this change was not intended to reduce support for training of teachers and researchers in geriatrics. A two-year fellowship remains the generally accepted standard, and is generally required to become an academic geriatrician. The AGE Act explicitly authorizes Medicare GME payments for the second year of fellowship.

III. DIRECTS THE SECRETARY OF HHS TO REPORT TO CONGRESS ON WAYS TO IMPROVE THE MEDICARE PROGRAMS TO READY THE PHYSICIAN WORKFORCE TO SERVE THE AGING POPULATION, INCLUDING WHETHER AN INITIATIVE SHOULD BE ESTABLISHED TO DEVELOP ACADEMIC GERIATRICIANS

It is estimated that the country currently has one-quarter of the academic geriatricians necessary to train and educate physicians in the area of geriatrics. Out of 125 medical schools in our country, only 3 have actual Departments of Geriatrics. Moreover, only 14 schools include geriatrics as a *requried* course, and one third of medical schools do not even offer geriatrics as a separate course elective. The AGE Act requires the Secretary of HHS to examine ways to prepare the physician workforce to serve the aging population, including initiatives to develop academic geriatricians, and to report to Congress within 6 months after the date of enactment.

IV. ENHANCES AND AUTHORIZES GREATER FUNDING FOR THE GERIATRIC TRAINING SECTIONS OF THE PUBLIC HEALTH SERVICE ACT

Section 735, Title VII of the Public Health Service Act, encompasses Geriatric Education Centers, which provide geriatrics training to all health professionals (Arkansas has a Geriatric Education Center program), a program to provide geriatric training to dentists and behavioral and mental health benefits, and the Geriatrics Academic Development Award program, which creates junior faculty awards to encourage the development of academic geriatricians. The AGE Act increases the amount of the Geriatric Academic Development Award from $50,000 to $75,000, and authorizes greater funding for all three programs in Fiscal Years 2002 through 2006 ($20 million in Fiscal Year 2002, $24 million in Fiscal Year 2003, $28 million in Fiscal Year 2004, $32 million in Fiscal Year 2005, and $36 million in Fiscal Year 2006).

By Mr. SMITH of New Hampshire (for himself, Mr. GREGG, Mr. LEAHY, and Mr. JEFFORDS):

S. 1363. A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont; to the Committee on Energy and Natural Resources.

Mr. SMITH of New Hampshire. Mr. President, I am pleased to introduce the Upper Connecticut River Partnership Act of 2001. This legislation is a truly locally-led initiative. I believe it will result in great environmental benefits for the Connecticut River.

The Connecticut River forms the border to New Hampshire and Vermont and provides for a great deal of recreational and tourism opportunities for residents of both States. This legislation takes a major step forward in making sure this River continues to thrive as a treasured resource.

To understand just how significant this legislation is, I would like to share with my colleagues some history about the Connecticut River program. In 1987–88, New Hampshire and Vermont each created a commission to address environmental issues facing the Connecticut river valley. The commissions were established to coordinate water quality and various other environmental efforts along the Connecticut river valley. The two commissions came together in 1990 to form the Connecticut River Joint Commission. The Joint Commission has no regulatory authority, but carries out cooperative education and advisory activities.

To further the local influence of the Commission, the Connecticut River Joint Commission established five advisory bi-state local river subcommittees comprised of representatives nominated by the governing body of their municipalities. These advisory groups developed a Connecticut River Corridor Management Plan. A major portion of the plan focuses on channeling federal funds to local communities to implement water quality programs, nonpoint source pollution controls and other environmental projects. Over the last ten years, the Connecticut River Joint Commission has fostered widespread participation and laid a strong foundation of community and citizen involvement.

As a Senator from New Hampshire and the ranking Republican of the Environment and Public Works Committee, as well as someone who enjoys the beauty of the Connecticut River, I am proud to be the principal author and cosponsor of this locally led, voluntary effort that accomplishes real environmental progress. Too often we depend on bureaucratic federal regulatory programs to accomplish environmental success. This bill takes a different approach and one that I bet will achieve greater results on the ground. I hope that other communities and neighboring states will look at this model as an example of how to develop and implement true voluntary, on the ground, locally-led environmental programs.

I want to thank my colleague from New Hampshire, Senator GREGG, and the two distinguished Senators of Vermont, Senators LEAHY and JEFFORDS, for joining me as original cosponsors to this legislation. I look forward to working with them as we move this important legislation through the Senate.

By Mr. HOLLINGS (for himself, Mr. INOUYE, and Mr. STEVENS):

S. 1364. A bill to ensure full and expeditious enforcement of the provisions of the Communications Act of 1934 that seek to bring about the competition in local telecommunications markets, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise to introduce, S. 1364, the Telecommunications competition Enforcement Act of 2001.

I introduce this bill to affirm and enforce the competitive tenants of the Telecommunications Act of 1996. Some want to deregulate the Bell companies and mistakenly assert that deregulation will lead to increased deployment of broadband services. I disagree. The evidence simply does not support such a conclusion. It is only through strengthening and enforcing the competitive provisions of the 1996 Act that local phone markets will become open to competition and the delivery of advanced services will be enhanced.

Congress in conjunction with members of the industry worked to pass the 1996 Act. I should note that at that time, everyone realized the impending innovations in technology and the potential for new and advanced services. These technological changes were expected to allow phone companies to provide high speed data and video services over their facilities, while also allowing cable companies to provide high speed data and phone services over their facilities. It was unquestionably understood by everyone involved that competition would be the driving force for incumbent companies to provide new services. And was this the right way to proceed? Of course it was. A wall street analysis with Montgomery Securities stated that ''RBOCs have finally begun to feel the competitive pressure from both CLECs and cable modem providers and are now planning to . . . accelerate/expand deployment of ADSL in order to counter the threat.'' Another wall street analyst with Prudential Securities noted that with respect to RBOC deployment of broadband service an ''important motivating factor is the threat of competition [and] [o]ther players are taking dead aim at the high-speed Internet access market.''

Let us not forget the context in which the 1996 Act was passed. When Judge Greene in the 1990s broke-up Ma Bell, the agreement limited the service areas that the Regional Bell Operating Companies could enter. Judge Greene understood the significant market power of the Bell companies who had no competitors in their local markets and had complete access to the customer. Clearly, under such conditions, if Bells were allowed to enter new markets, they could quickly decimate their competitors by leveraging their monopolies in their local markets. Consequently, in an effort to protect competition in other areas, Judge Greene restricted their access to other markets. For these reasons, the Bell companies came to Congress for a solution that would eliminate their service restrictions. After many years of hard work, numerous hearings, and tons of analyses, Congress in an agreement

with all the relevant parties including the Bells, long distance service providers, cable companies, and consumer organizations put together a framework that met the needs and requests of all involved parties and one that gave the Bells what they most coveted, entrance into all markets. In doing so, however, Congress also put in place provisions to preserve competition.

Under these conditions, the Bell companies worked with Congress to draft and pass the 1996 Act, and when the Act was finally passed, the Bell companies stated that they would quickly and aggressively open their local markets to competition. On March 5, 1996, Bell South-Alabama President, Neal Travis, stated that ''We are going full speed ahead . . . and within a year or so we can offer [long distance] to our residential and business wireline customers.'' Ameritech's chief executive officer, Richard Notebaert on February 1, 1996, indicated his support of the 1996 Act by stating that, ''[T]his bill will rank as one of the most important and far-reaching pieces of federal legislation passed this decade. . . . It offers a comprehensive communications policy, solidly grounded in the principles of the competitive marketplace. It's truly a framework for the information age.'' On February 8, 1996, US West's President of Long Distance, Richard Coleman, predicted that USWest would meet the 14 point checklist in a majority of its states within 12–18 months. Unfortunately, the Bell companies have not kept their promises. Instead of getting down to the business of competing, the Bell companies chose a strategy of delay. In doing so, they have litigated, they have complained, and they have combined. In other words they have done everything except work to ensure competition in local markets.

When the Bells first filed applications with the Federal Communications Commission, FCC, to enter the long distance market, contrary to their assertions, the FCC and the Department of Justice, DOJ, found that the local markets were not open to competition, and on that basis denied the companies entry into the long distance market. Once the Bells realized that they were not going to get into the long distance market before complying with the 1996 Act, they began a strategy of litigation which had two effects: 1. to delay competition into their local markets and 2. to hold on to their monopoly structure as they entered new markets in order to demolish their competitors. They appealed a series of the FCC's decisions to the courts and challenged the constitutionality of the 1996 Act even taking the case to the Supreme Court.

Having lost in the courts, the Bells have now returned to Congress complaining about the 1996 Act, the very Act that they had previously championed. Many of the Bell companies have been meeting with Senators and Representatives, often accompanied by the same lawyers who helped write the 1996 Act. But this time their message is different. Instead of embracing competition, the once laudable goal they had proclaimed to be seeking, they now want to change the rules of the game and move in the opposite direction. Specifically, they now want to offer lucrative high-speed data services to long distance customers without first opening their local markets to competition, and they want to block their competitors from using their networks to provide high speed data service. As a result of these efforts, the Bells have successfully convinced some members of Congress to introduce bills that in essence allow them to offer such service while protecting the Bells against competition and slowing the delivery of affordable advanced service to consumers by gutting the 1996 Act.

Bell companies claim that because no one contemplated the growth of data services that they should be permitted to continue their hold on the local customer as they provide broadband services. To state it plainly, they are wrong. The technology to provide broadband data services over the Bell network has been around since the early 1980s, but the Bells were slow to deploy service until competition prompted them to do so. Furthermore, recognizing the great potential of broadband services, Richard McCormick, then CEO and Chairman of USWest, in 1994 testifying before the Senate Commerce Committee stated the following:

> I want to touch briefly on USWest's business plan. We have embarked on an aggressive program both within our 14-state region and outside to deploy broadband. We want to be the leader in providing interactive, that is, two-way multimedia services, voice, data, video.

In addition to the Bells realizing the importance of broadband service, Congress recognized the importance of broadband services when it passed the 1996 Act and included section 706 which is dedicated to promoting the development and deployment of advanced services. To quote the Act, ''advanced telecommunications capability'' is defined as ''high-speed switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.'' Also a search of the legislative debate on the 1996 Act reveals that the word ''Internet'' appears 273 times. Even the preamble to the 1996 Act refers to ''advanced telecommunications and information technologies and services.'' With this evidence before it, the FCC also concluded that the competitive provisions of the 1996 Act included high-speed, advanced data and voice services.

Today, all Bell companies are providing DSL service to customers. In fact, in October of 1999, SBC announced it would spend $6 billion over 3 years on ''project Pronto'' which is the company's initiative to become the largest single provider of advanced broadband services in America. And on that point, I certainly commend SBC on its efforts. Through 2000, the four Bell companies invested 3.3. billion in DSL deployment and are expected to spend $10.3 billion through 2003. This investment is expected to payoff as earnings from their DSL investments are expected to be positive by late 2002 as market penetration hits 10 percent. By the end of the first quarter of this year, SBC and BellSouth reached about 50 percent of their customer base while Verizon reached abut 42 percent with DSL service offerings.

Additionally, reports indicate that broadband service is being effectively deployed. In an August 2000 report, the FCC concluded that overall, broadband service is being deployed on a reasonable and timely basis. It also found that there has been ample national deployment of backbone and other fiber facilities that provide backbone functionality. In October of 2000, the FCC issued another report in which it determined that high speed lines connecting homes and small businesses to the Internet increased by 57 percent during the first half of 2000. These developments effectively demonstrate why there is no justification for further deregulation of the Bells at least not until competition in the local markets is acheived.

A major issue in this debate is how to serve rural and underserved ares. However, there it is no demonstrated commitment by the Bells to serve the rural markets. In fact, there behavior would lead you to the opposite conclusion. Qwest/USWest has sold nearly 600 smaller exchanges representing about 500,000 access lines and GTE has sold $1.6 milion access lines. Joe Nacchio, Chief Executive Officer of Qwest stated, ''I would have not qualms selling seeral million access lines if [I] could find the real deal.'' He also noted that ''we have about 17.5 million access line—we really like 11 [million].''

While expending a great deal of resources litigating and complaining, Bell companies also have expended a fair amount of their energies in another area, that is merging and combining. In August of 1997, Verizon acquired NYNEX and in June of 2000 acquired GTE. First, SBC acquired Pac Bell, and in October of 1999, acquired Ameritech. The combined company now controls one-third of all access lines in the United States. In March of 2000, Qwest acquired USWest. At the same time, Bell Atlantic acquired Vodafone. In September of 2000, BellSouth Wireless and SBC Wireless entered into a joint venture, Cingular. Yet the local phone markets remain largely closed to competition.

Even though there are many companies working to build a business in the local market, the Bells have met the 271 checklist in only six States, New York, Texas, Oklahoma, Kansas, Massachusetts, and Connecticut. Undoubtedly, if they cannot obtain real access

to the local phone markets, competitive companies will not be able to make a go of their businesses. My grave concern is that they will not be able to survive the Bell strategy of delay. Today, CLECs are struggling to survive. Of the 300 CLECs that began providing service since 1996, several have declared bankruptcy or are on the verge of failing and several others have scaled back their buildout plans. CLECs are faced with a significant downturn in the marketplace, tremendous difficulty in raising capital, and local markets that remain largely closed to competition. From the standpoint of capital, CLECs are particularly sensitive to the financial market since the vast majority of them are not profitable and rely on the capital markets for funding. Relying on the marketplace, CLECs have raised and spent $56 billion in their attempts to compete in the local market. Of the publicly traded CLECs in 2000, only 4 CLECs made a profit. Additionally, as a result of the market downturn, the market capitalization of CLECs fell from a high of $86.4 billion in 1999 to $32.1 billion in 2000.

In Congress, we hear about the continued problems faced by competitive carriers trying to obtain access to the Bell network. Between December 1999 and April 2001, both the FCC and state regulators have imposed fines on several Bell companies for violations of their market opening and service quality requirements and other rules. For BellSouth, these fines totaled $804,750, for Qwest, $78.6 million, for SBC, $175 million, and for Verizon, $233 million. However, while these fines may be substantial to most businesses, many in the industry believe that they simply represent the cost of doing business for the Bell companies which over the past year had annual revenues in the range of tens of billions of dollars. Specifically, BellSouth's total revenues were $25.6 billion, Qwest, $18.3 billion, SBC, $50.1 billion, and Verizon, $66.4 billion. Chairman Powell has stated that in order to make fines a more effective tool, Congress should increase the FCC's current fine authority against a common carrier for a single continuing violation from $1.2 million to at least $10 million and extend the statute of limitations for violations which currently stands at 1 year.

In order to get local competition going, the Pennsylvania PUC mandated the functional separation of the retail and wholesale functions of Verizon. Petitions have been filed to impose structural separation in, Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, New Jersey, North Carolina, South Carolina, Tennessee, and Virginia. Legislation has also been introduced in the State legislatures of Maryland, Michigan, Minnesota, and New Jersey on the issue of structural separation. In September of last year, Chairpersons of the Commissions in Illinois, Indiana, Michigan, Ohio, and Wisconsin, issued a joint statement asserting that although the Commissions had taken repeated and sustained actions over the past months to address operating deficiencies with respect to SBC-Ameritech, CLEC customers had experienced a marked decline in service quality in purchasing network elements from SBC-Ameritech.

In addition to these actions by regulators, the courts also have taken action. In California in 1997, Caltech International Telecom Corporation sued SBC-Pacific Bell claiming that SBC was violating antitrust laws by acting anticompetitively and blocking competitors from their local phone market. Last year, a Federal district court ruled in favor of Caltech. Covad has sued SBC, Verizon, and BellSouth and already has obtained a $24 million arbitration ruling against SBC. Consumers have filed suit in the Superior Court of D.C. alleging that Verizon signed up over 3,000 new customers per day knowing that the company would be unable to provide high-speed service as promised and that its customers would experience significant disruptions and significant delays in obtaining technical support.

Regrettably, as Bells seek to block their competitors from entering their markets, many consumers are suffering through poor quality of Bell service. In New York, the Communications Workers of America issued a service quality report in which it stated that ''Verizon has systematically misled state regulators and the public by falsifying service quality data submitted to the PSC'' and ''60 percent of workers have been ordered to report troubles as fixed when problems remained.'' 91 percent of field technicians surveyed reported that they were dispatched on repairs of recent installations only to find that dial tone had never been provided. Additionally, consumers with inside wiring maintenance plans were not receiving the services for which they were paying.

Concerned about competition and service quality, the FCC as well as state Commissions have opposed legislative efforts to further deregulate the Bell companies. In response to such measures, former Chairman of the FCC, William Kennard, stated that such legislation would only upset the balance struck by the 1996 Act, . . . [and] would reverse the progress attained by the Act.'' Mr. Kennard went on to state that ''the Telecommunications Act of 1996 is working. Because of years of litigation, competition did not take hold as quickly as some had hoped. The fact that it is now working, however, is undeniable. Local markets are being opened, broadband services are being deployed, and competition, including broadband competition is taking root.'' More recently at a hearing before Congress in March, Chairman Powell of the FCC counseled against reopening the Telecommunications Act of 1996. He stated that ''any wholesale rewrite of the Telecom Act would be ill-advised.'' The Former Assistant Secretary for Communications and Information, Greg Rhode also stated that ''[d]espite the progress being made under the pro-competitive approach of the Telecommunications Act of 1996, some in Congress are talking about changing directions. Under the veil of 'de-regulation for data services' some are talking about stopping the progress of competition . . . competition, structured under the 1996 Act, is the model that will best deliver advanced telecommunications and information services, such as high speed Internet access. Walking away from the Act's pro-competitive provisions at this point would be a serious mistake.'' Recognizing the importance of the 1996 Act, the National Association of Regulatory Utilities Commissioners adopted a resolution opposing federal legislation that would deregulate the Bells and restrict the ability of State public utility commissions from fulfilling their obligations to regulate core telecommunications facilities that are used to provide both voice and data services and to promote deployment of advanced telecommunications capabilities.

Given the lack of competition in the local markets, the intransigent behavior of the Bell companies, and concerns about poor service quality, we are left with no choice but to adopt measures that will ensure Bell compliance with the 1996 Act. This will have to include not only fines, but also the separation of a Bell's retail operations responsible for marketing services to consumers from its wholesale operations responsible for operating and selling capacity on the network. Bell companies continue to have substantial profit margins and revenues in the billions of dollars. In contrast, Bear Stearns has stated that it expects half of the CLECs to disappear because of bankruptcy and consolidation. Unquestionably, I do anticipate that competition will weed out poor competitors. However, it does not serve consumers well for competitors to be weeded out because monopolies are not playing fair.

I strongly believe that the power that the Bell companies have wielded to block their competitors from the local markets must be curbed. That's why I rise to introduce legislation today. Under my bill within one year after passage of the legislation, a Bell company is required to provide retail service through a separate division. If a Bell company has to resell or provide portions of its network to its division on the same terms and conditions that it provides to its competitors, then it will quickly and affordably make its network available to competitors.

Requiring a company to separate functions or divest property is not a novel concept. In 1980, the court decided that the only way to introduced competition into the long distance market was to require Ma Bell to divest the Baby Bells. This has worked well and now the long distance market is competitive. More recently, the Pennsylvania PSC has required Verizon

to separate its retail operations from its wholesale operations. These decisions are all based on concerns about the ability of a company to distort competition because the company has significant market power.

Also, my bill clarifies that a carrier may bring an action against a Bell company to comply with the competition provisions of the 1996 Act at the FCC or at a State commission, and has the option of entering an alternative dispute resolution, ADR, process to enforce an interconnection agreement. The FCC is required to resolve such a complaint in 90 days and issue an interim order to correct the dispute within 30 days upon a proper showing by the carrier bringing the dispute.

My bill requires the FCC to impose a penalty of $10 million for each violation and $2 million for each day of each violation. The FCC can treble the damages if the Bell company repeatedly violates competitive provisions of the 1996 Act. I have chosen to include hefty fines, because the fines at the FCC are too small to have any real effect. I am also struck by the fact that for the Bells, fines seem to be just a cost of doing business and not a punishment that deters or positively affects their behavior. As Chairman Powell has stated, the FCC's ''fines are trivial and the cost of doing business to many of these companies.'' My bill would also require the FCC to establish performance guidelines detailing what Bell companies must do in order to allow CLEC's to interconnect with the Bell network.

Today, our communications network remains the envy of the world and the development of innovative advanced services is accelerating rapidly. Last year in a discussion about the lead America has over Europe with respect to the technology revolution, Thomas Middlehof, chief executive of Bertlemann, which is Europe's largest media conglomerate stated that ''Europe just doesn't get the message . . . [g]overnments are still trying to protect the old industrial structure.'' The article also noted that ''many [European] leaders now acknowledge a basic policy failure of the past decade [was] subsidizing dying industries.'' With that said, it is unfortunate that the rollout of local and broadband services on a competitive basis to all Americans is being thwarted by the failure of Bell companies to open their markets to competition. These same monopolists told us their markets would be open years ago. This legislation seeks to hold them to their word.

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. 1364

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 ''Telecommunications Fair Competition Enforcement Act of 2001''.

SEC. 2. FINDINGS.

The Congress finds:

(1) The Telecommunications Act of 1996 put in place the proper framework to achieve competition in local telecommunications markets.

(2) The Telecommunications Act of 1996 recognized that local exchange facilities are essential facilities and required that all incumbent local exchange carriers open their markets to competition by interconnecting with and providing network access to new entrants, a process to be overseen by Federal and State regulators.

(3) To increase the incentives of the Bell operating companies to open their local networks to competition, the Telecommunications Act of 1996 allows the Bell operating companies to provide interLATA voice and data services in their service region only after opening their local networks to competition.

(4) While some progress has been made in opening local telecommunications markets, the Federal Communications Commission has determined that, 6 years after passage of the Telecommunications Act of 1996, the Bell operating companies have met the market opening requirements of that Act in only 5 States.

(5) It is apparent that the incumbent local exchange carriers do not have adequate incentives to cooperate in this process and that regulators have not exercised their enforcement authority to require compliance.

(6) By improving mandatory penalties on Bell operating companies and their affiliates that have not opened their network to competition, there will be greater assurance that local telecommunications markets will be opened more expeditiously and, as a result, American consumers will obtain the full benefits of competition.

(7) Competitive carriers continue to experience great difficulty in gaining access to the Bell network, and, 5 years after enactment of the Telecommunications Act of 1996, Bell operating companies continue to control over 92 percent of all access lines nationwide.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to improve and strengthen the enforcement of the Telecommunications Act of 1996, in order to ensure that local telecommunications markets are opened more rapidly to full, robust, and sustainable competition; and

(2) to provide an alternative dispute resolution process for expeditious resolution of disputes concerning interconnection agreements.

SEC. 4. ENFORCEMENT OF COMPETITION.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following:

''PART IV—ENFORCEMENT

''SEC. 291. SHARED JURISDICTION OVER CERTAIN DISPUTES.

''(a) VIOLATIONS OF SECTIONS 251, 252, 271, AND 272.—A complaint under section 208 alleging that a specific act or practice or failure to act, of a Bell operating company or its affiliate, constitutes a violation of section 251, 252, 271, or 272 may be filed at the Commission or at a State commission.

''(b) ENFORCEMENT OF INTERCONNECTION AGREEMENTS.—An action to enforce compliance by a Bell operating company or its affiliate with an interconnection agreement entered into under section 252 may be initiated at the Commission or at a State Commission.

''(c) INITIATING PARTY.—A complaint described in subsection (a) or an enforcement action described in subsection (b) may be brought by a telecommunications carrier or by the Commission or a State commission on its own motion.

''SEC. 292. EXPEDITED CONSIDERATION OF INTERCONNECTION, INTERLATA, AND SEPARATE AFFILIATE COMPLAINTS AND ENFORCEMENT ACTIONS.

''(a) IN GENERAL.—The Commission shall make a final determination with respect to any complaint described in section 291(a) or an enforcement action described in section 291(b) within 90 days after the date on which the complaint, or the filing initiating the action, is received by the Commission.

''(b) INTERIM RELIEF.—

''(1) VIOLATIONS OF ACT.—Within 30 days after a complaint described in section 291(a) has been filed with the Commission, the Commission shall issue an order to the Bell operating company or its affiliate named in the complaint directing it to cease the act or practice that constitutes the alleged violation, or initiate an act or practice to correct the alleged violation, pending a final determination by the Commission if—

''(A) the complaint contains a prima facie showing that the alleged violation occurred or is occurring;

''(B) the complaint describes with specificity the act or practice, or failure to act, that constitutes the alleged violation; and

''(C) it appears from specific facts shown by the complaint or an accompanying affidavit that substantial injury, loss, or damage will result to the complainant before the 90-day period in subsection (a) expires if the order is not issued.

''(2) INTERCONNECTION AGREEMENTS.—Within 30 days after an enforcement action described in section 291(b) has been initiated at the Commission by a telecommunications carrier, the Commission shall issue an order to the Bell operating company or its affiliate named in the action directing it to cease the act or practice that constitutes the alleged noncompliance with the interconnection agreement, or initiate an act or practice to correct the alleged noncompliance, pending a final determination by the Commission if—

''(A) the filing initiating the action contains a prima facie showing that the alleged noncompliance occurred or is occurring;

''(B) the filing describes with specificity the act or practice, or failure to act, that constitutes the alleged noncompliance; and

''(C) it appears from specific facts shown by the filing or an accompanying affidavit that substantial injury, loss, or damage will result to the telecommunications carrier before the 90-day period in subsection (a) expires if the order is not issued.

''(c) BURDEN OF PROOF.—In any proceeding under this part with respect to a complaint described in section 291(a), or an enforcement action described in section 291(b), by a telecommunications carrier against a Bell operating company or its affiliate, and upon a prima facie showing by a carrier that there are reasonable grounds to believe that there is a violation or noncompliance, the burden of proof shall be on such Bell operating company or its affiliate to demonstrate its compliance with the section allegedly violated, or with the terms of such agreement, as the case may be.

''SEC. 293. ALTERNATIVE DISPUTE RESOLUTION OF INTERCONNECTION COMPLAINTS.

''(a) INTERCONNECTION AGREEMENTS.—A party to an interconnection agreement entered into under section 252 may submit a dispute under the agreement to the alternative dispute resolution process established by subsection (b). An action brought under

this section may be brought in lieu of an action described in section 291(b) at the Commission or at a State commission.

''(b) ALTERNATIVE DISPUTE RESOLUTION PROCESS.—

''(1) COMMISSION TO PRESCRIBE PROCESS.—Within 180 days after the date of enactment of the Telecommunications Fair Competition Enforcement Act of 2001, the Commission shall, after notice and opportunity for public comment, issue a final rule implementing an alternative dispute resolution process for the resolution of disputes under interconnection agreements entered into under section 252. The process shall be available to any party to such an agreement, including agreements entered into prior to the date of enactment of that Act, unless such prior agreement specifically precludes the use of alternative dispute resolution.

''(2) PROCESS REQUIREMENTS.—In carrying out paragraph (1), the Commission shall prescribe a process that—

''(A) provides for binding private commercial arbitration of disputes in an open, nondiscriminatory, and unbiased forum;

''(B) ensures that a dispute submitted to the process can be resolved within 45 days after the date on which the dispute is filed; and

''(C) requires any decision reached under the process to be in writing, available to the public, and posted on the Internet.

''(3) REQUESTS FOR INFORMATION.—Any person or panel conducting an arbitration under this subsection may require any party to the dispute to provide such information as may be necessary to enable that person or panel to reach a decision with respect to the dispute. If the party that receives such a request for information fails to comply with such a request for information within 7 business days after the date on which the request was made, then, unless that party shows that the failure to comply was due to extenuating circumstances, the person or panel conducting the arbitration shall render a decision or award in favor of the other party to the arbitration within 14 business days after the date on which the request was made. The decision or award in favor of a party shall not apply if the party in whose favor a decision or award would be rendered under the preceding sentence is not in compliance with a request for information from the person or panel conducting the arbitration.

''(4) REMEDIES AND AUTHORITY OF ARBITRATOR.—Any person or panel conducting an arbitration under this subsection may grant to the prevailing party any relief available in law or equity, including remedies available under this Act, injunctive relief, specific performance, monetary awards, and direct, consequential, and compensatory damages.

''(5) ARBITRATION AWARD AND ENFORCEMENT.—A final decision or award made by a person or panel conducting an arbitration under this subsection shall be binding upon the parties and is not subject to appeal by the parties or review by the Commission, a State commission, or any Federal or State court. A decision or award under the process may be enforced in any district court of the United States having jurisdiction under sections 9 through 13 of title 9, United States Code.

''SEC. 294. ENFORCEMENT OF PERFORMANCE STANDARDS.

''(a) COMMISSION TO PRESCRIBE PERFORMANCE STANDARDS FOR COMPLIANCE WITH INTERCONNECTION AGREEMENTS.—Not later than 180 days after the date of enactment of the Telecommunications Fair Competition Enforcement Act of 2001 the Commission shall, after notice and opportunity for public comment, issue final rules for performance standards, data validation procedures, and audit requirements to ensure prompt and verifiable implementation of interconnection agreements entered into under section 252 and for the purposes of sections 251, 252, 271, and 272. At a minimum, the rules shall include the most rigorous performance standards, data validation procedures, and audit requirements for such agreements adopted by the Commission or any State commission before the date of enactment of the Telecommunications Fair Competition Enforcement Act of 2001, as well as any new performance standards, data validation procedures, and audit requirements needed to ensure full compliance with the requirements of this Act for the opening of local telecommunications markets to competition. In establishing performance standards, data validation procedures, and audit requirements under this section, the Commission shall ensure that such standards, procedures, and requirements are quantifiable and sufficient to determine ongoing compliance by incumbent local exchange carriers with the requirements of their interconnection agreements, including the provision of operating support systems, special access, and retail and wholesale customer service standards, and for the purposes of enforcing sections 251, 252, 271, and 272.

''(b) SPECIFIC REQUIREMENT FOR PROVISION OF LOCAL LOOPS.—A Bell operating company or its affiliate which has not been granted an exemption, suspension, or modification under section 251(f) of the requirement to provide access to local loops (including subloop elements to the extent required under section 251(d)(2)) as an unbundled network element under section 251(c)(3) shall provide any such local loop to a requesting telecommunications carrier with which such Bell operating company or affiliate has an interconnection agreement entered into under section 252 within 5 business days after receiving a request for a specific local loop.

''(c) ENFORCEMENT OF PERFORMANCE METRICS.—Any violation of this section, or the rules adopted hereunder, shall be a violation of section 251.

''SEC. 295. FORFEITURES; DAMAGES; ATTORNEYS FEES.

''(a) IN GENERAL.—The forfeitures provided in this section are in addition to any other requirements, forfeitures, and penalties that may be imposed under any other provision of this Act, any other law, or by a State commission or court.

''(b) FORFEITURES FOR VIOLATION OF SECTIONS 251, 252, 271, OR 272.—

''(1) IN GENERAL.—The Commission shall impose a forfeiture of $10,000,000 for each violation by a Bell operating company or any affiliate of such company of section 251, 252, 271, or 272, and a forfeiture of $2,000,000 for each day on which the violation continues.

''(2) FORFEITURE INCREASED THREEFOLD FOR REPEAT VIOLATIONS.—The forfeiture under paragraph (1) shall be increased threefold for a repeated violation of any such section by a Bell operating company or its affiliate.

''(c) COMPENSATORY AND PUNITIVE DAMAGES; COSTS AND ATTORNEY'S FEES.—

''(1) IN GENERAL.—In any civil action brought by a telecommunications carrier against a Bell operating company or any affiliate of such company for damages for a violation of section 251, 252, 271, or 272, or violation of any interconnection agreement entered into under section 252 by a Bell operating company, the carrier may be awarded—

''(A) both compensatory and punitive damages; and

''(B) reasonable attorney fees and costs incurred in bringing the action.

''(2) TREBLE DAMAGES.—In any such action, the telecommunications carrier may be awarded treble damages for a repeated violation of any such section or interconnection agreement by a Bell operating company or its affiliate.

''(d) FORFEITURE FOR FAILURE TO COMPLY WITH ORDER GRANTING INTERIM RELIEF.—If the Bell operating company or its affiliate to which an order is issued under section 292(b) does not comply with the order within 7 days after the date on which the Commission releases the order, and the Commission makes a final determination that the Bell operating company or affiliate is in violation of section 251, 252, 271, or 272, or violation of an interconnection agreement entered into under section 252, then the Commission shall impose a forfeiture of $10,000,000 for each such violation, and a forfeiture of $2,000,000 for each day on which the violation continued after issuance of the order.

''(e) ATTORNEYS FEES.—The Commission, a State commission, a court, or person conducting an arbitration under section 293 may award reasonable attorney fees and costs to the prevailing party in an action commenced by a complaint described in section 291(a), an enforcement action described in section 291(b), or an alternative dispute resolution proceeding under section 293, respectively.

''(f) FORFEITURES DIVIDED BETWEEN COMPLAINANTS AND COMMISSION.—Any forfeiture imposed under subsection (b) or (d) shall be paid to the Commission and divided equally between—

''(1) either—

''(A) the party whose complaint commenced the action that resulted in the determination by the Commission, if the Commission's determination was made in response to a complaint; or

''(B) the party against which the violation was committed, if the action that resulted in the determination by the Commission was commenced by the Commission or a State commission; and

''(2) the Commission for use by its Enforcement Bureau for the purpose of enforcing parts II and III of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq. and 271 et seq.) and carrying out part IV of title II of that Act.

''(g) ADJUSTMENT FOR INFLATION.—The amount of each forfeiture provided for under subsections (b) and (d) shall be increased for violations during each calendar year beginning with 2004 by a percentage amount equal to the percentage increase (if any) in the CPI for the preceding year over the CPI for 2001. For purposes of this subsection, the CPI for any year is the average for the 12 months of the year of the Consumer Price Index for all-urban consumers published by the Department of Labor.

''SEC. 296. SAVINGS CLAUSES.

''(a) OTHER REMEDIES UNDER ACT.—The remedies in this part are in addition to any other requirements or penalties available under this Act or any other law.

''(b) ANTITRUST LAWS.—Nothing in this part modifies, impairs, or supersedes the applicability of any antitrust law, except that a violation by an incumbent local exchange carrier of section 251 or 252 shall also be a violation of the Act of July 2, 1890, commonly known as the Sherman Anti-Trust Act (15 U.S.C. 1 et seq.).''.

SEC. 5. RATEPAYER PROTECTION.

The Commission shall not forbear from, or modify, any cost allocation rules, accounting safeguards, or other requirements in a manner that reduces its ability to enforce the provisions of this Act.

SEC. 6. STATUTE OF LIMITATIONS EXTENDED TO 3 YEARS.

Section 503(b)(6) of the Communications Act of 1934 (47 U.S.C. 503(b)(6)) is amended by striking ''1 year'' each place it appears and inserting ''5 years''.

SEC. 7. STATE COMMISSIONS MAY USE FEDERAL FORFEITURES.

In any action brought before a State commission to enforce compliance with section 251, 252, 271, or 272 of the Communications Act of 1934 (47 U.S.C. 251, 252, 271, or 272) or an interconnection agreement entered into under section 252, the State commission may apply to the Federal Communications Commission requesting that the Commission impose a forfeiture under section 295 of that Act in addition to any relief granted by the State commission in that action. The Federal Communications Commission may impose a forfeiture under section 295 of that Act upon application by a State commission under this section if it determines that the State commission proceeding was conducted in accordance with the requirements of State law.

SEC. 8. SEPARATION OF RETAIL AND WHOLESALE FUNCTIONS.

(a) IN GENERAL.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following:

"SEC. 277. FUNCTIONAL SEPARATION OF RETAIL SERVICES.

''(a) IN GENERAL.—A Bell operating company may only provide retail service—

''(1) through a division that is legally separate from the part of the Bell operating company that provides wholesale services; and

''(2) in a manner that is consistent with the Code of Conduct described in subsection (b).

''(b) CODE OF CONDUCT.—The Code of Conduct for the provision of retail service by a Bell operating company is as follows:

''(1) A Bell operating company shall transfer to its retail division all relationships with retail customers, including customer interfaces and retail billing and all development, marketing, and pricing of retail services.

''(2) A Bell operating company shall transfer to its retail division all accounts for retail services and all assets, systems, and personnel used by the Bell operating company to carry out the business functions described in paragraph (1).

''(3) The retail division required by this section—

''(A) shall be operated independently from the wholesale services and functions of the Bell operating company of which it is a division;

''(B) shall maintain books, records, and accounts separate from those maintained by other departments, divisions, sections, affiliates, or units of the Bell operating company of which it is a division;

''(C) shall have separate employees and office space from the wholesale services and functions of the Bell operating company of which it is a division;

''(D) shall tie its management compensation only to the performance of the retail division;

''(E) may not own any telecommunications facilities or equipment jointly with the Bell operating company of which it is a division;

''(F) shall not engage in any joint marketing with the wholesale services department, division, section, affiliate, or unit of the Bell operating company of which it is a division;

''(G) shall conduct all wholesale transactions with the Bell operating company of which it is a division on a fully compensatory, arms-length basis, in accordance with part 32 of the Commission's rules (part 32 of title 47, Code of Federal Regulations);

''(H) shall offer retail telecommunications service solely at rates set by tariff; and

''(I) shall also offer all of its retail telecommunications services to telecommunications carriers for wholesale purchase at the avoided cost discount as established pursuant to sections 251(c)(4) and 252(d)(3).

''(4) A Bell operating company shall provide services, facilities, and network elements to any requesting carrier, including its retail division solely at rates, terms, and conditions set by tariff; shall offer physical and virtual collocation pursuant to tariffs; shall not provide any retail service except through its retail division; and shall not grant its retail division any preferential intellectual property rights. The Bell operating company shall conduct any business with unaffiliated persons in the same manner as it conducts business with its retail division, and shall not prefer, or discriminate in favor of, such retail division in the rates, terms, or conditions offered to the retail division, including—

''(A) fulfilling any requests from unaffiliated persons for ordering, maintenance, and repair of unbundled network elements and services provided for resale, within a period no longer than that in which it fulfills such requests from its retail division;

''(B) utilizing the same operating support systems for dealings with unaffiliated persons providing telecommunications service as it uses with its retail division;

''(C) providing any customer or network information to unaffiliated persons providing retail services on the same terms and conditions as it provides such information to its retail division;

''(D) fulfilling any requests from an unaffiliated person for exchange access within a period no longer than that in which it fulfills requests for exchange access from its retail division; and

''(E) fulfilling any such requests in subparagraph (D) with service of a quality that meets or exceeds the quality of exchange access it provides to its retail division.

''(c) BIENNIAL AUDIT.—

''(1) GENERAL REQUIREMENT.—A Bell operating company shall obtain and pay for a joint Federal/State audit every 2 years which shall be conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated to implement this section.

''(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, and the Commission shall make such results available for public inspection. Any party may submit comments on the final audit report.

''(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

''(A) the independent auditor, the Commission, and the State commission shall have access to the financial books, records, and accounts of each Bell operating company and its retail division necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

''(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

''(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

''(d) TRANSITION.—

''(1) A Bell operating company shall have one year from the date of enactment of the Telecommunications Fair Competition Enforcement Act of 2001 to comply with subsections (a) and (b).

''(2) Until such time as the Bell operating company complies with the requirements of subsection (a), it shall file quarterly reports demonstrating how it is implementing compliance with the nondiscrimination requirements of subsection (b)(4).

''(e) RATEPAYER PROTECTION.—The Commission shall not relax any cost allocation rules, accounting safeguards, or other requirements in a manner that reduces its ability to enforce the provisions of this section.

''(f) DEFINITIONS.—In this section:

''(1) BELL OPERATING COMPANY.—Notwithstanding section 3(4)(C), the term 'Bell operating company' includes any affiliate of such company other than its retail division.

''(2) RETAIL DEVISION.—The term 'retail division' means the division required by this section.

''(3) RETAIL SERVICE.—The term 'retail service' means any telecommunications or information service offered to a person other than a common carrier or other provider of telecommunications.

''(g) REPORT ON VIOLATIONS.—Until December 31, 2010, the Commission shall report to Congress annually on the amount and nature of any violations of sections 251, 252, 271, and 272 by each Bell Operating Company.

''(h) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed to limit the authority of the Commission under any other section of this Act to prescribe additional safeguards consistent with the public interest, convenience, and necessity.

"SEC. 278. SEPARATE RETAIL AFFILIATE.

''(a) REPEATED VIOLATIONS.—If, beginning 2 years after enactment of the Telecommunications Fair Competition Enforcement Act of 2001, the Commission finds that a Bell operating company willfully or knowingly violated the requirements of sections 251, 252, 271, or 272 of this Act, the Commission may require the Bell Operating Company to implement structural separation under this section.

''(b) IN GENERAL.—If the Commission requires a Bell operating company to implement structural separation under this section, then that Bell operating company may provide retail services only through a separate affiliate. A Bell operating company and a separate affiliate established under this section shall not engage in any joint marketing of retail services, notwithstanding section 272(g).

''(c) STRUCTURAL SEPARATION OF BUSINESS.—A Bell operating company shall comply with subsection (b) by transferring the following business functions to its retail affiliate, at the higher of book value or market value:

''(1) all relationships with retail customers, including customer interfaces and retail billing; and

''(2) all development, marketing, and pricing of retail services.

''(d) STRUCTURAL SEPARATION OF ASSETS.—

''(1) A Bell operating company shall comply with subsection (b) by transferring the following assets to its retail affiliate at the higher of book or market value:

''(A) all accounts for retail services, subject to the requirements of subsection (j); and

''(B) all assets, systems, and personnel used by the Bell operating company to carry out the business functions described in subsection (c).

''(2) The price, terms, and conditions of the transfer of assets required by paragraph (1) shall be made publicly available.

''(e) SEPARATE SUBSIDIARY SAFEGUARDS.—The separate affiliate required by this section—

''(1) shall operate independently from the Bell operating company;

''(2) shall maintain books, records, and accounts separate from those maintained by the Bell operating company of which it is an affiliate;

''(3) shall have separate officers and directors from the Bell operating company of which it is an affiliate;

''(4) shall have separate capital stock, the outstanding shares of which may not be held by the Bell operating company in any amount exceeding four times the amount of shares held by unaffiliated persons;

''(5) shall have separate employees and separate employee benefit plans from the Bell operating company of which it is an affiliate;

''(6) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company;

''(7) may not own any telecommunications facilities or equipment;

''(8) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arms' length basis, with any such transactions reduced to writing and available for public inspection;

''(9) shall offer retail telecommunications service solely at rates set by tariff;

''(10) shall offer all of its retail telecommunications services for wholesale purchase at the avoided cost discount as established pursuant to sections 251(c)(4) and 252(d)(3);

''(11) shall have separate office space from the wholesale services and functions of the Bell operating company of which it is an affiliate;

''(12) shall tie its management compensation only to the performance of the retail affiliate; and

''(13) shall conduct all wholesale transactions with the Bell operating company of which it is an affiliate on a fully compensatory basis, in accordance with part 32 of the Commission's rules (part 32 of title 47, Code of Federal Regulations).

''(f) NONDISCRIMINATION SAFEGUARDS.—A Bell operating company—

''(1) shall provide services, facilities and network elements to any requesting carrier, including its retail affiliate, solely at rates set by tariff;

''(2) shall conduct any business with unaffiliated entities in the same manner as it conducts business with its retail affiliate, and shall not prefer, or discriminate in favor of, such retail affiliate in the rates, terms, or conditions offered to the retail affiliate, including—

''(A) fulfilling any requests from an unaffiliated entity for exchange access service within a period no longer than that in which it fulfills requests for exchange access service from its retail affiliate;

''(B) fulfilling any such requests with service of a quality that meets or exceeds the quality of exchange access services it provides to its retail affiliate;

''(C) fulfilling any requests from an unaffiliated entity for ordering, maintenance and repair of unbundled network elements and services provided for resale, within a period no longer than that in which it fulfills such requests from its retail affiliate;

''(D) utilizing the same operating support systems for dealings with unaffiliated entities providing telecommunications service as it uses with its retail affiliate; and

''(E) providing any customer or network information to unaffiliated entities providing telecommunications services on the same terms and conditions as it provides such information to its retail affiliate;

''(3) shall not offer physical and virtual collocation other than pursuant to generally available tariffs;

''(4) shall not grant its retail affiliate any preferential intellectual property rights; and

''(5) shall not provide any retail service for its own use, but shall procure such services from a carrier other than its retail affiliate.

''(g) BIENNIAL AUDIT.—

''(1) GENERAL REQUIREMENT.—A Bell operating company shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section.

''(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

''(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

''(A) the independent auditor, the Commission, and the State commission shall have access to the financial books, records, and accounts of each Bell operating company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

''(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

''(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

''(h) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity.

''(i) PRESUBSCRIPTION.—Concurrent with the establishment of the separate retail affiliate required by this section, in any local calling area served by a Bell operating company, consumers shall have the opportunity to select their provider of telephone exchange service by means of a balloting process established by rule by the Commission.

''(j) RATEPAYER PROTECTION.—The Commission shall not relax any cost allocation rules, accounting safeguards, or other requirements in a manner that reduces its ability to enforce the provisions of this section.

''(k) DEFINITIONS.—In this section:

''(1) BELL OPERATING COMPANY.—Notwithstanding section 3(4)(C), the term 'Bell operating company' includes any affiliate of such company other than its retail affiliate.

''(2) RETAIL AFFILIATE.—The term 'retail affiliate' means the affiliate required by this section.

''(3) RETAIL SERVICE.—The term 'retail service' means any telecommunications or information service offered to a person other than a common carrier or other provider of telecommunications.''.

By Mr. NICKLES:

S. 1366. A bill for the relief of Lindita Idrizi Heath; to the Committee on the Judiciary.

Mr. NICKLES. 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. 1366

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

SECTION 1. PERMANENT RESIDENT STATUS FOR LINDITA IDRIZI HEATH.

(a) IN GENERAL.—Notwithstanding section 101(b)(1) and subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Lindita Idrizi Heath shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Lindita Idrizi Heath enters the United States before the filing deadline specified in subsection (c), Lindita Idrizi Heath shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Lindita Idrizi Heath, the Secretary of State shall instruct the proper officer to reduce by one, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 202(e) of that Act.

SEC. 2. ELIGIBILITY FOR CITIZENSHIP.

For purposes of section 320 of the Immigration and Nationality Act (8 U.S.C. 1431; relating to the automatic acquisition of citizenship by certain children born outside the United States), Lindita Idrizi Heath shall be considered to have satisfied the requirements applicable to adopted children under section 101(b)(1) of that Act (8 U.S.C. 1101(b)(1)).

SEC. 3. LIMITATION.

No natural parent, brother, or sister, if any, of Lindita Idrizi Heath shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 1367. A bill to amend title XVIII of the Social Security Act to provide appropriate reimbursement under the medicare program for ambulance trips originating in rural areas; to the Committee on Finance.

Ms. COLLINS. Mr. President, I am pleased to join with my friend and colleague, Senator RUSS FEINGOLD, in introducing legislation today to provide needed financial relief to rural ambulance providers.

Historically, Medicare payments for ambulance services provided by freestanding ambulance providers have been based on a proportion of their reasonable charges, while payments to hospital-based providers have been

based on their actual costs. The Balanced Budget Act of 1997, however, directed the Secretary of Health and Human Services to establish a fee schedule for the payment of ambulance services using a negotiated rulemaking process. This rulemaking Committee finalized its agreement in February of 2000, and the then-Health Care Financing Administration, HCFA, issued a proposed rule last September. The new fee schedule was originally scheduled to start on January 1, 2001, but its implementation has been delayed while HCFA, now the Centers for Medicare and Medicaid Services, continues to work on publishing a final rule.

Payment under this new fee schedule will preclude hospital providers of ambulance services from recouping their actual costs. For the average, high-volume urban provider, this should not pose a significant problem. Ambulance services in rural areas, however, tend to have higher fixed costs and low volume, which means that they are unable to take advantage of any economies of scale. I am therefore extremely concerned that the proposed rule fails to include a meaningful adjustment for low-volume ambulance providers.

I recently heard about the impact that this change will have on one of Maine's rural hospitals, Franklin Memorial Hospital in Farmington, ME. Logging, tourism, and recreational activities are central to the economic viability of this region, and good emergency transport is essential Franklin Memorial owns and operates five local ambulance services that cover more than 2,000 square miles of rural Maine. They serve some of the most remote areas of the State, and ambulances often have to travel more than 80 miles to reach the hospital. Moreover, these trips frequently involve backwoods and wilderness rescues which require highly trained staff. Since there are only 30,000 people in Franklin Memorial's service area, however, volume is very low.

Under the current Medicare reimbursement system, Franklin Memorial has just managed to break even on its ambulance services. Under the proposed fee schedule, however, these services stand to lose up to $500,000 a year, system-wide. While the small towns served by Franklin Memorial help to subsidize this service, there is no way that they can absorb this loss. The Medicare, Medicaid and S–CHIP Benefits Improvement and Protection Act, BIPA, did increase the mileage adjustment for rural ambulance providers driving between 17 and 50 miles by $1.25. While this is helpful, it will not begin to compensate low-volume ambulance services like Franklin Memorial Hospital adequately.

Congress has required the General Accounting Office to conduct a study of costs in low-volume areas, but any GAO-recommended adjustments in the ambulance fee schedule would not be effective until 2004. The Rural Ambulance Relief Act that I am introducing today with Senator FEINGOLD will therefore establish a hold harmless provision allowing rural ambulance providers to elect to be paid on a reasonable cost basis until the Centers for Medicare and Medicaid Services is able to identify and adjust payments under the new ambulance fee schedule for services provided in low-volume rural areas.

By Mr. ALLARD (for himself and Mr. SMITH of New Hampshire):

S. 1368. A bill to amend title 10, United States Code, to improve the organization and management of the Department of Defense with respect to space programs and activities, and for other purposes; to the Committee on Armed Services.

Mr. ALLARD. Mr. President, today I rise to introduce, along with Senator BOB SMITH, a bill to improve the organization and management of the Department of Defense with respect to space programs and activities. To my very good friend, I would like to extend my congratulations for being the driving force in establishing the ''Commission to Assess United States National Security Space Management and Organization'' or better known as the Space Commission which led to this legislation.

The Commission looked at the role of organization and management in the development and implementation of national-level guidance and in establishing requirements, acquiring and operating systems, and planning, programming and budgeting for national security space capabilities. What the Commission found is that the United States dependence on space is creating vulnerabilities and demands on our space systems which requires space to be recognized as a top national security priority. This priority must begin at the top with the President and must be embraced by the country's leaders.

Senator SMITH and I agree that space must be a top priority and that is why we are introducing this legislation. We want this to be a statement to everyone, that space is a priority and must be treated as such.

The Commission also concluded that these new vulnerabilities and demands are not adequately addressed by the current management structure at the Department. The Commission found that a number of space activities should be merged, chains of command adjusted, lines of communications opened and policies modified to achieve greater responsibility and accountability.

I understand the Department is making some of these changes today. However, we believe Congress should show its support to our military men and women involved in space that Congress wants them to succeed and that we will provide the tools for them to achieve that goal.

This legislation will provide the Secretary of Defense the tools he needs for more effective management and organization of space program and activities. Specifically the legislation:

Provides permissive authority for the Secretary of Defense to establish an Under Secretary of Defense for Space, Intelligence and Information—This permissive authority will provide the Secretary of Defense flexibility.

Designates the duties of the Under Secretary of Defense for Space, Intelligence and Information, provides for an additional Assistant Secretary of Defense (conditional on creation of the new Under Secretary of Defense position). This provision follows the recommendations of the Commission.

Requires the Secretary of Defense to issue a report 30 days prior to exercise of the authority to establish the new Under Secretary position on the proposed organization; and requires a report one year after enactment if the new position has not been created to describe how the intent of the Space Commission is being implemented.

Establishes the Secretary of the Air Force as the Executive Agent for DOD space programs for DOD functions designated by the Secretary of Defense; and assigns to acquisition executive function to the Under Secretary of the Air Force. The Secretary of Defense has flexibility in assigning and defining functions of the Executive Agent;

Assigns the Under Secretary of the Air Force as the director of the NRO; and directs the Under Secretary of the Air Force to coordinate the space activities of DOD and the NRO;

Directs the Under Secretary of the Air Force to establish a space career field and directs the Secretary of the Air Force to assign the Commander of Air Force Space Command to manage the space career field. Establishment of career field is an important commission recommendation and key indicator concerning AF implementation.

Requires that, to the maximum extent practicable, space programs be jointly managed. I believe this will encourage the Army and Navy to develop space personnel.

Creates a major force program for space which will provide visibility into space program funding.

Requires a GAO assessment of the progress made by DOD in implementing the recommendations of the Space Commission.

Requires the commander of Air Force Space Command to be a four star general; and prohibits the commander of Air Force Space Command from serving concurrently as CINCSPACE or and commander of the U.S. element of NORAD—Elevates space component commander to level of all other major Air Force component commanders

Finally, it expresses the sense of Congress that CINCSPACE should be the best qualified four-star officer from the Army, Navy, Marines, or Air Force—Rotation of CINCSPACE will encourage Army, Navy, and Marines to develop space expertise

These measures provide the authority which, if exercised by the Secretary, can provide the focus and attention that space programs and activities deserve. This is imperative in a world where some technology's life span can be less than 24 months. DOD must be able to respond to these changing environments.

Mr. President, I want to thank my colleague for joining with me in this effort to provide the Department the tools it needs to make space a top national security priority. We look forward to seeing this bill becoming law and welcome all Senators to join us on this important legislation.

Mr. SMITH of New Hampshire. Mr. President, I am pleased to send to the desk a bill that will make improvements in our current national security space management and organization.

I am delighted to stand here today and state that the Department of Defense is moving forward to implement the recommendations of the Commission to Assess United States National Security Space Management and Organization, more commonly known as the Space Commission. I pushed my colleagues to charter this group of 13 senior military-space experts in the Fiscal Year 1999 Defense Authorization Act to assess the management of military space matters today and make recommendations to strengthen the national security space organization in the future.

It is a wonderful coincidence that the chairman of the bipartisan Space Commission, the Honorable Donald Rumsfeld, was appointed by President Bush and confirmed by the Senate for the position of Secretary of Defense. As a result, Secretary Rumsfeld brings to his position a keen appreciation of the importance of space to the future national security of the United States.

The Space Commission, the efforts of the Secretary of Defense, and this proposed legislation will set this nation on a bold new course. More than fifty years ago, this nation took a similar bold step in establishing military air power with the creation of the U.S. Air Force. This decision, under the National Security Act of 1947, was signed into law by President Truman and dramatically restructured our institutional approach to military air power. This restructuring resulted from years of air-power management problems under the Army, insufficient reforms under the Army Air Corps established in 1926, and assessments of numerous committees like the recent Space Commission.

The military management and organizational reforms of fifty years ago were a great success, and today, quite a bit has changed for the better. As a result of the formation of a separate service focused on air power, we soon developed, and have had, right up to today, the best equipped and best trained Air Force in the world. The U.S. Air Force is capable of surpassing any enemy.

However, we have come to see that there are structural limitations inherent in the Air Force today with respect to space power just as there were in the Army fifty years ago with respect to air power. The Army has been structured to meet ground requirements. Its training, doctrine, leaders, and culture are all focused on fighting ground battles. For systemic reasons, the Army was not able to develop a strong, viable military air power. Therefore, the Air Force was created by the 1947 National Security Act which called for the creation of a separate organization designed to deal specifically with air power.

There are many parallels between the early struggle for air power that led to the creation of the Air Force and the issues we face today in seeking space power. The similarities between these two issues are truly astounding.

Today, space is used only in support of air, land, and sea warfare in much the same manner that air power was at first seen as only a way to support ground forces. Space today is used to provide ''information superiority'' in support of other missions, but there is the potential for so much more. We, as a Nation, need to stop talking and dreaming of a dominant space presence and start doing. We must recognize the importance of space as a permanent frontier for the military, so that America may proceed into space with the same confidence, assurance, and authority that marked our entrance into the skies.

Currently, space programs are raided for funds ten times more often than other Air Force programs because space programs are either not aggressively defended and/or not aggressively executed consistent with the intent of Congress. Other space opportunities like the military space plane, an air and space vehicle promising future power projection from the U.S. to anywhere in the world in 45 minutes or less, are extremely important to the cost-effective transformation of the military especially during this period of shrinking American military presence around the globe. Yet the space plane and most of the space programs continue to be underfunded. We need a better leader in space.

The reason for this is simple: the top priority of the Air Force is and will remain air power, not space power. The top jobs do and will continue to elude space officers in an Air Force run by pilots unless we can create an organization whose job it would be to defend space programs, to make sure that funding for space opportunities goes where it is supposed to go, and does not get rerouted back to other non-space programs.

Space is too important a frontier and too vital a resource to be allowed to remain untapped and unexplored, undefended and unmanned. America's future security and prosperity depends on our constant vigilance. We cannot afford to ignore space because our enemies will not. While we are ahead of any potential rival in exploiting space, we are not unchallenged. Our future superiority is by no means assured. To ensure superiority, we must combine expansive thinking with a sustained and substantial commitment of resources and vest them in a dedicated, politically powerful, independent advocate for space.

The way it is organized today, the Air Force is not building the material, cultural, or organizational foundations of a service dedicated to space power. Where are the space science and technology investments? Where is the funding for key space-power programs? Where are the personnel investments? What concrete steps are being taken to build a dedicated cadre of young space-warfare officers?

Before closing, let me assure my colleagues of what this legislation is and what it is not. This legislation is about streamlined management, efficient operations, and the elimination of redundancy. It is about establishing an advocate for space who can evaluate space opportunities and bring those proposals forward to the President and Congress for disposition. It is about maximizing the national-security capability for every tax dollar spent. I have seen press stories that twisted Secretary Rumsfeld's support of the Space Commission recommendations as an intent to weaponize space. Let me assure my colleagues that this bill does not weaponize space. This is about management and organization. It is about good government. Enacting this legislation merely ensures that the concrete management reforms recommended by the Space Commission are implemented quickly.

The Secretary of Defense, the Services, and the Intelligence Community all support the unanimous bipartisan recommendations from the Space Commission. I urge my Colleagues to support this bill which implements those recommendations. Space is critical to the future of this nation. It is important for Congress to provide leadership so that these recommendations are implemented quickly and not watered-down. While the Secretary does have broad management authority to run the Department of Defense, space is too important to be managed in-the-margin or through loopholes in statute. Just as Congress established the Army Air Corps in 1926 and the Air Force in 1947, it is right that Congress legislate these space management reforms.

Space dominance is too important to the success of future warfare to allow any bureaucracy, military department, or parochial concern to stand in the way. To protect America's interests we need to move forward consistent with the spirit of the Space Commission. This legislation is a good first step.

By Mr. WARNER:

S. 1369. A bill to provide that Federal employees may retain for personal use

promotional items received as a result of travel taken in the course of employment; to the Committee on Governmental Affairs.

Mr. WARNER. Mr. President, today I am introducing legislation that will allow Federal employees to keep frequent flyer miles they receive while on official government travel. This will level the playing field between Federal employees and their counterparts in the private sector where companies traditionally allow employees to retain frequent flyer miles and similar benefits earned while on business travel.

In 1994, a law was passed that requires Federal employees to surrender their frequent flyer miles back to their agencies. The frequent flyer miles would then be used to defray the costs of future travel costs by agency personnel.

A recent review conducted by the Government Accounting Office reports that these miles usually become lost, however, in an administrative shuffle. Airlines do not keep separate business and personal accounts for the same individual. While the law had good intentions, it is impractical, if not impossible, for an agency to apply the miles or travel benefits elsewhere.

While travel may be inherent with certain jobs, business related travel often impedes on an individual's personal time, time that person could be spending with family and at home. Allowing Federal employees to keep their frequent flyer miles will also help to support the government's ongoing efforts to recruit and retain a skilled, qualified workforce. Furthermore, I believe it will boost morale in the federal workforce.

I encourage my colleagues to cosponsor this legislation and show their support for the dedicated employees of the Federal workforce.

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. 1369

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

SECTION 1. RETENTION OF TRAVEL PROMOTIONAL ITEMS.

(a) IN GENERAL.—Section 5702 of title 5, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) in subsection (d) (as redesignated by paragraph (1)), by striking ''This section does'' and inserting ''Subsections (a) and (b) do''; and

(3) by inserting after subsection (b) the following:

''(c) Promotional items (including frequent flyer miles, upgrades, and access to carrier clubs or facilities) an employee receives as a result of using travel or transportation services procured by the United States or accepted pursuant to section 1353 of title 31 may be retained by the employee for personal use if such promotional items are obtained under the same terms as those offered to the general public and at no additional cost to the Government.''.

(b) REPEAL OF SUPERCEDED LAW.—Section 6008 of the Federal Acquisition Streamlining Act of 1994 (5 U.S.C. 5702 note; Public Law 103–355) is repealed.

(c) APPLICABILITY.—The amendments made by this Act shall apply with respect to promotional items received before, on, or after the date of the enactment of this Act.

By Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. SARBANES, Mr. NELSON of Florida, Mr. KYL, and Mr. DEWINE):

S. 1371. A bill to combat money laundering and protect the United States financial system by strengthening safeguards in private banking and correspondent banking, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, today I am introducing, along with my colleagues Senator GRASSLEY, Senator SARBANES, Senator BILL NELSON, Senator MIKE DEWINE, and Senator JON KYL, the Money Laundering Abatement Act, a bill to modernize and strengthen U.S. laws to detect, stop and prosecute money laundering through U.S. banks.

The safety and soundness of our banking system, the stability of the U.S. dollar, the services our banks perform, and the returns our banks earn for depositors make the U.S. banking system an attractive location for money launderers. And money launderers who are able to use U.S. banks can take advantage of the prestige of these banks to lend credibility to their operations, reassure victims, and send wire transfers that may attract less scrutiny from law enforcement. So whether it is to protect their funds or further their crimes, money launderers want access to U.S. banks, and they are devising one scheme after another to infiltrate the U.S. banking system.

The funds they want to move through our banks are enormous. Estimates are that at least $1 trillion in criminal proceeds are laundered each year, with about half of that amount, $500 billion, going through U.S. banks.

Stopping this flood of dirty money is a top priority for U.S. law enforcement which spent about $650 million in taxpayer dollars last year on anti-money laundering efforts. That's because money laundering damages U.S. interests in so many ways, rewarding criminals and financing crime, undermining the integrity of international financial systems, weakening emerging democracies and distorting their economies, and impeding the international fight against corruption, drug trafficking and organized crime.

The bill we are introducing today would provide new and improved tools to stop money laundering. Because it includes provisions that would outlaw the proceeds of foreign corruption, cut off the access of offshore shell banks to U.S. banks, and end foreign bank immunity to forfeiture of laundered funds, this bill would close some of the worst gaps and remedy some of the most glaring weaknesses in existing anti-money laundering laws. For example, the bill would: 1. add foreign corruption offenses, such as bribery and theft of government funds, to the list of foreign crimes that can trigger a U.S. money laundering prosecution; 2. bar U.S. banks from providing banking services to foreign shell banks, which are banks that have no physical presence in any country and carry high money laundering risks; 3. require U.S. banks to conduct enhanced due diligence reviews to guard against money laundering when opening (a) a private bank account with $1 million or more for a foreign person, or (b) a correspondent account for an offshore bank or foreign bank in a country posing high money laundering risks; and 4. make a depositor's funds in a foreign bank's U.S. correspondent account subject to the same civil forfeiture rules that apply to depositors' funds in other U.S. bank accounts.

These provisions are the product of almost three years of work by my staff at the Senate Permanent Subcommittee on Investigations examining money laundering problems in the private and correspondent banking fields. Countless interviews with money laundering experts, bankers, regulators, law enforcement personnel, criminals and victims, and the careful review of literally tens of thousands of pages of documents led to the issuance of two staff reports in 1999 and 2001, and several days of Subcommittee hearings, setting out the problems uncovered and recommendations for strengthening U.S. enforcement efforts.

The first Subcommittee investigation examined private banking, a growing and lucrative banking sector which offers financial services to wealthy individuals, who usually must deposit $1 million or more to open a private bank account. In return, the client is assigned a ''private banker'' who provides the client with sophisticated financial services, such as offshore accounts, shell corporations, and high dollar wire transfers, which raise money laundering concerns.

A key issue to emerge from this investigation is the role that private banks play in opening accounts and accepting hundreds of millions of dollars in deposits from senior foreign officials or their relatives, even amid allegations or suspicions that the deposits may be the product of government corruption or other criminal conduct. The 1999 staff report described four case histories of senior government officials or their relatives depositing hundreds of millions of suspect dollars into private bank accounts at Citibank, the largest bank in the United States. These case histories showed how Citibank Private Bank had become the banker for a rogues' gallery of senior government officials or their relatives. One infamous example is Raul Salinas, the brother of the former President of Mexico, who is imprisoned in Mexico for murder and is under indictment in

Switzerland for money laundering associated with drug trafficking. He deposited almost $100 million into his Citibank Private Bank accounts. Another example involves the three sons of General Sani Abacha, who was the former military leader of Nigeria and was notorious for misappropriating and extorting billions of dollars from his country. His sons deposited more than $110 million into Citibank Private Bank accounts.

The investigation determined that Citibank's private bankers asked few questions before opening the accounts and accepting the funds. It also found that, because foreign corruption offenses are not currently on the list of crimes that can trigger a U.S. money laundering prosecution, corrupt foreign leaders may be targeting U.S. banks as a safe haven for their funds.

Another striking aspect of the investigation was how a culture of secrecy pervaded most private banking transactions. Citibank private bankers, for example, routinely helped clients set up offshore shell companies and open bank accounts in the name of these companies or under other fictional names such as ''Bonaparte'' or ''Gelsobella.'' After opening these accounts, secrecy remained such a priority that Citibank private bankers were often told by their superiors not to keep any record in the United States disclosing the true owner of the offshore accounts or corporations they manage. One private banker told of stashing with his secretary a ''cheat sheet'' that identified which client owned which shell company in order to hide it from Citibank managers who did not allow such ownership information to be kept in the United States.

On some occasions, Citibank Private Bank even hid ownership information from its own staff. For example, one Citibank private banker in London worked for years on a Salinas account without knowing Salinas was the beneficial owner. Salinas was instead referred to by the name of his offshore corporation, Trocca, Ltd., or by a code, ''CC–2,'' which stood for ''Confidential Client Number 2.'' Citibank even went so far as to allow Mr. Salinas to deposit millions of dollars into his private bank accounts without putting his name on the wire transfers moving the funds, instead allowing his future wife, using an assumed name, to wire the funds through Citibank's own administrative accounts. Later, when Mr. Salinas' wife was arrested, Citibank discussed transferring all of his funds to Switzerland to minimize disclosure, abandoning that suggestion only after noting that the wire transfer documentation would disclose the funds' final destination.

That's how far one major U.S. private bank went on client secrecy.

The Subcommittee's second money laundering investigation focused on U.S. correspondent accounts opened for high risk foreign banks. Correspondent banking occurs when one bank provides services to another bank to move funds or carry out other financial transactions. It is an essential feature of international banking, allowing the rapid movement of funds across borders and enabling banks and their clients to conduct business worldwide, including in jurisdictions where the banks do not maintain offices.

The problem uncovered by the Subcommittee's year-long investigation is that too many U.S. banks, through the correspondent accounts they provide to foreign banks that carry high risks of money laundering, have become conduits for illicit funds associated with drug trafficking, financial fraud, Internet gambling and other crimes. The investigation identified three categories of foreign banks with high risks of money laundering: shell banks, offshore banks, and banks in jurisdictions with weak anti-money laundering controls. Because many U.S. banks have routinely failed to screen and monitor these high risk foreign banks as clients, they have been exposed to poorly regulated, poorly managed, sometimes corrupt, foreign banks with weak or no anti-money laundering controls. The U.S. correspondent accounts have been used by these foreign banks, their owners and criminal clients to gain direct access to the U.S. financial system, to benefit from the safety and soundness of the U.S. banking system, and to launder dirty money through U.S. bank accounts.

In February of this year, my staff released a 450 page report detailing the money laundering problems uncovered in correspondent banking. The report indicated that virtually every U.S. bank examined, from Chase Manhattan, to Bank of America, to First Union, to Citibank, had opened correspondent accounts for offshore banks. Citibank also admitted opening correspondent accounts for offshore shell banks with no physical presence in any jurisdiction.

The report presents ten detailed case histories showing how high risk foreign banks managed to move billions of dollars through U.S. banks, including hundreds of millions of dollars in illicit funds associated with drug trafficking, financial fraud or Internet gambling. In some cases, the foreign banks were engaged in criminal behavior; in others, the foreign banks had such poor anti-money laundering controls that they did not know or appeared not to care whether their clients were engaged in criminal behavior. Several of the foreign banks operated well outside the parameters of normal banking practices, without basic fiscal or administrative controls, account opening procedures or anti-money laundering safeguards. All had limited resources and staff and relied heavily upon their U.S. correspondent accounts to conduct operations, provide client services, and move funds. Most completed virtually all of their transactions through their correspondent accounts, making correspondent banking integral to their operations. The result was that their U.S. correspondent accounts served as a significant gateway into the U.S. financial system for criminals and money launderers.

In March 2001, the Subcommittee held hearings on the problem of international correspondent banking and money laundering. One witness was a former owner of an offshore bank in the Cayman Islands, John Mathewson, who pleaded guilty in the United States to conspiracy to commit money laundering and tax evasion and has spent the past 5 years helping to prosecute his former clients for tax evasion and other crimes. Mr. Mathewson testified that he had charged his bank clients about $5,000 to set up an offshore shell corporation and another $3,000 for an annual corporate management fee, before opening a bank account for them in the name of the shell corporation. He noted that no one would pay $8,000 for a bank account in the Cayman Islands when they could have the same account for free in the United States, unless they were willing to pay a premium for secrecy. He testified that 95 percent of his 2,000 clients were U.S. citizens, and he believed that 100 percent of his bank clients were engaged in tax evasion. He characterized his offshore bank as a ''run-of-the-mill'' operation. He also said that the Achilles' heel of the offshore banking community is its dependence upon correspondent banks to do business and that was how jurisdictions like the United States could take control of the situation and stop abuses, if we had the political will to do so.

I think we do have that political will, and that's why we are introducing this bill today. Let me describe some of its key provisions.

The Money Laundering Abatement Act would add foreign corruption offenses such as bribery and theft of government funds to the list of crimes that can trigger a U.S. money laundering prosecution. This provision would make it clear that corrupt funds are not welcome here, and that corrupt leaders can expect criminal prosecutions if they try to stash dirty money in our banks. After all, America can't have it both ways. We can't condemn corruption abroad, be it officials taking bribes or looting their treasuries, and then tolerate American banks profiting off that corruption.

Second, the bill would require U.S. banks and U.S. branches of foreign banks to exercise enhanced due diligence before opening a private bank account of $1 million or more for a foreign person, and to take particular care before opening accounts for foreign government officials, their close relatives or associates to make sure the funds are not tainted by corruption. This due diligence provision targets the greatest money laundering risks that the Subcommittee investigation identified in the private banking field. While some U.S. banks are already performing enhanced due diligence reviews, this provision would put

that requirement into law and bring U.S. law into alignment with most other countries engaged in the fight against money laundering.

The Money Laundering Abatement Act would also put an end to some of the extreme secrecy practices at private banks. For example, if a U.S. bank or a U.S. branch of a foreign bank opened or managed an account in the United States for a foreign accountholder, the bill would require the bank to keep a record in the United States identifying that foreign accountholder. After all, U.S. banks already keep records of accounts held by U.S. citizens, and there is no reason to allow U.S. banks to administer offshore accounts for foreign accountholders with less openness than other U.S. bank accounts. The bill would also put an end to the type of secret fund transfers that went on in the Salinas matter by prohibiting bank clients from independently directing funds to be deposited into a bank's ''concentration account,'' an administrative account which merges and processes funds from multiple accounts and transactions, and by requiring banks to link client names to all client funds passing through the bank's concentration accounts.

Our bill would also take a number of steps to close the door on money laundering through U.S. correspondent accounts. First and most importantly, our bill would bar any U.S. bank or U.S. branch of a foreign bank from opening a U.S. correspondent account for a foreign offshore shell bank, which the Subcommittee investigation found to pose the highest money laundering risks of all foreign banks. Shell banks are banks that have no physical presence anywhere—no office where customers can go to conduct banking transactions or where regulators can go to inspect records and observe bank operations. They also have no affiliation with any other bank and are not regulated through any affiliated bank.

The Subcommittee investigation examined four shell banks in detail. All four were found to be operating far outside the parameters of normal banking practice, often without paid staff, basic fiscal and administrative controls, or anti-money laundering safeguards. All four also largely escaped regulatory oversight. All four used U.S. bank accounts to transact business and move millions of dollars in suspect funds associated with drug trafficking, financial fraud, bribe money or other misconduct.

Let me describe one example from the Subcommittee's investigation. M.A. Bank was an offshore bank that was licensed in the Cayman Islands, but had no physical office of its own in any country. In 10 years of operation, M.A. Bank never underwent an examination by any bank regulator. Its owners have since admitted that the bank opened accounts in fictitious names, accepted deposits for unknown persons, allowed clients to authorize third parties to make large withdrawals, and manufactured withdrawal slips or receipts on request.

Nevertheless, M.A. Bank was able to open a U.S. correspondent account at Citibank in New York. M.A. Bank used that account to move hundreds of millions of dollars for clients in Argentina, including $7.7 million in illegal drug money. After the Subcommittee staff began investigating the account, Citibank closed it. After the staff report came out, the Cayman Islands decided to close the bank, but since the bank had no office, Cayman regulators at first didn't know where to go. They eventually sent teams to Uruguay and Argentina to locate bank documents and take control of bank operations. The Cayman Islands finally closed the bank a few months ago.

The four shell banks investigated by the Subcommittee are only the tip of the iceberg. There are hundreds in existence, operating through correspondent accounts in the United States and around the world.

By nature, shell banks operate in extreme secrecy and are resistant to regulatory oversight. No one really knows what they are up to other than their owners. Some jurisdictions known for offshore businesses, such as Jersey and Guernsey, refuse to license shell banks. Others, such as the Cayman Islands and the Bahamas, stopped issuing shell bank licenses several years ago. In addition, both the Cayman Islands and Bahamas announced that by the end of this year, 2001, all of their existing shell banks, which together number about 120, must establish a physical office within their respective jurisdictions, or lose their license. But other offshore jurisdictions, such as Nauru, Vanuatu and Montenegro, are continuing to license shell banks. Nauru alone has licensed about 400.

Here at home, many U.S. banks, such as Bank of America and Chase Manhattan, will not open correspondent bank accounts for offshore shell banks as a matter of policy. But other banks, such as Citibank, continue to do business with offshore shell banks and continue to expose the U.S. banking system to the money laundering risks they bring. Our bill would close the door to these money laundering risks. Foreign shell banks occupy the bottom rung of the banking world, and they don't deserve a place in the U.S. banking system. It is time to shut the door to these rogue operators.

In addition to barring offshore shell banks, the bill would require U.S. banks to exercise enhanced due diligence before opening a correspondent account for an offshore bank or a bank licensed by a jurisdiction known for poor anti-money laundering controls. These foreign banks also expose U.S. banks to high money laundering risks. Requiring U.S. banks to exercise enhanced due diligence prior to opening an account for one of these banks would not only help protect the U.S. banking system from the money laundering risks posed by these foreign banks, but would also help bring U.S. law into parity with the anti-money laundering laws of other countries.

Another provision in the bill would address a key weakness in existing U.S. forfeiture law as applied to correspondent banking, by making a depositor's funds in a foreign bank's U.S. correspondent account subject to the same civil forfeiture rules that apply to depositors' funds in all other U.S. bank accounts. Right now, due to a quirk in the law, U.S. law enforcement faces a significant and unusual legal barrier to seizing funds from a correspondent account. Unlike a regular U.S. bank account, it is not enough for U.S. law enforcement to show that criminal proceeds were deposited into the correspondent account; the government must also show that the foreign bank holding the deposits was somehow part of the wrongdoing.

That's not only a tough job, that can be an impossible job. In many cases, the foreign bank will not have been part of the wrongdoing, but that's a strange reason for letting the foreign depositor who was engaged in the wrongdoing escape forfeiture. And in those cases where the foreign bank may have been involved, no prosecutor will be able to allege it in a complaint without first getting the resources needed to chase the foreign bank abroad.

Take the example of a financial fraud committed by a Nigerian national against a U.S. victim, a fraud pattern which the U.S. State Department has identified as affecting many U.S. citizens and businesses and which consumes U.S. law enforcement resources across the country. If the Nigerian fraudster deposits the fraud victim's funds in a personal account at a U.S. bank, U.S. law enforcement can freeze the funds and litigate the case in court. But if the fraudster instead deposits the victim's funds in a U.S. correspondent account belonging to a Nigerian bank at which the Nigerian fraudster does business, U.S. law enforcement cannot freeze the funds unless it is prepared to show that the Nigerian bank was involved in the fraud. And what prosecutor has the resources to travel to Nigeria to investigate a Nigerian bank? Even when the victim is sitting in the prosecutor's office, and his funds are still in the United States in a U.S. bank, the prosecutor's hands are tied unless he or she is willing to take on the Nigerian bank as well as the Nigerian fraudster. That is one reason so many Nigerian fraud cases are no longer being prosecuted in this country, because Nigerian criminals are taking advantage of that quirk in U.S. forfeiture law to prevent law enforcement from seizing a victim's money before it is transferred out of the country.

Our bill would eliminate that quirk by placing civil forfeitures of funds in correspondent accounts on the same footing as forfeitures of funds in all

other U.S. accounts. There is just no reason foreign banks should be shielded from forfeitures when U.S. banks would not be.

The Levin-Grassley bill has a number of other provisions that would help U.S. law enforcement in the battle against money laundering. They include giving U.S. courts ''long-arm'' jurisdiction over foreign banks with U.S. correspondent accounts; expanding the definition of money laundering to include laundering funds through a foreign bank; authorizing U.S. prosecutors to use a Federal receiver to find a criminal defendant's assets, wherever located; and requiring foreign banks to designate a U.S. resident for service of subpoenas.

These are realistic, practical provisions that could make a real difference in the fight against money laundering. One state Attorney General who has reviewed the bill has written that ''there is a serious need for modernizing and refining the federal money laundering statutes to thwart the efforts of the criminal element and close the loopholes they use to their advantage.'' He expresses ''strong support'' for the bill, explaining that it ''will greatly aid law enforcement'' and ''provide new tools that will assist law enforcement in keeping pace with the modern money laundering schemes.'' Another state Attorney General has written that the bill ''would provide much needed relief from some of the most pressing problems in money laundering enforcement in the international arena.'' She predicts that the bill's ''effects on money laundering affecting victims of crime and illegal drug trafficking would be dramatic.'' She also writes that the ''burdens it places on the financial institutions are well considered, closely tailored to the problems, and reasonable in light of the public benefits involved.''

This country passed its first major anti-money laundering law in 1970, when Congress made clear its desire to not allow U.S. banks to function as conduits for dirty money. Since then, the world has experienced an enormous growth in the accumulation of wealth by individuals around the world, and in the activities of private banks servicing these clients. At the same time there has been a rapid increase in offshore activities, with the number of offshore jurisdictions doubling from about 30 to about 60, and the number of offshore banks skyrocketing to an estimated worldwide total of 4,000, including more than 500 shell banks.

At the same time, the Subcommittee investigations have shown that private and correspondent accounts have become gateways for criminals to carry on money laundering and other criminal activity in the United States and to benefit from the safety and soundness of the U.S. banking industry. U.S. law enforcement needs stronger tools to detect, stop and prosecute money launderers attempting to use these gateways into the U.S. banking system. Enacting this legislation would help provide the tools needed to close those money laundering gateways and curb the dirty funds seeking entry into the U.S. banking industry.

I ask unanimous consent that letters in support for the bill from the two State Attorneys General of the States of Massachusetts and Arizona, as well as a short summary of the bill, and the text of the bill be printed in the RECORD.

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

S. 1371

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 ''Money Laundering Abatement Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) money laundering, the process by which proceeds from criminal activity are disguised as legitimate money, is contrary to the national interest of the United States, because it finances crime, undermines the integrity of international financial systems, impedes the international fight against corruption and drug trafficking, distorts economies, and weakens emerging democracies and international stability;

(2) United States banks are frequently used to launder dirty money, and private banking, which provides services to individuals with large deposits, and correspondent banking, which occurs when 1 bank provides financial services to another bank, are specific banking sectors which are particularly vulnerable to money laundering;

(3) private banking is particularly vulnerable to money laundering by corrupt foreign government officials because the services provided (offshore accounts, secrecy, and large international wire transfers) are also key tools used to launder money;

(4) correspondent banking is vulnerable to money laundering because United States banks—

(A) often fail to screen and monitor the transactions of their high-risk foreign bank clients; and

(B) enable the owners and clients of the foreign bank to get indirect access to the United States banking system when they would be unlikely to get access directly;

(5) the high-risk foreign bank that currently poses the greatest money laundering risks in the United States correspondent banking field is a shell bank, which has no physical presence in any country, is not affiliated with any other bank, and is able to evade day-to-day bank regulation; and

(6) United States anti-money laundering efforts are currently impeded by outmoded and inadequate statutory provisions that make United States investigations, prosecutions and forfeitures more difficult when money laundering involves foreign persons, foreign banks, or foreign countries.

(b) PURPOSE.—The purpose of this Act is to modernize and strengthen existing Federal laws to combat money laundering, particularly in the private banking and correspondent banking fields when money laundering offenses involve foreign persons, foreign banks, or foreign countries.

SEC. 3. INCLUSION OF FOREIGN CORRUPTION OFFENSES AS MONEY LAUNDERING CRIMES.

Section 1956(c)(7)(B) of title 18, United States Code, is amended—

(1) in clause (ii), by striking ''or destruction of property by means of explosive or fire'' and inserting ''destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16)'';

(2) in clause (iii), by striking ''1978'' and inserting ''1978)''; and

(3) by adding at the end the following:

''(iv) fraud, or any scheme or attempt to defraud, against that foreign nation or an entity of that foreign nation;

''(v) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

''(vi) smuggling or export control violations involving—

''(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

''(II) technologies with military applications controlled on any control list established under the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) or any successor statute;

''(vii) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

''(viii) the misuse of funds of, or provided by, the International Monetary Fund in contravention of the Articles of Agreement of the Fund or the misuse of funds of, or provided by, any other international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)) in contravention of any treaty or other international agreement to which the United States is a party, including any articles of agreement of the members of the international financial institution;''.

SEC. 4. ANTI-MONEY LAUNDERING MEASURES FOR UNITED STATES BANK ACCOUNTS INVOLVING FOREIGN PERSONS.

(a) REQUIREMENTS RELATING TO UNITED STATES BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following:

''§ 5318A. Requirements relating to United States bank accounts involving foreign persons

''(a) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) ACCOUNT.—The term 'account'—

''(i) means a formal banking or business relationship established to provide regular services, dealings, or financial transactions; and

''(ii) includes a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit.

''(B) BRANCH OR AGENCY OF A FOREIGN BANK.—The term 'branch or agency of a foreign bank' has the meanings given those terms in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

''(C) CORRESPONDENT ACCOUNT.—The term 'correspondent account' means an account established for a depository institution, credit union, or foreign bank.

''(D) CORRESPONDENT BANK.—The term 'correspondent bank' means a depository institution, credit union, or foreign bank that establishes a correspondent account for and provides banking services to a depository institution, credit union, or foreign bank.

''(E) COVERED FINANCIAL INSTITUTION.—The term 'covered financial institution' means—

''(i) a depository institution;

''(ii) a credit union; and

''(iii) a branch or agency of a foreign bank.

''(F) CREDIT UNION.—The term 'credit union' means any insured credit union, as

defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of the Federal Credit Union Act (12 U.S.C. 1781).

''(G) DEPOSITORY INSTITUTION.—The term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(H) FOREIGN BANK.—The term 'foreign bank' has the same meaning as in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

''(I) FOREIGN COUNTRY.—The term 'foreign country' has the same meaning as in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

''(J) FOREIGN PERSON.—The term 'foreign person' means any foreign organization or any individual resident in a foreign country or any organization or individual owned or controlled by such an organization or individual.

''(K) OFFSHORE BANKING LICENSE.—The term 'offshore banking license' means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the foreign country which issued the license.

''(L) PRIVATE BANK ACCOUNT.—The term 'private bank account' means an account (or combination of accounts) that—

''(i) requires a minimum aggregate deposit of funds or assets in an amount equal to not less than $1,000,000;

''(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

''(iii) is assigned to, administered, or managed in whole or in part by an employee of a financial institution acting as a liaison between the institution and the direct or beneficial owner of the account.

''(2) OTHER TERMS.—After consultation with the Board of Governors of the Federal Reserve System, the Secretary may, by regulation, order, or otherwise as permitted by law, define any term that is used in this section and that is not otherwise defined in this section or section 5312, as the Secretary deems appropriate.

''(b) UNITED STATES BANK ACCOUNTS WITH UNIDENTIFIED FOREIGN OWNERS.—

''(1) RECORDS.—

''(A) IN GENERAL.—A covered financial institution shall not establish, maintain, administer, or manage an account in the United States for a foreign person or a representative of a foreign person, unless the covered financial institution maintains in the United States, for each such account, a record identifying, by a verifiable name and account number, each individual or entity having a direct or beneficial ownership interest in the account.

''(B) PUBLICLY TRADED CORPORATIONS.—A record required under subparagraph (A) that identifies an entity, the shares of which are publicly traded on a stock exchange regulated by an organization or agency that is a member of and endorses the principles of the International Organization of Securities Commissions (in this section referred to as 'publicly traded'), is not required to identify individual shareholders of the entity.

''(C) FOREIGN BANKS.—In the case of a correspondent account that is established for a foreign bank, the shares of which are not publicly traded, the record required under subparagraph (A) shall identify each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner.

''(2) COMPLEX OWNERSHIP INTERESTS.—The Secretary may, by regulation, order, or otherwise as permitted by law, further delineate the information to be maintained in the United States under paragraph (1)(A), including information for accounts with multiple, complex, or changing ownership interests.

''(c) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

''(1) IN GENERAL.—A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

''(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country.

''(3) EXCEPTION.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

''(A) is an affiliate of a depository institution, credit union, or other foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

''(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank, described in subparagraph (A), as applicable.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'affiliate' means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

''(B) the term 'physical presence' means a place of business that—

''(i) is maintained by a foreign bank;

''(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

''(I) employs 1 or more individuals on a full-time basis; and

''(II) maintains operating records related to its banking activities; and

''(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

''(d) DUE DILIGENCE FOR UNITED STATES PRIVATE BANK AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

''(1) IN GENERAL.—Each covered financial institution that establishes, maintains, administers, or manages a private bank account or a correspondent account in the United States for a foreign person or a representative of a foreign person shall establish enhanced due diligence policies, procedures, and controls to prevent, detect, and report possible instances of money laundering through those accounts.

''(2) MINIMUM STANDARDS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) of this subsection, shall, at a minimum, ensure that the covered financial institution—

''(A) ascertains the identity of each individual or entity having a direct or beneficial ownership interest in the account, and obtains sufficient information about the background of the individual or entity and the source of funds deposited into the account as is needed to guard against money laundering;

''(B) monitors such accounts on an ongoing basis to prevent, detect, and report possible instances of money laundering;

''(C) conducts enhanced scrutiny of any private bank account requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, to prevent, detect, and report transactions that may involve the proceeds of foreign corruption;

''(D) conducts enhanced scrutiny of any correspondent account requested or maintained by, or on behalf of, a foreign bank operating—

''(i) under an offshore banking license; or

''(ii) under a banking license issued by a foreign country that has been designated—

''(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; or

''(II) by the Secretary as warranting special measures due to money laundering concerns; and

''(E) ascertains, as part of the enhanced scrutiny under subparagraph (D), whether the foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate, under paragraph (1).''.

(b) REGULATORY AUTHORITY.—After consultation with the Board of Governors of the Federal Reserve System, the Secretary of the Treasury may, by regulation, order, or otherwise as permitted by law, take measures that the Secretary deems appropriate to carry out section 5318A of title 31, United States Code (as added by this section).

(c) CONFORMING AMENDMENTS.—Section 5312(a) of title 31, United States Code, is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

''(5) 'Secretary' means the Secretary of the Treasury, except as otherwise provided in this subchapter.''.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item related to section 5318 the following:

''5318A. Requirements relating to United States bank accounts involving foreign persons.''.

(e) EFFECTIVE DATE.—Section 5318A of title 31, United States Code, as added by this section, shall take effect beginning 180 days after the date of enactment of this Act with respect to accounts covered by that section that are opened before, on, or after the date of enactment of this Act.

SEC. 5. LONG-ARM JURISDICTION OVER FOREIGN MONEY LAUNDERERS.

Section 1956(b) of title 18, United States Code, is amended by—

(1) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) inserting ''(1)'' after ''(b)'';

(3) inserting '', or section 1957'' after ''or (a)(3)''; and

(4) adding at the end the following:

''(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

''(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

''(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

''(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

''(3) A court, described in paragraph (2), may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

''(4) A court, described in paragraph (2), may appoint a Federal Receiver, in accordance with paragraph (5), to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a judgment under this section or section 981, 982, or 1957, including an order of restitution to any victim of a specified unlawful activity.

''(5) A Federal Receiver, described in paragraph (4)—

''(A) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

''(B) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

''(C) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

''(i) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

''(ii) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.''.

SEC. 6. LAUNDERING MONEY THROUGH A FOREIGN BANK.

Section 1956(c) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

''(6) the term 'financial institution' includes—

''(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

''(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).''.

SEC. 7. PROHIBITION ON FALSE STATEMENTS TO FINANCIAL INSTITUTIONS CONCERNING THE IDENTITY OF A CUSTOMER.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following:

''§ 1008. False statements concerning the identity of customers of financial institutions

''(a) IN GENERAL.—Whoever knowingly in any manner—

''(1) falsifies, conceals, or covers up, or attempts to falsify, conceal, or cover up, the identity of any person in connection with any transaction with a financial institution;

''(2) makes, or attempts to make, any materially false, fraudulent, or fictitious statement or representation of the identity of any person in connection with a transaction with a financial institution;

''(3) makes or uses, or attempts to make or use, any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry concerning the identity of any person in connection with a transaction with a financial institution; or

''(4) uses or presents, or attempts to use or present, in connection with a transaction with a financial institution, an identification document or means of identification the possession of which is a violation of section 1028;

shall be fined under this title, imprisoned not more than 5 years, or both.

''(b) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(A) has the same meaning as in section 20; and

''(B) in addition, has the same meaning as in section 5312(a)(2) of title 31, United States Code.

''(2) IDENTIFICATION DOCUMENT.—The term 'identification document' has the same meaning as in section 1028(d).

''(3) MEANS OF IDENTIFICATION.—The term 'means of identification' has the same meaning as in section 1028(d).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking ''1014 (relating to fraudulent loan'' and inserting ''section 1008 (relating to false statements concerning the identity of customers of financial institutions), section 1014 (relating to fraudulent loan''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following:

''1008. False statements concerning the identity of customers of financial institutions.''.

SEC. 8. CONCENTRATION ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(h) of title 31, United States Code, is amended by adding at the end the following:

''(3) CONCENTRATION ACCOUNTS.—The Secretary shall issue regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

''(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

''(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

''(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.''.

SEC. 9. CHARGING MONEY LAUNDERING AS A COURSE OF CONDUCT.

Section 1956(h) of title 18, United States Code, is amended by —

(1) inserting ''(1)'' before ''Any person''; and

(2) adding at the end the following:

''(2) Any person who commits multiple violations of this section or section 1957 that are part of the same scheme or continuing course of conduct may be charged, at the election of the Government, in a single count in an indictment or information.''.

SEC. 10. FUNGIBLE PROPERTY IN BANK ACCOUNTS.

(a) IN GENERAL.—Section 984 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) The provisions of this section may be invoked only if the action for forfeiture was commenced by the seizure or restraint of the property, or by the filing of a complaint, within 2 years of the offense that is the basis for the forfeiture.''.

(b) APPLICATION.—The amendment made by this section shall apply to any offense committed on or after the date which is 2 years before the date of enactment of this Act.

SEC. 11. FORFEITURE OF FUNDS IN UNITED STATES INTERBANK ACCOUNTS.

(a) FORFEITURE FROM UNITED STATES INTERBANK ACCOUNT.—Section 981 of title 18, United States Code, is amended by adding at the end the following:

''(k) INTERBANK ACCOUNTS.—

''(1) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign bank, and that foreign bank has an interbank account in the United States with a covered financial institution (as defined in section 5318A of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign bank, may be restrained, seized, or arrested.

''(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign bank, nor shall it be necessary for the Government to rely on the application of section 984.

''(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign bank may contest the forfeiture by filing a claim under section 983.

''(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) INTERBANK ACCOUNT.—The term 'interbank account' has the same meaning as in section 984(c)(2)(B).

''(B) OWNER.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'owner'—

''(I) has the same meaning as in section 983(d)(6); and

''(II) does not include any foreign bank or other financial institution acting as an intermediary in the transfer of funds into the interbank account and having no ownership interest in the funds sought to be forfeited.

''(ii) EXCEPTION.—The foreign bank may be considered the 'owner' of the funds (and no other person shall qualify as the owner of such funds) only if—

''(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

''(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its

obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.''.

(b) BANK RECORDS.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

''(i) BANK RECORDS RELATED TO ANTI-MONEY LAUNDERING PROGRAMS.—

''(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(B) INCORPORATED TERMS.—The terms 'correspondent account', 'covered financial institution', and 'foreign bank' have the same meanings as in section 5318A.

''(2) 48-HOUR RULE.—Not later than 48 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

''(3) FOREIGN BANK RECORDS.—

''(A) SUMMONS OR SUBPOENA OF RECORDS.—

''(i) IN GENERAL.—The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account.

''(ii) SERVICE OF SUMMONS OR SUBPOENA.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

''(B) ACCEPTANCE OF SERVICE.—

''(i) MAINTAINING RECORDS IN THE UNITED STATES.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

''(ii) LAW ENFORCEMENT REQUEST.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

''(C) TERMINATION OF CORRESPONDENT RELATIONSHIP.—

''(i) TERMINATION UPON RECEIPT OF NOTICE.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 days after receipt of written notice from the Secretary or the Attorney General that the foreign bank has failed—

''(I) to comply with a summons or subpoena issued under subparagraph (A); or

''(II) to initiate proceedings in a United States court contesting such summons or subpoena.

''(ii) LIMITATION ON LIABILITY.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

''(iii) FAILURE TO TERMINATE RELATIONSHIP.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.''.

(c) AUTHORITY TO ORDER CONVICTED CRIMINAL TO RETURN PROPERTY LOCATED ABROAD.—

(1) FORFEITURE OF SUBSTITUTE PROPERTY.—Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by striking subsection (p) and inserting the following:

''(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

''(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

''(A) cannot be located upon the exercise of due diligence;

''(B) has been transferred or sold to, or deposited with, a third party;

''(C) has been placed beyond the jurisdiction of the court;

''(D) has been substantially diminished in value; or

''(E) has been commingled with other property which cannot be divided without difficulty.

''(2) SUBSTITUTE PROPERTY.—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

''(3) RETURN OF PROPERTY TO JURISDICTION.—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.''.

(2) PROTECTIVE ORDERS.—Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended by adding at the end the following:

''(4) ORDER TO REPATRIATE AND DEPOSIT.—

''(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

''(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.''.

SEC. 12. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act, and the amendments made by this Act, shall take effect 90 days after the date of enactment of this Act.

SUMMARY OF MONEY LAUNDERING ABATEMENT ACT

Foreign Corruption. Expands the list of foreign crimes triggering a U.S. money laundering offense to include foreign corruption offenses such as bribery and misappropriation of government funds.

Unidentified Foreign Accountholders. Requires U.S. banks and U.S. branches of foreign banks opening or managing a bank account in the United States for a foreign person to keep a record in the United States identifying the account owner.

Foreign Shell Banks. Bars U.S. banks and U.S. branches of foreign banks from providing direct or indirect banking services to foreign shell banks that have no physical presence in any country and no bank affiliation.

Foreign Private Bank and Correspondent Accounts. Requires U.S. banks and U.S. branches of foreign banks that open a private bank account with $1 million or more for a foreign person, or a correspondent account for an offshore bank or foreign bank in a country posing high money laundering risks, to conduct enhanced due diligence reviews of those accounts to guard against money laundering.

Foreign Bank Forfeitures. Modifies forfeiture rules for foreign banks' correspondent accounts by making a depositor's funds in a foreign bank's U.S. correspondent account subject to the same civil forfeiture rules that apply to depositors' funds in other U.S. bank accounts.

Additional Measures Targeting Foreign Money Laundering.

Gives U.S. courts ''long-arm'' jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons seizing assets ordered forfeited by a U.S. court.

Expands the definition of money laundering to include laundering funds through a foreign bank.

Authorizes U.S. courts to order a convicted criminal to return property located abroad and, in civil forfeiture proceedings, to order a defendant to return such property pending a civil trial on the merits. Authorizes U.S. prosecutors to use a court-appointed Federal Receiver to find a criminal defendant's assets, wherever located.

Authorizes Federal law enforcement to subpoena a foreign bank with a U.S. correspondent account for account records, and ask the U.S. correspondent bank to identify a U.S. resident who can accept the subpoena. Requires the U.S. correspondent bank, if it receives government notice that the foreign bank refuses to comply or contest the subpoena in court, to close the foreign bank's account.

Other measures would make it a Federal crime to knowingly falsify a bank customer's true identity; bar bank clients from anonymously directing funds through a bank's general administrative or ''concentration'' accounts; extend the statute of limitations for civil forfeiture proceedings; simplify pleading requirements for money laundering indictments; and require banks to provide prompt responses to regulatory requests for anti-money laundering information.

THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE ATTORNEY GENERAL,

Boston, MA, August 1, 2001.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: This letter is to express my strong support for the Money Laundering Abatement Act. As I am sure you are aware, money laundering has become increasingly prevalent in recent years. As law enforcement has worked to curb the illegal laundering of funds, the criminal element has become more sophisticated and focused in its efforts to evade the grasp of the law. Specifically, money launderers are taking advantage of foreign shell banks, and banks in jurisdictions with weak money laundering controls to hide their ill-gotten gains.

At this juncture, there is a serious need for modernizing and redefining the Federal money laundering statutes to thwart the efforts of the criminal element and close the loopholes they use to their advantage. The money laundering business has taken advantage of its ability under current law to use foreign banks, largely without negative consequences. This is an issue that must be addressed on the Federal level because of its international element. Moreover, in the Commonwealth of Massachusetts, there is no state level money laundering legislation. As a result, we rely on Federal/State law enforcement partnership to eradicate money laundering. The only hope for eliminating international money laundering ties within our State lies with the United States Congress. I encourage the Congress to take the necessary steps to assist State and Federal law enforcement in their continuing efforts to control the illegal laundering of funds.

The Money Laundering Abatement Act is an important step in that process. Among many useful provisions, the Act prohibits United States banks from providing services to foreign shell banks that have no physical presence in any country, and as a result, are easily used in the laundering of illegal funds. In addition, the legislation provides for enhanced due diligence procedures by United States banks which will at the very least detect money laundering, and will also undoubtedly deter it in the first place. Further, the Act makes it a federal crime to knowingly falsify a bank customer's true identity, which will make tracing of funds immeasurably easier. In addition to these few provisions that I have mentioned, the Act contains many other measures that will greatly aid law enforcement in its mission.

I strongly support your efforts to assist state and federal law enforcement in their money laundering control efforts through the Money Laundering Abatement Act. The legislation strengthens the existing anti-money laundering structure and provides new tools that will assist law enforcement in keeping pace with the modern money laundering schemes. Good luck in your efforts to pass this vital legislation.

Sincerely,

THOMAS F. REILLY.

STATE OF ARIZONA,
OFFICE OF THE ATTORNEY GENERAL,
Phoenix, AZ, August 2, 2001.

Hon. CARL LEVIN,
U.S. Senate, Washington, DC.
Hon. CHUCK GRASSLEY,
U.S. Senate, Washington, DC.

DEAR SENATORS LEVIN AND GRASSLEY: I write to express my views on the Money Laundering Abatement Act you are planning to introduce soon. This bill would provide much needed relief from some of the most pressing problems in money laundering enforcement in the internation arena. The burdens it places on the financial institutions are well considered, closely tailored to the problems, and reasonable in light of the public benefits involved.

The bill focuses on the structural arrangements that allow major money launderers to operate. These include the use of shell banks and foreign accounts, abuse of private banking, evasion of law enforcement efforts to acquire necessary records, and of safe foreign havens for criminal proceeds. The approach is very encouraging, because efforts to limit the abuse of these international money laundering tools and techniques must come from Congress rather than the state legislatures, and because such measures attack money laundering at a deeper and more lasting level than simpler measures.

The focus on structural matters means that this bill's effects on cases actually prosecuted by state attorneys general are a relatively small part of the substantial effects its passage would have on money laundering as a whole. Nevertheless, its effects on money laundering affecting victims of crime and illegal drug trafficking would be dramatic. I will use two exmples from my Office's present money lauderning efforts

My Office initiated a program to combat so-called ''prime bank fraud'' in 1996, and continued to focus on these cases. Some years ago, the International Chamber of Commerce estimated that over $10 million per day is invested in this wholly fraudulent investment scam. The ''PBI'' business has grown substantially since then. To date, my Office has recovered over $46 million in these cases, directly and in concert with U.S. Attorneys and SEC. Prime bank fraudsters rely heavily on the money movement and concealment techniques that this bill would address, particularly foreign bank accounts, shell banks, accounts in false identities, movement of funds through ''concentration'' accounts, and impunity from efforts to repatriate stolen funds. One of our targets was sentenced recently in federal court to over eight years in prison and ordered to make restitution of over $9 million, but without the tools provided in this bill, there is little hope that the victims will ever see anything that was not seized for forfeiture in the early stages of the investigation.

My Office is now engaged in a program to control the laundering of funds through the money transmitters in Arizona, as part of the much larger problem of illegal money movement to and through the Southwest border region. This mechanism is a major facilitator of the drug smuggling operations. Foreign bank accounts and correspondence accounts, immunity from U.S. forfeitures, and false ownership are significant barriers to successful control of money laundering in the Southwest.

Your bill is an example of the immense value of institutions like the Permanent Subcommittee of Investigations, because this type of bill requires a deeper understanding of the issues that come from long term inquiries by professional staff. We who are involved in state level money laundering control efforts should be particularly supportive of such long term strategies because they are most important to the quality of life of our citizens.

I commend your efforts for introducing this important legislation and will assist you in anyway I can to gain its passage.

Yours very truly,

JANET NAPOLITANO,
Attorney General.

By Mr. BINGAMAN (for himself and Mr. REID):

S. 1374. A bill to provide for a study of the effects of hydraulic fracturing on underground drinking water sources; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, today I introduce, along with the senior Senator from Nevada, very important legislation to remedy an unnecessary impediment to natural gas production.

In 1997, the Eleventh Circuit ruled that hydraulic fracturing, a process for stimulating development in certain types of gas wells, constituted as ''underground injection'' under the Safe Drinking Water Act. As such, the State of Alabama was required to establish standards by which all hydraulic fracturing operations associated with natural gas development would be required to obtain a permit under the Safe Drinking Water Act. This is an expensive and time consuming process, and one that appears unnecessary for protection of underground sources of drinking water.

The Environmental Protection Agency argued before the Eleventh Circuit that hydraulic fracturing did not pose a threat to underground sources of drinking water, and should not be subject to regulation under the Safe Drinking Water Act. The Eleventh Circuit did not find that hydraulic fracturing in fact threatened underground sources of drinking water. Instead, the Court found only that, as written, the definition of ''underground injection'' under the Safe Drinking Water Act included the process of hydraulic fracturing.

Natural gas, including gas from coalbed methane and other unconventional source, is becoming an increasingly important energy source for the United States. It is a clean burning, domestically produced resource, the increased production of which will both enhance our energy security and help us address the problem of global warming.

Protection of drinking water is also an issue of the highest priority. However, it appears that the situation created by the Eleventh Circuit's decision is not one that addresses protection of underground sources of drinking water, because the Court did not find any harm to drinking water associated with groundwater production. Instead, this appears to be a situation where a technical reading of a statute creates expensive permitting requirements not associated with a real on-the-ground need.

The legislation introduced by myself and Senator REID will require the EPA, in consultation with the Secretary of the Interior, the Secretary of Energy, the Groundwater Protection Council, affected States, and other entities, as appropriate, to conduct a study on any impacts from hydraulic fracturing on underground sources of drinking water.

If the Administration determines that hydraulic fracturing endangers underground sources of drinking water, the Administrator shall regulate it under the Safe Drinking Water Act.

If, however, the Administrator determines that hydraulic fracturing will not endangered underground sources of drinking water, the Administrator shall not regulate it under the Safe Drinking Water Act. In that case, States, including the State of Alabama, shall likewise not be required to regulate hydraulic fracturing as an underground injection under the Safe Drinking Water Act.

Our bill addresses regulation under section 1421 of the Safe Drinking Water Act, 42 U.S.C. 300h. Under current law, States are entitled to make a showing under section 1425 of the Safe Drinking Water Act, 42 U.S.C. 300H–4, that for certain oil and gas operations, the State regulations satisfy the statutory

requirements of the Safe Drinking Water Act and the State will therefore not be required to promulgate regulations under section 1422 of the Safe Drinking Water Act.

It is our intention that the provisions of Section 1425 apply to hydraulic fracturing operations, and it is our understanding that this is the status of current law. This issue is currently being litigated before the Eleventh Circuit. Should the Eleventh Circuit decide otherwise, we will address the issue as appropriate at that time.

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. 1374

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

SECTION 1. SHORT TITLE.

This act may be cited as the ''Hydraulic Fracturing Act''.

SEC. 2. HYDRAULIC FRACTURING.

Section 1421 of the Safe Drinking Water Act (42 U.S.C. §300h) is amended by adding at the end the following:

''(e) HYDRAULIC FRACTURING FOR OIL AND GAS PRODUCTION.—

''(1) STUDY OF THE EFFECTS OF HYDRAULIC FRACTURING.—

''(A) IN GENERAL.—Not later than 24 months after the date of enactment of this subsection, the Administrator shall complete a study of the known and potential effects on underground drinking water sources of hydraulic fracturing, including the effects of hydraulic fracturing on underground drinking water sources on a nationwide basis, and within specific regions, states, or portions of states.

''(B) CONSULTATION.—In planning and conducting the study, the Administrator shall consult with the Secretary of the Interior, the Secretary of Energy, the Ground Water Protection Council, affected States, and, as appropriate, representatives of environmental, industry, academic, scientific, public health, and other relevant organizations. Such study may be accomplished in conjunction with other ongoing studies related to the effects of oil and gas production on groundwater resources.

''(C) STUDY ELEMENTS.—The study conducted under subparagraph (A) shall, at a minimum, examine and make findings as to whether—

''(i) such hydraulic fracturing has, or will, endanger (as defined under subsection (d)(2)) underground drinking water sources, including those sources within specific regions, states or portions of states;

''(ii) there are specific methods, practices, or hydrogeologic circumstances in which hydraulic fracturing has, or will, endanger underground drinking water sources; and

''(iii) whether there are any precautionary actions that may reduce or eliminate any such endangerment.

''(2) INDEPENDENT SCIENTIFIC REVIEW.—

''(A) IN GENERAL.—Not later than 2 months after the study under paragraph (1) is completed, the Administrator shall enter into an appropriate agreement with the National Academy of Sciences to have the Academy review the conclusions of the study.

''(B) REPORT.—Not later than 9 months after entering into an appropriate agreement with the Administrator, the National Academy of Sciences shall report to the Administrator, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate, on the—

''(i) findings related to the study conducted by the Administrator under paragraph (1); and

''(ii) recommendations, if any, for modifying the findings of the study.

''(3) REGULATORY DETERMINATION.—

''(A) IN GENERAL.—Not later than 6 months after receiving the National Academy of Sciences report under paragraph (2), the Administrator shall determine, after informal public hearings and public notice and opportunity for comment, and based on information developed or accumulated in connection with the study required under paragraph (1) and the National Academy of Sciences report under paragraph (2), either:

''(i) that regulation of hydraulic fracturing under this part is necessary to ensure that underground sources of drinking water will not be endangered on a nationwide basis, or within a specific region, state or portions of a state; or

''(ii) that regulation described under clause (i) is unnecessary.

''(B) PUBLICATION OF DETERMINATION.—The Administrator shall publish the determination in the Federal Register, accompanied by an explanation and the reasons for it.

''(4) PROMULGATION OF REGULATIONS.

''(A) REGULATION NECESSARY.—If the Administrator determines under paragraph (3) that regulation of hydraulic fracturing under this part is necessary to ensure that hydraulic fracturing does not endanger underground drinking water sources on a nationwide basis, or within a specific region, State or portions of a State, the Administrator shall, within 6 months after issuance of that determination, and after public notice and opportunity for comment, promulgate regulations under section 1421 (42 U.S.C. §300h) to ensure that hydraulic fracturing will not endanger such underground sources of drinking water.

''(B) REGULATION UNNECESSARY.—The Administrator shall not promulgate regulations for hydraulic fracturing under this part unless the Administrator determines under paragraph (3) that such regulations are necessary.

''(C) EXISTING REGULATIONS.—A determination by the Administrator under paragraph (3) that regulation is unnecessary will relieve states from any further obligation to regulate hydraulic fracturing as an underground injection under this part.

''(5) DEFINITION OF HYDRAULIC FRACTURING.—For purposes of this subsection, the term ''hydraulic fracturing'' means the process of creating a fracture in a reservoir rock, and injecting fluids and propping agents, for the purposes of reservoir stimulation related to oil and gas production activities.

''(6) SAVINGS.—Nothing in this subsection shall in any way limit the authorities of the Administrator under section 1431 (42 U.S.C. 300i).''.

By Mr. NELSON of Florida:

S. 1376. A bill to amend part C of title XVIII of the Social Security Act to ensure that Medicare + Choice eligible individuals have sufficient time to consider information and to make an informed choice regarding enrollment in a Medicare + Choice plan; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, I rise today to introduce the Medicare Beneficiary Information Act. It is vital that Medicare + Choice participants receive plan information in a timely, appropriate manner.

Under the Social Security Act, HMOs participating in the Medicare + Choice program are required to submit all of their plan information, including the type, cost and scope of benefits they intend to offer, by July 1st of each year. Upon receiving this information, the Secretary of HHS is required to prepare a booklet that compares the benefits and costs of each plan, and disseminate the information to seniors prior to the open enrollment season. The enrollment season is November 1st through November 30th.

The July 1st deadline was imposed so that seniors would have ample opportunity to read the materials and to make an informed decision before selecting a health plan.

Last month, at the request of the HMO industry, Secretary Thompson extended the deadline until September 15th. As a result, Medicare beneficiaries will have little time to review the comparative information before the enrollment period. In response to these concerns, the Secretary indicated that the information would be posted on the Internet by October 15th.

Senior citizens in many cases do not have access to the Internet. If information is not sent in a timely manner, it will be extremely difficult for seniors, especially low income seniors, to make informed choices about their health plan. As a result, they will have little time to find new health care coverage if their HMO sharply raises premiums and fees, reduces benefits or pulls out of Medicare. Consequently, seniors may be forced to accept whatever changes the HMOs impose or run the risk of having gaps in their coverage should they choose to switch plans.

This bill states that, effective 2002, HMO's are required to submit, complete binding information to the Secretary of Health and Human Services. It also requires that the information be sent to beneficiaries at least 45 days before the beginning of the open enrollment period. It further requires all comparative information to be sent in mail, rather than only being posted on the Internet. This will ensure that seniors are receiving the information necessary to make educated informed decisions about their health plan.

By Mr. SMITH of Oregon:

S. 1377. A bill to require the Attorney General to establish an office in the Department of Justice to monitor acts of international terrorism alleged to have been committed by Palestinian individuals or individuals acting on behalf of Palestinian organizations and to carry out certain other related activities; to the Committee on the Judiciary.

Mr. SMITH of Oregon. Mr. President, almost everyday we hear about new Palestinian violence in Israel and all too often, American citizens are among the victims. Earlier this year, Mrs. Sarah Blaustein, of Long Island, New York, was murdered in a drive-by shooting by Palestinian terrorists south of Jerusalem. A few weeks before

that, a 13-year old boy from Maryland, Jacob ''Koby'' Mandell, was savagely beaten and tortured to death by Palestinian terrorists. Eighteen American citizens have been killed by Palestinian terrorists since the signing of the Oslo accords in September 1993, and six of them were killed during the current wave of violence that began last autumn.

Of course, Americans are occasionally the victims of terrorism all over the world, not just in Israel. But what makes the American victims in Israel unique is that while our government does everything it can to capture the terrorists who harm Americans elsewhere around the world, it takes a completely different approach when it comes to Palestinian terrorists.

Our State Department offers multimillion dollar rewards for information leading to the capture of terrorists who have killed Americans around the world—but it has never offered such a reward to help catch terrorists who are being sheltered by Arafat. The State Department maintains a web site *www.dssrewards.net* for its ''Heroes'' program, where it posts the rewards to help capture terrorists.

The time has come to take this vital issue out of the State Department's hands and put it back where it belongs, in the Department of Justice. This should not be a political issue. When a matter of justice is at stake, the decision should be made by the legal authorities whose responsibility it is to pursue justice, not politics.

This is why today I rise to introduce the Koby Mandell Justice for American Victims of Terrorism Act of 2000.'' This bill will establish a special office, within the Department of Justice, the sole purpose of which will be to facilitate the capture of Palestinian terrorists involved in attacks in which American Citizens were harmed. The bill will: Collect evidence against suspected terrorists; offer rewards for information leading to the capture of these terrorists and maintain contact with families of victims to update them on the progress of efforts to capture the terrorists.

In short, this legislation will help ensure that the killers of Americans will have a sanctuary in the Palestinian Authority territories. This legislation will advance the cause of justice and it will put terrorists and their supporters on notice that the United States government will not stand idly by when our citizens are harmed.

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. 1377

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 ''Koby Mandell Justice for American Victims of Terrorism Act of 2001''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Since 1948, many United States citizens have been injured or killed in terrorist attacks committed by Palestinian individuals and organizations in and outside of the Middle East.

(2) Under United States law, individuals who commit acts of international terrorism outside of the United States against nationals of the United States may be prosecuted for such acts in the United States.

(3) The United States has taken a special interest and active role in resolving the Israeli-Palestinian conflict, including numerous diplomatic efforts to facilitate a resolution of the conflict and the provision of financial assistance to Palestinian organizations.

(4) However, despite these diplomatic efforts and financial assistance, little has been done to apprehend, indict, prosecute, and convict Palestinian individuals who have committed terrorist attacks against nationals of the United States.

SEC. 3. ESTABLISHMENT OF OFFICE IN THE DEPARTMENT OF JUSTICE TO MONITOR TERRORIST ACTS BY PALESTINIAN INDIVIDUALS AND ORGANIZATIONS AND CARRY OUT RELATED ACTIVITIES.

(a) IN GENERAL.—The Attorney General shall establish within the Department of Justice an office to carry out the following activities:

(1) Monitor acts of international terrorism alleged to have been committed by Palestinian individuals or individuals acting on behalf of Palestinian organizations.

(2) Collect information against individuals alleged to have committed acts of international terrorism described in paragraph (1).

(3) Offer rewards for information on individuals alleged to have committed acts of international terrorism described in paragraph (1), including the dissemination of information relating to such rewards in the Arabic-language media.

(4) Negotiate with the Palestinian Authority or related entities to obtain financial compensation for nationals of the United States, or their families, injured or killed by acts of terrorism described in paragraph (1).

(5) In conjunction with other appropriate Federal departments and agencies, establish and implement alternative methods to apprehend, indict, prosecute, and convict individuals who commit acts of terrorism described in paragraph (1).

(6) Contact the families of victims of acts of terrorism described in paragraph (1) and provide updates on the progress to apprehend, indict, prosecute, and convict the individuals who commit such acts.

(7) In order to effectively carry out paragraphs (1) through (6), provide for the permanent stationing of an appropriate number of United States officials in Israel, in territory administered by Israel, in territory administered by the Palestinian Authority, and elsewhere, to the extent practicable.

(b) DEFINITION.—In this section, the term ''international terrorism'' has the meaning given such term in section 2331(b) of title 18, United States Code.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal year 2002 and each subsequent fiscal year such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

By Mr. DASCHLE (for himself, Mr. HARKIN Mr. HATCH, Mr. INOUYE, Mr. JOHNSON, and Mr. REID):

S. 1378. A bill to allow patients access to drugs and medical devices recommended and provided by health care practitioners under strict guidelines, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DASCHLE. Mr. President, today I am introducing the Access to Medical Treatment Act. I am pleased to be joined by Senators HARKIN, HATCH, INOUYE, JOHNSON, and REID in this effort to increase individuals' freedom of choice in health care.

Patient choice is a value often articulated in health care debates. Yet patients often do not have the right to choose potentially life-saving alternative treatments. I want to thank Berkley Bedell, who formerly represented the 6th District of Iowa, for making me aware of the importance of this issue and for assisting in the development of this bill. This has been a multi-year effort, and he has worked tirelessly on it. Berkley has experienced first-hand the life-saving potential of alternative treatments. His story convinced me that our health care system discourages the use of alternative medicine treatment and thereby restricts the right of patients to choose.

American consumers have already voted for expanded access to alternative treatments with their feet and their wallets. A 1997 study published in the Journal of the American Medical Association, JAMA, shows that 42 percent of Americans used some kind of alternative therapy, spending more than $27 billion that year. Americans made more visits to alternative practitioners than to primary care providers. According to a 1999 JAMA study, people sought complementary and alternative medicine not only because they were dissatisfied with conventional medicine but also because these therapies mirrored their own values, beliefs and philosophical orientation toward health and life.

Alternative therapies are rapidly being incorporated into mainstream medical programs, practice and research. Indeed, at least 75 out of 117 U.S. medical schools offer elective courses in alternative medicine or include alternative medicine topics in required courses. A 1994 study in the Journal of Family Practice revealed that more than 60 percent of doctors from a wide range of specialties recommended alternative therapies to their patients at least once. The National Institutes of Health now has a Center for Complementary and Alternative Medicine where research is underway to expand our knowledge of alternative therapies and their safe and effective use.

Despite the growing demand for many types of alternative medicine, some therapies remain unavailable because they have not yet been approved

by the FDA. My bill would increase access to treatments that would normally be regulated by the FDA, but have not yet undergone the expansive and lengthy process currently required to gain FDA approval. Given the popularity of alternative medicine among the American public and its growing acceptance among traditional medical practitioners, it would seem logical to remove some of the access barriers that consumers face when seeking certain alternative therapies.

The Access to Medical Treatment Act supports patient choice while maintaining important patient safeguards. It asserts that individuals, especially those who face life-threatening afflictions for which conventional treatments have proven ineffective, should have the option of trying an alternative treatment. This is a choice rightly made by the consumer, and not dictated by the Federal Government.

All treatments sanctioned by this Act must be prescribed by an authorized health care practitioner who has personally examined the patient. The practitioner must fully disclose all available information about the safety and effectiveness of any medical treatment, including questions that remain unanswered because the necessary research has not been conducted.

The bill carefully restricts the ability of practitioners to advertise or market unapproved drugs or devices or to profit financially from prescribing alternative treatment. This provision was included to ensure that practitioners keep the best interests of patients in mind and to retain incentives for seeking FDA approval. If an individual or a company wants to earn a profit from a product, they would be wise to go through the standard FDA process.

I want to be absolutely clear that this legislation will not dismantle the FDA, undermine its authority, or appreciably change current medical practices. It is not meant to attack the FDA or its approval process. It is meant to complement it. The FDA should, and would under this legislation, remain solely responsible for protecting the health of the Nation from unsafe and impure drugs. The heavy demands and requirements placed upon treatments before they gain FDA approval are important, and I firmly believe that treatments receiving the Federal Government's stamp of approval should be proven safe and effective.

The bill protects patients by requiring practitioners to report any adverse reaction that could potentially have been caused by an unapproved drug or medical device. If an adverse reaction is reported, manufacture and distribution of the drug must cease pending an investigation. If it is determined that the adverse reaction was caused by the drug or medical device, as part of a total recall, the Secretary of the Department of Health and Human Services and the manufacturer have the duty to inform all health care practitioners to whom the drug or medical device has been provided.

This legislation will help build a knowledge base regarding alternative medicine treatments by requiring practitioners to report on effectiveness. This is critical because current information available about the effectiveness of many promising treatments is inadequate. The information generated through this Act will begin to reverse this information gap, as data are collected and analyzed by the Center for Complementary and Alternative Medicine at the National Institutes of Health.

The Access to Medical Treatment Act represents an honest attempt to focus serious attention on the value of alternative treatments and overcome current obstacles to their safe development and utilization. In essence, this legislation addresses the fundamental balance between two seemingly irreconcilable interests: the protection of patients from dangerous and ineffective treatments and the preservation of consumers' freedom to choose alternative therapies. The complexity of this policy challenge should not discourage us from seeking to solve it. I am convinced that the public good will be served by a serious attempt to reconcile these contradictory interests, and I am hopeful the discussion generated by this legislation will help point the way to its resolution.

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 1379. A bill to amend the Public Health Service Act to establish an Office of Rare Diseases at the National Institutes of Health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased to introduce the Rare Diseases Act of 2001.

This legislation, in conjunction with companion legislation introduced by Senator HATCH to amend the orphan drug tax credit, promises to greatly enhance the prospects for developing new treatments and diagnostics, and even cures for literally thousands of rare diseases and disorders.

The Rare Diseases Act provides a statutory authorization for the existing Office of Rare Diseases at the National Institutes of Health, NIH, and authorizes regional centers of excellence for rare disease research and training. The Act also increases the funding for the Food and Drug Administration's, FDA, Orphan Product Research Grant program, which has provided vital support for clinical research on new treatments for rare diseases and disorders.

I am encouraged that, consistent with our legislation, the President has proposed in fiscal year 2002 to create a network of centers of excellence for rare diseases. This proposal originated with the NIH, in recommendations of a Special Emphasis Panel convened to examine the state of rare disease research. Because the Panel itself was convened in response to a request of the Senate Appropriations Committee in 1966, it is appropriate that we are today introducing legislation which represents the fruition of a long, deliberative process involving both the Congress and the NIH.

It is important to note that Congress has had a longstanding interest in rare diseases. In 1983, Congress enacted the Orphan Drug Act to promote the development of treatments for rare diseases and disorders. Such diseases affect small patient populations, typically smaller than 200,000 individuals in the United States, and include Huntington's disease, myoclonus, ALS, Lou Gehrig's disease, Tourette syndrome, and muscular dystrophy. Although each disease may be rare, there are, in sum, 25 million Americans today who suffer from the six thousand known rare diseases and disorders.

As an original sponsor of the Orphan Drug Act, I am pleased it has been a great success, leading to the development of over 220 treatments for rare diseases and disorders. But the greatest share of credit is due to the original author of the Act, Congressman HENRY WAXMAN of California, and to a woman named Abbey Meyers.

During the 1970s, an organization called the National Organization for Rare Disorders, NORD, was founded by Abbey to provide services and to lobby on behalf of patients with rare diseases and disorders. It was Abbey and her organization which were instrumental in pressing Congress for enactment of legislation to encourage the development of orphan drugs.

In light of this important history, I am very pleased that the Rare Diseases Act of 2001 is supported by NORD. And I am also pleased to join my colleague, Senator HATCH, a champion of research into rare diseases, in introducing this legislation.

By Mr. KERRY (for himself and Mr. HOLLINGS):

S. 1380. A bill to coordinate and expand United States and international programs for the conservation and protection of North Atlantic Whales; to the Committee on Commerce, Science, and Transportation.

Mr. KERRY. Mr. President, as Chairman of the Oceans, Atmosphere and Fisheries Subcommittee, I rise today to introduce the North Atlantic Right Whale Recovery Act of 2001. I am pleased to be joined by our Commerce Committee Chairman, Senator HOLLINGS in this effort. This bill is designed to improve the management and research activities for right whales and increase the focus on reducing mortality caused by ship collisions, entanglement in fishing gear, and other causes. The most endangered of the great whales, the northern Atlantic right whale has shown no evidence of recovery since the whaling days of the

1900s despite full protection from hunting by a League of Nations agreement since 1935. Today the population of North Atlantic Right Whales remains at less than 350 animals, although 2001 was a banner year for reproduction as over 30 calves were born.

The entire Nation has watched with great interest as a team of experts from a number of organizations including the National Marine Fisheries Service, the New England Aquarium and the Center for Coastal Studies has sought to remove the nylon rope that is imbedded in the jaw of a North Atlantic Right Whale, dubbed ''Churchill''. By all accounts, unless the rope is removed the whale is likely to die from infections that are already discoloring the whale's skin. I would like to offer my sincere appreciation for all of these efforts to date and I hope that by offering this legislation today that we can refocus our attention on how to protect these magnificent mammals.

Right whales are at risk of extinction from a number of sources. These include, ship strikes, the number one source of known right whale fatalities, entanglement in fishing gear, coastal pollution, habitat degradation, ocean noise and climate change. This legislation requires the Secretary of Commerce to institute a North Atlantic Right Whale Recovery Program, in coordination with the Department of Transportation and other appropriate Federal agencies, States, the Southeast and Northeast Northern Atlantic Right Whale Recovery Plan Implementation Team and the Atlantic Large Whale Take Reduction Team, pursuant to the authority provided under the Endangered Species Act, the Marine Mammal Protection Act, and the Magnuson-Stevens Fishery Conservation and Management Act.

This legislation would require the Secretary of Commerce within 6 months of enactment, to initiate demonstration projects designed to result in the immediate reductions in North Atlantic right whale deaths. There are 4 distinct areas that I believe we should be focusing our attention on. First, we should develop acoustic detection and tracking technologies to monitor the migration of right whales so that ships at sea can avoid right whales. Second, we need to continue work on individual satellite tags for right whales. This is yet another way that we can track whale migration and alert ships at sea of the presence of whales and avoid ship strikes. Third, this legislation would speed up the development of neutrally buoyant line and ''weak link'' fishing gear, so that we can either avoid having whales become entangled in the first place or when they do the ''weak links'' break and they can more easily become disentangled. Finally this legislation supports research and testing into developing innovative ways to increase the success of disentanglement efforts.

This legislation allows for the government to provide fishermen ''whale safe'' fishing gear in high use or critical habitat areas. This is crucial, because once we have developed this ''whale safe'' gear we need to get it in the water as soon as possible. I believe an assistance program that is fair to fishermen will be needed and we are asking the agencies to tell us the potential costs so we can ensure that the gear can be deployed where needed.

This legislation requires the Secretary of Transportation and Commerce to develop and implement a comprehensive ship strike avoidance plan for Right Whales. I am pleased that a draft plan has been issued this week, but I want to make it clear that a plan must be implemented by January of 2003. I would like to stress to my colleagues, that by far the number one source of know right whale mortalities is ship strikes, and in my opinion we have not done nearly enough to prevent these lethal ship strikes from happening.

This legislation establishes a right whale research grant program. This program will establish a peer review process of all innovative biological and technical projects designed to protect right whales. In addition to the scientific community, this peer review team will also be comprised of representatives of the fishing industry and the maritime transportation industry. It is important that from the very beginning we have the input of the people who are on the water every day. Their knowledge and experience is absolutely necessary to developing innovative practices and techniques to save right whales.

Congress has appropriated over $8 million dollars in the last two years to protect right whales. I believe that now is the time to develop a comprehensive plan that spells out what we can do immediately to better protect these whales and focus our research efforts on innovative ideas and technologies that can identify whale migrations.

By Mrs. FEINSTEIN:

S. 1381. A bill to redesignate the facility of the United States Postal Service located at 5472 Crenshaw Boulevard in Los Angeles, California, as the ''Congressman Julian C. Dixon Post Office Building''; to the Committee on Governmental Affairs.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation to honor the late Julian Dixon, an esteemed Member of the House of Representatives from California for more than 20 years.

Julian Dixon lived a full life; highlighted by almost thirty years of public service. He served in the Army from 1957 to 1960 and in the California Assembly from 1972 until 1978. Julian was first elected to the House of Representatives in 1978.

As the representative for the Thirty-Second District of California, Julian consistently fought to maintain our Nation's commitment to civil rights and to increase the economic upward mobility of his constituents. Julian was also chair of the Congressional Black Caucus and worked tirelessly to establish a memorial to Dr. Martin Luther King, Jr. here in our Nation's capital.

Julian's legislative work covered myriad issues from intelligence to defense to congressional ethics. He was the ranking member of the House Intelligence Committee and a member of the committee that determines defense appropriations. He used his position on the appropriations committee to provide Federal aid for communities that were devastated by base closings and other defense cuts. He also helped secure emergency funding for damaged businesses after the Northridge earthquake and the Los Angeles riots.

Julian was not only a great legislator, but also a great human being. He was a gentleman in every sense of the word who was willing to work across partisan lines to improve the lives of his constituents and so many Americans. I was privileged as a member of the Senate Appropriations committee to work with Mr. Dixon. In this role, Julian always put California's needs first.

Julian served with passion and distinction. He was a man of the highest integrity and credibility. I am sure his constituents will be proud to have a Post Office named in his honor.

Julian Dixon was a man of principle and fairness whose grace and humility will be sorely missed. I am pleased to honor his memory by introducing a bill to designate the Post Office at 5472 Crenshaw Boulevard in Los Angeles as the ''Congressman Julian C. Dixon Post Office Building.''

By Mr. DEWINE (for himself and Ms. LANDRIEU):

S. 1382. A bill to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes; to the Committee on Governmental Affairs.

Mr. DEWINE. Mr. President, I rise today to introduce legislation, along with my friends and colleagues Senator LANDRIEU and Senator LEVIN, that will have a vital impact on children and families in the District of Columbia. Our bill, the ''District of Columbia Family Court Act of 2001'' is aimed at guiding the District, as the Superior Court strives to reform its role in the child welfare system through its creation of a Family Court.

This legislation takes a very important step forward in helping to ensure that the best interest of children in contact with the DC child welfare system are always paramount. In making

sure that is the case, judges in the system play a key role. I learned this first-hand nearly thirty years ago when I was serving as an assistant county prosecutor in Greene County, OH. One of my duties was to represent the Greene County Children Services in cases where children were going to be removed from their parents' custody.

I witnessed then that too many of these cases drag on endlessly, leaving children trapped in temporary foster care placements, which often entail multiple moves from foster home to foster home to foster home, for years and years and years. Such multiple placements and lack of permanency for these kids is abuse in it's own right.

Since being appointed to the District of Columbia Appropriations Committee, I have made it my personal mission to find financial solutions for the problems facing DC's foster children. In March, Representative DELAY and I laid the groundwork for a DC Family Court Bill that would be bipartisan and effective. In drafting this bill, we have held numerous hearings, met with child welfare advocates from across the District, and had countless meetings with the DC Superior Court Judges.

In particular, I want to thank Chief Judge Rufus King for making himself available to members of Congress and their staffs and for appearing before the DC Subcommittee on Appropriations. Judge King has made reforming the Family Division of the DC Court his number one priority, and I look forward to working with him in the future to implement the reforms established by our DC Family Court Bill.

Our legislation includes a number of important reforms that would ensure that the judicial system protects the children of the District. First, it would increase the length of judicial terms for judges from one year for judges already presiding over the Superior Court to three years. New judges appointed to the Superior Court and then assigned to the Family Court would have five-year terms. This change would enable judges to develop an expertise in Family Law.

Second, the bill would create magistrates so that the current backlog of 4500 permanency cases can be properly and adequately addressed. These magistrates would be distributed among the judges according to a transition plan, which must be submitted to Congress within 90 days of passage of this bill. We want to make sure the court has the flexibility to deal with these important child welfare issues.

Third, the bill provides the resources for an Integrated Judicial Information System, IJIS. This would enable the court to track and properly monitor family cases and would allow all judges and magistrates to have access to the information necessary to make the best decisions about placement and child safety.

Fourth, a reform in the bill that I find extremely important is the One-Judge/One Family provision. This policy would ensure that the same judge, a judge who knows the history of a family and the child, would be making the important permanency decisions. This provision is essential for those hard cases involving abuse and neglect. It ensures consistency. It ensures safety. And, it just makes sense.

Ultimately, our bill would provide consistency through the One-Judge/One-Family provision, it would provide safety and security, and it would provide stability for the children of the District. We need to give the children in the District's welfare system all of these things. It is the right thing to do.

I urge my colleagues to join in support of this bill. We must never, ever lose sight of our responsibility to the children involved. Their needs and their best interests must always come first. And today, I believe we are putting children first and taking a step forward on their behalf.

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. 1382

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 ''District of Columbia Family Court Act of 2001''.

SEC. 2. REDESIGNATION OF FAMILY DIVISION AS FAMILY COURT OF THE SUPERIOR COURT.

(a) IN GENERAL.—Section 11–902, District of Columbia Code, is amended to read as follows:

''§ 11–902. Organization of the court.

''(a) IN GENERAL.—The Superior Court shall consist of the following:

''(1) The Civil Division.

''(2) The Criminal Division.

''(3) The Family Court.

''(4) The Probate Division.

''(5) The Tax Division.

''(b) BRANCHES.—The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.

''(c) DESIGNATION OF PRESIDING JUDGE OF FAMILY COURT.—The chief judge of the Superior Court shall designate one of the judges assigned to the Family Court of the Superior Court to serve as the presiding judge of the Family Court of the Superior Court.

''(d) JURISDICTION DESCRIBED.—The Family Court shall have original jurisdiction over the actions, applications, determinations, adjudications, and proceedings described in section 11–1101.''.

(b) CONFORMING AMENDMENT TO CHAPTER 9.—Section 11–906(b), District of Columbia Code, is amended by inserting ''the Family Court and'' before ''the various divisions''.

(c) CONFORMING AMENDMENTS TO CHAPTER 11.—(1) The heading for chapter 11 of title 11, District of Columbia, is amended by striking ''FAMILY DIVISION'' and inserting ''FAMILY COURT''.

(2) The item relating to chapter 11 in the table of chapters for title 11, District of Columbia, is amended by striking ''FAMILY DIVISION'' and inserting ''FAMILY COURT''.

(d) CONFORMING AMENDMENTS TO TITLE 16.—

(1) CALCULATION OF CHILD SUPPORT.—Section 16–916.1(o)(6), District of Columbia Code, is amended by striking ''Family Division'' and inserting ''Family Court of the Superior Court''.

(2) EXPEDITED JUDICIAL HEARING OF CASES BROUGHT BEFORE HEARING COMMISSIONERS.—Section 16–924, District of Columbia Code, is amended by striking ''Family Division'' each place it appears in subsections (a) and (f) and inserting ''Family Court''.

(3) GENERAL REFERENCES TO PROCEEDINGS.—Chapter 23 of title 16, District of Columbia Code, is amended by inserting after section 16–2301 the following new section:

''§ 16–2301.1. References deemed to refer to Family Court of the Superior Court.

''Any reference in this chapter or any other Federal or District of Columbia law, Executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Family Division of the Superior Court of the District of Columbia shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.''.

(4) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 23 of title 16, District of Columbia, is amended by inserting after the item relating to section 16–2301 the following new item:

''16–2301.1. References deemed to refer to Family Court of the Superior Court.''.

SEC. 3. APPOINTMENT AND ASSIGNMENT OF JUDGES; NUMBER AND QUALIFICATIONS.

(a) NUMBER OF JUDGES FOR FAMILY COURT; QUALIFICATIONS AND TERMS OF SERVICE.—Chapter 9 of title 11, District of Columbia Code, is amended by inserting after section 11–908 the following new section:

''§ 11–908A. Special rules regarding assignment and service of judges of Family Court.

''(a) NUMBER OF JUDGES.—

''(1) IN GENERAL.—The number of judges serving on the Family Court of the Superior Court at any time may not be less than 12 or more than 15.

''(2) REPORT.—The total number of judges on the Superior Court may exceed the limit on such judges to the extent necessary to maintain the requirements of this subsection if the chief judge of the Superior Court—

''(A) obtains the approval of the Joint Committee on Judicial Administration; and

''(B) reports to Congress regarding the circumstances that gave rise to the necessity to exceed the cap.

''(b) QUALIFICATIONS.—The chief judge may not assign an individual to serve on the Family Court of the Superior Court unless—

''(1) the individual has training or expertise in family law;

''(2) the individual certifies to the chief judge that the individual intends to serve the full term of service, except that this paragraph shall not apply with respect to individuals serving as senior judges under section 11–1504 and individuals serving as temporary judges under section 11–908;

''(3) the individual certifies to the chief judge that the individual will participate in the ongoing training programs carried out for judges of the Family Court under section 11–1104(c); and

''(4) the individual meets the requirements of section 11–1732A(b).

''(c) TERM OF SERVICE.—

''(1) IN GENERAL.—

''(A) SERVING JUDGES.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge in the Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of not fewer than 3 years as determined by the chief judge of the Superior Court (including any consecutive period of service on

the Family Division of the Superior Court immediately preceding the date of the enactment of such Act).

''(B) NEW JUDGES.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is not serving as a judge in the Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of 5 years.

''(2) ASSIGNMENT FOR ADDITIONAL SERVICE.—After the term of service of a judge of the Family Court (as described in paragraph (1)) expires, at the judge's request the judge may be assigned for additional service on the Family Court for a period of such duration (consistent with section 431(c) of the District of Columbia Home Rule Act) as the chief judge may provide.

''(3) PERMITTING SERVICE ON FAMILY COURT FOR ENTIRE TERM.—At the request of the judge, a judge may serve as a judge of the Family Court for the judge's entire term of service as a judge of the Superior Court under section 431(c) of the District of Columbia Home Rule Act.

''(d) REASSIGNMENT TO OTHER DIVISIONS.—The chief judge may reassign a judge of the Family Court to any division of the Superior Court if the chief judge determines that the judge is unable, for cause, to continue serving in the Family Court.''.

(b) PLAN FOR FAMILY COURT TRANSITION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall prepare and submit to the President and Congress a transition plan for the Family Court of the Superior Court, and shall include in the plan the following:

(A) The chief judge's determination of the role and function of the presiding judge of the Family Court.

(B) The chief judge's determination of the number of judges needed to serve on the Family Court.

(C) The chief judge's determination of the number of magistrate judges of the Family Court needed for appointment under section 11–1732, District of Columbia Code.

(D) The chief judge's determination of the appropriate functions of such magistrate judges, together with the compensation of and other personnel matters pertaining to such magistrate judges.

(E) A plan for case flow, case management, and staffing needs (including the needs for both judicial and nonjudicial personnel) for the Family Court.

(F) A plan for space, equipment, and other physical plant needs and requirements during the transition, as determined in consultation with the Administrator of General Services.

(G) An analysis of the success of the use of magistrate judges under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia, as amended by subsection (a)).

(H) Consistent with the requirements of paragraph (2), a proposal for the disposition or transfer to the Family Court of actions and proceedings within the jurisdiction of the Family Court as of the date of the enactment of this Act (together with actions and proceedings described in section 11–1101, District of Columbia Code, which were initiated in the Family Division but remain pending in other Divisions of the Superior Court as of such date) in a manner consistent with applicable Federal and District of Columbia law and best practices, including best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(2) IMPLEMENTATION OF THE PROPOSAL FOR TRANSFER OR DISPOSITION OF ACTIONS AND PROCEEDINGS TO FAMILY COURT.—

(A) IN GENERAL.—The chief judge of the Superior Court and the presiding judge of the Family Court shall take such steps as may be required as provided in the proposal for disposition of actions and proceedings under paragraph (1)(H) to ensure that each action or proceeding within the jurisdiction of the Family Court of the Superior Court (as described in section 11–902(d), District of Columbia Code, as amended by subsection (a)) is transferred to the Family Court or otherwise disposed of as provided in subparagraph (B). The requirement of this subparagraph shall not apply to an action or proceeding pending before a senior judge as defined in section 11–1504, District of Columbia Code.

(B) DEADLINE.—Notwithstanding any other provision of this Act or any amendment made by this Act, no action or proceeding which is within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia Code, as amended by subsection (a)) shall remain pending with a judge not serving on the Family Court upon the expiration of 18 months after the date of enactment of this Act.

(C) PROGRESS REPORTS.—The chief judge of the Superior Court shall report to the Committee on Appropriations of each House, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives 6 months and 12 months after the date of enactment of this Act on the progress made towards disposing of actions or proceedings described in subparagraph (B).

(3) EFFECTIVE DATE OF IMPLEMENTATION OF PLAN.—The chief judge of the Superior Court may not take any action to implement the transition plan under this subsection until the expiration of the 30-day period which begins on the date the chief judge submits the plan to the President and Congress under paragraph (1).

(c) TRANSITION TO REQUIRED NUMBER OF JUDGES.—

(1) ANALYSIS BY CHIEF JUDGE OF SUPERIOR COURT.—The chief judge of the Superior Court of the District of Columbia shall include in the transition plan prepared under subsection (b)—

(A) the chief judge's determination of the number of individuals serving as judges of the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court under section 11–908A, District of Columbia Code (as added by subsection (a)); and

(B) if the chief judge determines that the number of individuals described in subparagraph (A) is less than 15, a request that the Judicial Nomination Commission recruit and the President nominate (in accordance with section 433 of the District of Columbia Home Rule Act) such additional number of individuals to serve on the Superior Court who meet the qualifications for judges of the Family Court under such section as may be required to enable the chief judge to make the required number of assignments.

(2) ROLE OF DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION.—For purposes of section 434(d)(1) of the District of Columbia Home Rule Act, the submission of a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B) shall be deemed to create a number of vacancies in the position of judge of the Superior Court equal to the number of additional appointments so requested by the chief judge, except that the deadline for the submission by the District of Columbia Judicial Nomination Commission of nominees to fill such vacancies shall be 90 days after the creation of such vacancies. In carrying out this paragraph, the District of Columbia Judicial Nomination Commission shall recruit individuals for possible nomination and appointment to the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court.

(d) REPORT BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall prepare and submit to Congress and the chief judge of the Superior Court of the District of Columbia a report on the implementation of this Act (including the transition plan under subsection (b)), and shall include in the report the following:

(A) An analysis of the procedures used to make the initial appointments of judges of the Family Court under this Act and the amendments made by this Act, including an analysis of the time required to make such appointments and the effect of the qualification requirements for judges of the Court (including requirements relating to the length of service on the Court) on the time required to make such appointments.

(B) An analysis of the impact of magistrate judges for the Family Court (including the expedited initial appointment of magistrate judges for the Court under section 6(d)) on the workload of judges and other personnel of the Court.

(C) An analysis of the number of judges needed for the Family Court, including an analysis of how the number may be affected by the qualification requirements for judges, the availability of magistrate judges, and other provisions of this Act or the amendments made by this Act.

(2) SUBMISSION TO CHIEF JUDGE OF SUPERIOR COURT.—Prior to submitting the report under paragraph (1) to Congress, the Comptroller General shall provide a preliminary version of the report to the chief judge of the Superior Court and shall take any comments and recommendations of the chief judge into consideration in preparing the final version of the report.

(e) CONFORMING AMENDMENT.—The first sentence of section 11–908(a), District of Columbia Code, is amended by striking ''The chief judge'' and inserting ''Subject to section 11–908A, the chief judge''.

(f) CLERICAL AMENDMENT.—The table of sections for chapter 9 of title 11, District of Columbia Code, is amended by inserting after the item relating to section 11–908 the following new item:

''11–908A. Special rules regarding assignment and service of judges of Family Court.''.

SEC. 4. IMPROVING ADMINISTRATION OF CASES AND PROCEEDINGS IN FAMILY COURT.

(a) IN GENERAL.—Chapter 11 of title 11, District of Columbia, is amended by striking section 1101 and inserting the following:

''§ 11–1101. Jurisdiction of the Family Court.

''(a) IN GENERAL.—The Family Court of the District of Columbia shall be assigned and have original jurisdiction over—

''(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

''(2) applications for revocation of divorce from bed and board;

''(3) actions to enforce support of any person as required by law;

''(4) actions seeking custody of minor children, including petitions for writs of habeas corpus;

''(5) actions to declare marriages void;

''(6) actions to declare marriages valid;

''(7) actions for annulments of marriage;

''(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;

''(9) proceedings in adoption;

''(10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30–301 to 30–324);

''(11) proceedings to determine paternity of any child born out of wedlock;

''(12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;

''(13) proceedings in which a child, as defined in section 16–2301, is alleged to be delinquent, neglected, or in need of supervision;

''(14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;

''(15) proceedings under chapter 11 of title 21 relating to the commitment of the substantially retarded; and

''(16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

''(b) DEFINITION.—In this chapter, the term 'action or proceeding' with respect to the Family Court refers to cause of action described in paragraphs (1) through (16) of subsection (a).

''§ 11–1102. Use of alternative dispute resolution.

''To the greatest extent practicable and safe, cases and proceedings in the Family Court of the Superior Court shall be resolved through alternative dispute resolution procedures, in accordance with such rules as the Superior Court may promulgate.

''§ 11–1103. Standards of practice for appointed counsel.

''The Superior Court shall establish standards of practice for attorneys appointed as counsel in the Family Court of the Superior Court.

''§ 11–1104. Administration.

''(a) 'ONE FAMILY, ONE JUDGE' REQUIREMENT FOR CASES AND PROCEEDINGS.—To the greatest extent practicable and feasible, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

''(b) RETENTION OF JURISDICTION OVER CASES.—

''(1) IN GENERAL.—In addition to the requirement of subsection (a), any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed.

''(2) ONE FAMILY, ONE JUDGE.—

''(A) FOR THE DURATION.—An action or proceeding assigned pursuant to this subsection shall remain with the judge or magistrate judge to whom the action or proceeding is assigned for the duration of the action or proceeding to the greatest extent practicable, feasible, and lawful.

''(B) ALL CASES INVOLVING AN INDIVIDUAL.—If an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate judge to whom the individual's initial action or proceeding is assigned to the greatest extent practicable, feasible, and lawful.

''(C) REASSIGNMENT.—If the judge to whom the action or proceeding is assigned ceases to serve on the Family Court prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court, except that a judge who ceases to serve in Family Court but remains in Superior Court may retain the case or proceeding for not more than 6 months after ceasing to serve if such retention is in the best interests of the parties.

''(3) STANDARDS OF JUDICIAL ETHICS.—The actions of a judge or magistrate judge in retaining an action or proceeding under this paragraph shall be subject to applicable standards of judicial ethics.

''(c) TRAINING PROGRAM.—

''(1) IN GENERAL.—The presiding judge of the Family Court shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court, including magistrate judges, attorneys who practice in the Family Court, and appropriate nonjudicial personnel, and shall include in the program information and instruction regarding the following:

''(A) Child development.

''(B) Family dynamics, including domestic violence.

''(C) Relevant Federal and District of Columbia laws.

''(D) Permanency planning principles and practices.

''(E) Recognizing the risk factors for child abuse.

''(F) Any other matters the presiding judge considers appropriate.

''(2) USE OF CROSS-TRAINING.—The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

''(d) ACCESSIBILITY OF MATERIALS, SERVICES, AND PROCEEDINGS; PROMOTION OF 'FAMILY-FRIENDLY' ENVIRONMENT.—

''(1) IN GENERAL.—To the greatest extent practicable, the presiding judge of the Family Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the Court, and that the Court carries out its duties in a manner which reflects the special needs of families with children.

''(2) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

''(e) INTEGRATED COMPUTERIZED CASE TRACKING AND MANAGEMENT SYSTEM.—The Executive Officer of the District of Columbia courts under section 11–1703 shall work with the chief judge of the Superior Court—

''(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under section 4(b) of the District of Columbia Family Court Act of 2001;

''(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

''(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

''§ 11–1105. Social services and other related services.

''(a) ON-SITE COORDINATION OF SERVICES AND INFORMATION.—

''(1) IN GENERAL.—The Mayor of the District of Columbia, in consultation with the chief judge of the Superior Court, shall ensure that representatives of the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) are available on-site at the Family Court to coordinate the provision of such services and information regarding such services to such individuals and families.

''(2) DUTIES OF HEADS OF OFFICES.—The head of each office described in paragraph (1), including the Superintendent of the District of Columbia Public Schools and the Director of the District of Columbia Housing Authority, shall provide the Mayor with such information, assistance, and services as the Mayor may require to carry out such paragraph.

''(b) APPOINTMENT OF SOCIAL SERVICES LIAISON WITH FAMILY COURT.—The Mayor of the District of Columbia shall appoint an individual to serve as a liaison between the Family Court and the District government for purposes of subsection (a) and for coordinating the delivery of services provided by the District government with the activities of the Family Court and for providing information to the judges, magistrate judges, and nonjudicial personnel of the Court regarding the services available from the District government to the individuals and families served by the Court. The Mayor shall provide on an ongoing basis information to the chief judge of the Superior Court and the presiding judge of the Family Court regarding the services of the District government which are available for the individuals and families served by the Family Court.

''§ 11–1106. Reports to Congress.

''Not later than 90 days after the end of each calendar year, the chief judge of the Superior Court shall submit a report to Congress on the activities of the Family Court during the year, and shall include in the report the following:

''(1) The chief judge's assessment of the productivity and success of the use of alternative dispute resolution pursuant to section 11–1102.

''(2) Goals and timetables as required by the Adoption and Safe Families Act of 1997 to improve the Family Court's performance in the following year.

''(3) Information on the extent to which the Court met deadlines and standards applicable under Federal and District of Columbia law to the review and disposition of actions and proceedings under the Court's jurisdiction during the year.

''(4) Information on the progress made in establishing locations and appropriate space for the Family Court that are consistent with the mission of the Family Court until such time as the locations and space are established.

''(5) Information on any factors which are not under the control of the Family Court which interfere with or prevent the Court from carrying out its responsibilities in the most effective manner possible.

''(6) Based on outcome measures derived through the use of the information stored in electronic format under section 11–1104(d), an analysis of the Court's efficiency and effectiveness in managing its case load during the

year, including an analysis of the time required to dispose of actions and proceedings among the various categories of the Court's jurisdiction, as prescribed by applicable law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

''(7) If the Court failed to meet the deadlines, standards, and outcome measures described in the previous paragraphs, a proposed remedial action plan to address the failure.''.

(b) EXPEDITED APPEALS FOR CERTAIN FAMILY COURT ACTIONS AND PROCEEDINGS.—Section 11–721, District of Columbia Code, is amended by adding at the end the following new subsection:

''(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals and shall be certified by the appellant. An oral hearing on appeal shall be deemed to be waived unless specifically requested by a party to the appeal.''.

(c) PLAN FOR INTEGRATING COMPUTER SYSTEMS.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Mayor of the District of Columbia shall submit to the President and Congress a plan for integrating the computer systems of the District government with the computer systems of the Superior Court of the District of Columbia so that the Family Court of the Superior Court and the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court of the Superior Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) will be able to access and share information on the individuals and families served by the Family Court.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Mayor of the District of Columbia such sums as may be necessary to carry out paragraph (1).

(d) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, District of Columbia Code, is amended by adding at the end the following new items:

''11–1102. Use of alternative dispute resolution.
''11–1103. Standards of practice for appointed counsel.
''11–1104. Administration.
''11–1105. Social services and other related services.
''11–1106. Reports to Congress.''.

SEC. 5. TREATMENT OF HEARING COMMISSIONERS AS MAGISTRATE JUDGES.

(a) IN GENERAL.—

(1) REDESIGNATION OF TITLE.—Section 11–1732, District of Columbia Code, is amended—

(A) by striking ''hearing commissioners'' each place it appears in subsection (a), subsection (b), subsection (d), subsection (i), subsection (l), and subsection (n) and inserting ''magistrate judges'';

(B) by striking ''hearing commissioner'' each place it appears in subsection (b), subsection (c), subsection (e), subsection (f), subsection (g), subsection (h), and subsection (j) and inserting ''magistrate judge'';

(C) by striking ''hearing commissioner's'' each place it appears in subsection (e) and subsection (k) and inserting ''magistrate judge's'';

(D) by striking ''Hearing commissioners'' each place it appears in subsections (b), (d), and (i) and inserting ''Magistrate judges''; and

(E) in the heading, by striking ''**Hearing commissioners**'' and inserting ''**Magistrate Judges**''.

(2) CONFORMING AMENDMENTS.—(A) Section 11–1732(c)(3), District of Columbia Code, is amended by striking '', except that'' and all that follows and inserting a period.

(B) Section 16–924, District of Columbia Code, is amended—

(i) by striking ''hearing commissioner'' each place it appears and inserting ''magistrate judge''; and

(ii) in subsection (f), by striking ''hearing commissioner's'' and inserting ''magistrate judge's''.

(3) CLERICAL AMENDMENT.—The item relating to section 11–1732 of the table of sections of chapter 17 of title 11, D.C. Code, is amended to read as follows:

''11–1732. Magistrate judges.''.

(b) TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.—Any individual serving as a hearing commissioner under section 11–1732 of the District of Columbia Code as of the date of the enactment of this Act shall serve the remainder of such individual's term as a magistrate judge, and may be reappointed as a magistrate judge in accordance with section 11–1732(d), District of Columbia Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a hearing commissioner prior to the effective date of section 11–1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6. SPECIAL RULES FOR MAGISTRATE JUDGES OF FAMILY COURT.

(a) IN GENERAL.—Chapter 17 of title 11, District of Columbia Code, is amended by inserting after section 11–1732 the following new section:

''§ 11–1732A. Special rules for magistrate judges of the Family Court of the Superior Court.

''(a) USE OF SOCIAL WORKERS IN ADVISORY MERIT SELECTION PANEL.—The advisory selection merit panel used in the selection of magistrate judges for the Family Court of the Superior Court under section 11–1732(b) shall include certified social workers specializing in child welfare matters who are residents of the District and who are not employees of the District of Columbia Courts.

''(b) SPECIAL QUALIFICATIONS.—Notwithstanding section 11–1732(c), no individual shall be appointed as a magistrate judge for the Family Court of the Superior Court unless that individual—

''(1) is a citizen of the United States;

''(2) is an active member of the unified District of Columbia Bar;

''(3) for the 5 years immediately preceding the appointment has been engaged in the active practice of law in the District, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government, or any combination thereof;

''(4) has not fewer than 3 years of training or experience in the practice of family law; and

''(5)(A) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment, and retains such residency during service as a magistrate judge; or

''(B) is a bona fide resident of the areas consisting of Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties, and the City of Alexandria in Virginia, has maintained an actual place of abode in such area for at least 5 years prior to appointment, and certifies that the individual will become a bona fide resident of the District of Columbia not later than 90 days after appointment.

''(c) SERVICE OF CURRENT HEARING COMMISSIONERS.—Those individuals serving as hearing commissioners under section 11–1732 on the effective date of this section who meet the qualifications described in subsection (b)(4) may request to be appointed as magistrate judges for the Family Court of the Superior Court under such section.

''(d) FUNCTIONS.—A magistrate judge, when specifically designated by the presiding judge of the Family Court of the Superior Court, and subject to the rules of the Superior Court and the right of review under section 11–1732(k), may perform the following functions:

''(1) Administer oaths and affirmations and take acknowledgements.

''(2) Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the Family Court of the Superior Court (as described in section 11–1101), excluding jury trials and trials of felony cases, as assigned by the presiding judge of the Family Court.

''(3) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

''(e) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, magistrate judges of the Family Court of the Superior Court shall conduct proceedings at locations readily accessible to the parties involved.

''(f) TRAINING.—The Family Court of the Superior Court shall ensure that all magistrate judges of the Family Court receive training to enable them to fulfill their responsibilities, including specialized training in family law and related matters.''.

(b) CONFORMING AMENDMENTS.—(1) Section 11–1732(a), District of Columbia Code, is amended by inserting after ''the duties enumerated in subsection (j) of this section'' the following: ''(or, in the case of magistrate judges for the Family Court of the Superior Court, the duties enumerated in section 11–1732A(d))''.

(2) Section 11–1732(c), District of Columbia Code, is amended by striking ''No individual'' and inserting ''Except as provided in section 11–1732A(b), no individual''.

(3) Section 11–1732(k), District of Columbia Code, is amended—

(A) by striking ''subsection (j),'' and inserting the following: ''subsection (j) (or proceedings and hearings under section 11–1732A(d), in the case of magistrate judges for the Family Court of the Superior Court),''; and

(B) by inserting after ''appropriate division'' the following: ''(or, in the case of an order or judgment of a magistrate judge of the Family Court of the Superior Court, by a judge of the Family Court)''.

(4) Section 11–1732(l), District of Columbia Code, is amended by inserting after ''responsibilities'' the following: ''(subject to the requirements of section 11–1732A(f) in the case of magistrate judges of the Family Court of the Superior Court)''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 17 of title 11, District of Columbia, is amended by inserting after the item relating to section 11–1732 the following new item:

''11–1732A. Special rules for magistrate judges of Family Court of the Superior Court.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXPEDITED INITIAL APPOINTMENTS.—

(A) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall appoint not more than 5 individuals to serve as magistrate judges for the Family Division of the Superior Court in accordance with the requirements of sections 11–1732 and 11–1732A, District of Columbia Code (as added by subsection (a)).

(B) APPOINTMENTS MADE WITHOUT REGARD TO SELECTION PANEL.—Sections 11–1732(b) and 11–1732A(a), District of Columbia Code (as added by subsection (a)) shall not apply with respect to any magistrate judge appointed under this paragraph.

(C) PRIORITY FOR CERTAIN ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court and the presiding judge of the Family Division of the Superior Court (acting jointly) shall first assign and transfer to the magistrate judges appointed under this paragraph actions and proceedings described as follows:

(i) The action or proceeding involves an allegation of abuse or neglect.

(ii) The judge to whom the action or proceeding is assigned as of the date of the enactment of this Act is not assigned to the Family Division.

(iii) The action or proceeding was initiated in the Family Division prior to the 2-year period which ends on the date of the enactment of this Act.

SEC. 7. SENSE OF CONGRESS REGARDING BORDER AGREEMENT WITH MARYLAND AND VIRGINIA.

It is the sense of Congress that the State of Maryland, the Commonwealth of Virginia, and the District of Columbia should promptly enter into a border agreement to facilitate the timely and safe placement of children in the District of Columbia's welfare system in foster and kinship homes and other facilities in Maryland and Virginia.

SEC. 8. SENSE OF THE SENATE REGARDING THE USE OF COURT APPOINTED SPECIAL ADVOCATES.

It is the sense of the Senate that the Chief Judge of the Superior Court and the Presiding Judge of the Family Division should take all steps necessary to encourage and support the use of Court Appointed Special Advocates (CASA) in family court actions or proceedings.

SEC. 9. INTERIM REPORTS.

Not later than 12 months after the date of enactment of this Act, the chief judge of the Superior Court and the presiding judge of the Family Court—

(1) in consultation with the General Services Administration, shall submit to Congress a feasibility study for the construction of appropriate permanent courts and facilities for the Family Court; and

(2) shall submit to Congress an analysis of the success of the use of magistrate judges under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Courts of the District of Columbia and the District of Columbia such sums as may be necessary to carry out the amendments made by this Act.

SEC. 11. EFFECTIVE DATE.

The amendments made by section 4 shall take effect upon the expiration of the 18 month period which begins on the date of the enactment of this Act.

By Mrs. CLINTON (for herself and Mr. ROBERTS):

S. 1383. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of incentive stock options and employee stock purchases; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I am pleased to introduce today a bill to support the efforts of the many companies in New York and elsewhere who grant stock options to their employees. Over the past three decades, companies have increasingly used stock options to attract and motivate employees. These companies give their workers the right to purchase company stock, at a small discount from the listed price, through Employee Stock Purchase Plans, ESPP and Incentive Stock Options, ISO. Employees stock ownership has been shown to motivate workers and enhance relationship between management and workers. Indeed, for many workers, these plans are the only way to amass any assets.

For nearly thirty years, the Internal Revenue Service, IRS has taken the position that income from these stock options is not subject to employment taxes. However, recent audits and rulings on individual companies have raised the troubling prospect that the IRS may now reverse its policy.

ESPPs and ISOs were created by Congress to provide tools to build strong companies through increased employee ownership of company stock. The purpose of the bipartisan bill I am introducing today, with Senator ROBERTS, is to clarify that it was not the intent of Congress to dilute these incentives by requiring employment tax withholding when the stock is purchased. While the IRS has in place a moratorium until January 1, 2003 on assessing employment taxes on stock options, we must take action to eliminate any uncertainty for companies and workers as to whether options are subject to withholding taxes.

Again, the legislation I am introducing would clarify that the difference between the exercise price and the fair market value of stock offered by the ISO and ESPP is excluded from employment taxes. In addition, wage withholding is not required on disqualifying dispositions of ISO stock or on the fifteen percent discount offered to employees by ESPPs.

I urge my colleagues to join me in cosponsoring this legislation.

By Mr. SMITH of Oregon:

S. 1384. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to expand the definition of the term ''Major disaster'' to include an application of the Endangered Species Act of 1973 that souses severe economic hardship; to the Committee on Environment and Public Works.

Mr. SMITH of Oregon. Mr. President, earlier this month I went to the Santiam Canyon community of Detroit. Along with my visit to Klamath Falls in May, it was probably one of the most emotional days I have had as a Senator.

This beautiful community, located on one of Oregon's most popular recreational lakes, has been devastated by a combination of natural and man-made disasters. I stood next to one of the Detroit Lake marinas, which in past years had been the busiest spot on the lake, provided services to hundreds of boaters. I was amazed to see this marina was high and dry. Now there are only tree stumps and mud flats in the reservoir. Again, a result of both natural and man-made disasters. I hosted a town hall where 350 community residents, nearly the entire population of the City of Detroit, came to share their desperate concerns.

I need to tell you what brought the community of Detroit, OR, to this point.

Over 50 years ago, the town was forced by the Federal Government to move from its original location so that Detroit Dam & Reservoir could be built. The original city site was buried under several feet of water. Detroit was a hearty community of strong-willed men and women. Instead of giving up, they moved their community to higher ground, and they survived. Years later, the Federal Government again came to Detroit. Like a number of other timber dependent communities in Santiam Canyon, the timber supply from the surrounding Federal land was cut off and the mills were forced to close. Again, the residents of Detroit refused to be broken, and instead retooled their economy from timber to tourism.

Now, the Federal Government is visiting Detroit, Oregon again. This time, as a result of drought and the government's decision to drain Detroit Reservoir, upon which that new economy was based, the community is once again facing extinction. Even with economic losses estimated at $1.75 million, the Small Business Administration and the Federal Emergency Management Agency tell me that according to their regulations, there is no disaster in Detroit, OR, today.

I am here to tell you that there is a disaster in Detroit, it was caused by the Federal Government, and it should be made right by the Federal Government.

The Corps of Engineers drained Detroit Lake this summer before it ever had a chance to fill. The Corps tells me that under a negotiated agreement with the Oregon Department of Fish and Wildlife, NMFS and other State and Federal agencies, it devised an operating plan to drain the reservoir in order to meet far downstream needs for water quality under the Clean Water Act and the Endangered Species Act, and even to meet the power needs of California. Once again, the needs of rural communities were left out of the equation.

I hope that the Senate will work with me to find more effective ways of addressing drought. Detroit Lake is the prime example of how Federal programs fail to prepare and assist non-agricultural communities through drought disasters. This must change. The Federal Government must engage the States in preparing comprehensive drought contingency plans that address all those who are affected, agricultural and non-agricultural communities alike.

Areas like Detroit Lake and the Klamath Basin also portray in bold proportion the Federal Government's failure to take responsibility for its own actions, actions it deems necessary to meet environmental goals. I do not believe, however, that commitment to shared environmental values means leaving dustbowls, wastelands, and paralyzed communities in the wake of Federal actions. There must be a better way.

Therefore, I am introducing legislation today that would qualify government-induced disasters for Disaster relief under the same guidelines as natural disasters. It seems only fitting that if the Government causes the disaster, it should provide the same relief as when nature causes the problem.

I understand our environmental ethic, and I believe in our environmental stewardship obligations. But I know that I am not alone when I say this Government of the people and by the people, must also be for the people. Including those people hurting in Detroit, OR, today.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 1385. A bill to authorize the Secretary of the Interior, pursuant to the provisions of the Reclamation Wastewater and Groundwater Study and Facilities Act to participate in the design, planning, and construction of the Lakehaven water reclamation project for the reclamation and reuse of water; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise today to introduce important legislation to improving the capacity and reliability of wastewater systems in the State of Washington.

I thank my friend, Washington state's senior Senator, PATTY MURRAY, who worked on this legislation in the last Congress and who has been a champion of clean water as a member of this body. I look forward to working with her as we build on those efforts in the years to come.

The United States economy, the strongest economy in the world, is built on our human infrastructure and our physical infrastructure. We have among the most comprehensive air traffic, public transit, highway, and navigable waterway transportation systems; perhaps the most sophisticated energy transmission grids and communication networks; and the most effective drinking water and wastewater systems in the world.

However, in the face of the natural aging and deterioration of these resources, combined with significant population growth, our Nation has a massive need for investment in the maintenance and improvement of our resources. Our Nation's economic health, and literally the physical health of our constituents, depends on that investment.

In March, the American Society of Civil Engineers released a ''Report Card for America's Infrastructure.'' After an extensive survey of the Nation's infrastructure, the group of professionals perhaps most familiar with the technical capabilities of the roads, bridges, dams, runways, and water treatment plants, gave our Nation a cumulative grade of D+. The group estimated that our Nation needs to invest $1.3 trillion over the next five years to bring our infrastructure up to the standards that keep our overall economy out of the gridlock that has gripped many of our metropolitan areas, that will keep our families safe, and that simply befits the nature of this great Nation in striving to be the best in the world.

The legislation that my colleague and I are introducing today addresses only a small piece of this infrastructure, but it is nonetheless important in addressing the growth of our region and the impacts of that growth on the water systems of one part of Washington. This legislation will authorize one project, in one area of our state, but it is essential to maintaining water quality in the Puget Sound region for fish habitat, for wetland restoration, and for meeting the growing demands for water in the many communities served by the Lakehaven Utility District.

Since 1972 the Federal Government has spent about $73 billion on wastewater treatment programs. That's certainly no minor contribution, and we have made progress, the elimination of nearly 85 percent of wastewater. Unfortunately, with aging water collection and treatment systems across the Nation, it is still estimated that between 35 percent and 45 percent of U.S. surface waters do not meet current water-quality standards. Our Nation's 16,000 wastewater systems still face enormous infrastructure funding needs.

While last year Congress appropriated $1.35 billion for wastewater infrastructure, and another $1.35 billion in the legislation for fiscal year 2002 that this body passed yesterday, EPA has estimated that we will need to spend $126 billion by 2016 to fully achieve secondary treatment improvements of existing facilities. So we still have a long way to go, and I intend to keep working on increasing that Federal commitment with my colleagues.

Again, the legislation that we are introducing today will take steps toward solving some of these infrastructure needs in the Puget Sound area and I will take a moment to explain the legislation.

The Lakehaven Utility District is one of Washington State's largest water and sewer utilities providing 10.5 million gallons of water a day to over 100,000 residents and numerous corporate facilities in south King county and parts of Pierce county. The demand for water from these sources has increased to a point that the district may soon exceed safe water production limits and has resulted in reduction of water levels in all local aquifers.

The District has two secondary wastewater treatment plants that currently discharge more than 6 million gallons of water a day to Puget Sound and the district is certain that techniques successfully used in many parts of this Nation to utilize reclaimed water to manage groundwater levels could be used in this region. The district has prepared a plan to construct additional treatment systems at the two wastewater treatment plants in the district, to improve pipeline distribution systems for transporting water to the reuse areas, and systems to direct water back to the aquifer system. if we make these improvements, the district will be able to better maintain stream levels during droughts and recharge the aquifers without using additional surface water.

The legislation authorizes the Bureau of Reclamation to assist in the planning, land acquisition and construction of this important water reclamation project. The bill limits the Federal contribution to 25 percent and would comply with other limitations and obligations of the Reclamation Wastewater and Groundwater Study and Facilities Act.

This project would begin to meet the needs of improving the wastewater systems serving a large segment of the Northwest population, and will provide additional protection for vital natural resources, using economically feasible and proven technologies. The Federal Government has a role in maintaining these systems and assisting in building additional infrastructure to handle our nation's massive needs.

Thus I urge my colleagues to join with us in support of this critical legislation for the state of Washington and our Nation, I look forward to working with my colleagues to expeditiously take up and pass this bill.

By Mr. SANTORUM:

S. 1386. A bill to amen the Internal Revenue Code of 1986 to provide for the equitable operation of welfare benefit plans for employees, and for other purposes; to the Committee on Finance.

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

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

S. 1386

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT TO 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Employee Welfare Benefit Equity Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents; amendment to 1986 Code.

TITLE I—CERTAIN WELFARE BENEFIT PLANS

Sec. 101. Modification of definition of ten-or-more employer plans.
Sec. 102. Clarification of deduction limits for certain collectively bargained plans.
Sec. 103. Clarification of standards for section 501(c)(9) approval.
Sec. 104. Tax shelter provisions not to apply.
Sec. 105. Effective dates.

TITLE II—ENFORCEMENT PROVISIONS

Sec. 201. Clarification of section 4976.
Sec. 202. Effective date.

(c) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—CERTAIN WELFARE BENEFIT PLANS

SEC. 101. MODIFICATION OF DEFINITION OF TEN-OR-MORE EMPLOYER PLANS.

(a) ADDITIONAL REQUIREMENTS.—Paragraph (6)(B) of section 419A(f) (relating to the exception for 10 or more employer plans) is amended by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by adding at the end the following new clauses:

''(iii) which meets the requirements of section 505(b)(1) with respect to all benefits provided by the plan,

''(iv) which has obtained a favorable determination from the Secretary that such plan (or a predecessor plan) is an organization described in section 501(c)(9), and

''(v) under which no severance pay benefit is provided.''

(b) CLARIFICATION OF EXPERIENCE RATING.—

(1) IN GENERAL.—Paragraph (6)(A) of section 419A(f) (relating to the exception for 10 or more employer plans) is amended by striking the second sentence and inserting the following: ''The preceding sentence shall not apply to any plan which is an experience-rated plan.''

(2) EXPERIENCE-RATED PLAN.—Section 419A(f)(6) is amended by adding at the end the following new subparagraph:

''(C) EXPERIENCE-RATED PLAN.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'experience-rated plan' means a plan which determines contributions by individual employers on the basis of actual gain or loss experience.

''(ii) EXCEPTION FOR GUARANTEED BENEFIT PLAN.—

''(I) IN GENERAL.—The term 'experience-rated plan' shall not include a guaranteed benefit plan.

''(II) GUARANTEED BENEFIT PLAN.—The term 'guaranteed benefit plan' means a plan the benefits of which are funded with insurance contracts or are otherwise determinable and payable to a participant without reference to, or limitation by, the amount of contributions to the plan attributable to any contributing employer. A plan shall not fail to be treated as a guaranteed benefit plan solely because benefits may be limited or denied in the event a contributing employer fails to pay premiums or assessments required by the plan as a condition of continued participation.''

(c) SINGLE PLAN REQUIREMENT.—Section 419A(f)(6), as amended by subsections (a) and (b), is amended—

(1) by striking ''means a plan'' in subparagraph (B) and inserting ''means a single plan'', and

(2) by adding at the end the following:

''(D) SINGLE PLAN.—For purposes of this paragraph, the term 'single plan' means a written plan or series of related written plans the terms of which provide that—

''(i) all assets of the plan or plans, whether maintained under 1 or more trusts, accounts, or other arrangements and without regard to the method of accounting of the plan or plans, are available to pay benefits of all participants without regard to the participant's contributing employer, and

''(ii) the method of accounting of the plan or plans may not operate to limit or reduce the benefits payable to a participant at any time before the withdrawal of the participant's employer from the plan or the termination of any benefit arrangement under the plan.''

SEC. 102. CLARIFICATION OF DEDUCTION LIMITS FOR CERTAIN COLLECTIVELY BARGAINED PLANS.

Paragraph (5) of section 419A(f) (relating to the deductions limits for certain collectively bargained plans) is amended by adding at the end the following flush sentences:

''Subparagraph (B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers unless the taxpayer applies for, and the Secretary issues, a determination that such agreement is a bona fide collective bargaining agreement and that the welfare benefits provided under the agreement were the subject of good faith bargaining between employee representatives and such employer or employers. The Secretary may issue regulations to carry out the purposes of the preceding sentence.''

SEC. 103. CLARIFICATION OF STANDARDS FOR SECTION 501(c)(9) APPROVAL.

Section 505 is amended by adding at the end the following new subsection:

''(d) CLARIFICATION OF STANDARDS FOR EXEMPTION.—

''(1) MEMBERSHIP.—An organization shall not fail to be treated as an organization described in paragraph (9) of section 501(c) solely because its membership includes employees or other allowable participants who—

''(A) reside or work in different geographic locales, or

''(B) do not work in the same industrial or employment classification.

''(2) FUNDING.—An organization described in paragraph (9) or (20) of section 501(c) shall not be treated as discriminatory solely because life insurance or other benefits provided by the organization are funded with different types of products, contracts, investments, or other funding methods of varying costs, but only if the plan under which such benefits are provided meets the requirements of subsection (b).''

SEC. 104. TAX SHELTER PROVISIONS NOT TO APPLY.

Section 419 (relating to treatment of funded welfare benefit plans) is amended by adding at the end the following:

''(h) TAX SHELTER RULES NOT TO APPLY.—For purposes of this title, a welfare benefit fund meeting all applicable requirements of this title shall not be treated as a tax shelter or corporate tax shelter.''

SEC. 105. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this title shall apply to contributions to a welfare benefit fund made after the date of the enactment of this Act.

(b) TAX SHELTER RULES.—The amendment made by section 104 shall take effect as if included in the amendments made by section 1028 of the Taxpayer Relief Act of 1997.

TITLE II—ENFORCEMENT PROVISIONS

SEC. 201. CLARIFICATION OF SECTION 4976.

Section 4976 (relating to excise taxes with respect to funded welfare benefit plans) is amended to read as follows:

''SEC. 4976. TAXES WITH RESPECT TO FUNDED WELFARE BENEFIT PLANS.

''(a) IMPOSITION OF TAX.—

''(1) GENERAL RULE.—If—

''(A) an employer maintains a welfare benefit fund, and

''(B) there is—

''(i) a disqualified benefit provided or funded during any taxable year, or

''(ii) a premature termination of such plan,

there is hereby imposed on such employer a tax in the amount determined under paragraph (2).

''(2) AMOUNT OF TAX.—The amount of the tax imposed by paragraph (1) shall be equal to—

''(A) in the case of a taxable event under paragraph (1)(B)(i), 100 percent of—

''(i) the amount of the disqualified benefit provided, or

''(ii) the amount of the funding of the disqualified benefit, and

''(B) in the case of a taxable event under paragraph (1)(B)(ii), 100 percent of all contributions to the fund before the termination.

''(b) DISQUALIFIED BENEFIT.—For purposes of subsection (a)—

''(1) IN GENERAL.—The term 'disqualified benefit' means—

''(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

''(B) any post-retirement medical benefit or life insurance benefit provided or funded with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

''(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

''(2) EXCEPTION FOR COLLECTIVE BARGAINING PLANS.—Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

''(3) EXCEPTION FOR NONDEDUCTIBLE CONTRIBUTIONS.—Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

''(4) EXCEPTION FOR CERTAIN AMOUNTS CHARGED AGAINST EXISTING RESERVE.—Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

''(c) PREMATURE TERMINATION.—For purposes of subsection (a)—

''(1) IN GENERAL.—The term 'premature termination' means a termination event which occurs on or before the date which is 6 years after the first contribution to a welfare benefit fund which benefits any highly compensated employee.

''(2) EXCEPTION FOR INSOLVENCY, ETC.—Paragraph (1) shall not apply to any termination event which occurs by reason of the insolvency of the employer or for such other reasons as the Secretary may by regulation determine are not likely to result in abuse.

''(3) TERMINATION EVENT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'termination event' means—

''(i) the termination of a welfare benefit fund,

''(ii) the withdrawal of an employer from a welfare benefit fund to which more than 1 employer contributes, or

''(iii) any other action which is designed to cause, directly or indirectly, a distribution of any asset from a welfare benefit fund to a highly compensated employee.

''(B) EXCEPTION FOR BONA FIDE BENEFITS.—Subparagraph (A) shall not apply to any bona fide benefit (other than a severance benefit) paid from a welfare benefit fund which is available to all employees on a nondiscriminatory basis and payable pursuant to the terms of a written plan.

''(d) DEFINITIONS.—For purposes of this section—

''(1) IN GENERAL.—Except as otherwise provided, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

''(2) POST-RETIREMENT BENEFIT.—

''(A) IN GENERAL.—The term 'post-retirement benefit' means any benefit or distribution which is reasonably determined to be paid, provided, or made available to a participant on or after normal retirement age.

''(B) NORMAL RETIREMENT AGE.—The term 'normal retirement age' shall have the same meaning given the term in section 3(24) of the Employee Retirement Income Security Act of 1974, but in no event shall such date be later than the latest normal retirement age defined in any qualified retirement plan of the employer maintaining the welfare benefit fund which benefits such individual.

''(C) PRESUMPTION IN THE CASE OF PERMANENT LIFE INSURANCE.—In the case of a welfare benefit fund which provides a life insurance benefit for an employee, any contributions to the fund for life insurance benefits in excess of the cumulative projected cost of providing the employee permanent whole life insurance, calculated on the basis level premiums for each for each year before a normal retirement age, shall be treated as funding a post-retirement benefit.''

SEC. 202. EFFECTIVE DATE.

The amendments made by this title shall apply to benefits provided, and terminations occurring, after the date of the enactment of this Act.

By Mr. BINGAMAN (for himself, Mr. DOMENICI and Mr. ROCKEFELLER):

S. 1387. A bill to conduct a demonstration program to show that physician shortage, recruitment, and retention problems may be ameliorated in rural States by developing comprehensive program that will result in statewide physician population growth, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation, the ''Rural States Physician Recruitment and Retention Demonstration Act of 2001,'' with Senators DOMENICI and ROCKEFELLER. This Act would create a demonstration program to show that physician shortage, recruitment, and retention problems may be ameliorated in demonstration States by developing a training program and loan repayment program that will result in statewide physician population growth.

The problem of recruiting and retaining physicians, particularly in some specialties, has reached crisis proportions in my State. There are very few small town residents who don't have a story to tell about losing a cherished doctor or traveling vast distances to see a specialist. And even in New Mexico's most populous city, Albuquerque, the number of practicing neurosurgeons can be counted on one hand. Not so long ago there were 11 of them practicing there. We know that the surgeons in Santa Fe are struggling to recruit a new general surgeon, as are many other communities throughout the State. We know that the thought of having an additional psychiatrist in Las Cruces would be considered by many to be an unrealistic fantasy. I am certain that many Senators from States that are demographically more similar to New Mexico than they are to Washington, D.C. can truly understand the discrepancy in physician recruitment and retention.

Anyone representing a rural State knows that a certain amount of physician turn over is inevitable and understandable. It is very important, however, to anticipate how we can ensure an adequate supply of physicians in the future. Payment for Graduate Medical Education slots has been frozen at the number of physicians who were being trained in 1996. Within the past six months we have been told that the funding for training family physicians, general internists, pediatricians, dentists, nurse practitioners, physician assistants, and other health professionals should be drastically cut because ''today a physician shortage no longer exists''. Although aggregate data appears to support the notion that we need not be concerned about a physician shortage, this does not reflect what is happening at home.

Health professional shortages continue to exist in geographically isolated and economically disadvantaged areas. This maldistribution problem is exacerbated by market forces that often entice physicians to urban or suburban areas where higher income levels can be achieved. The Medicare payment formula further contributes to the problem by assessing a lower cost of living adjustment in rural areas and, accordingly, decreasing the Medicare payment rate in the very area where the physician shortage exists in the first place. Fortunately we know that economics is only one of the many factors that physicians consider when they are choosing a place to practice. Family considerations and lifestyle issues also play a vital role in this important decision. One of the best predictors of where a physician will practice is directly related to the location of their post-graduate medical education—they are likely to stay within a sixty-mile radius of where they did their residency training. This fact, provides us with a focus for this demonstration project.

This particular piece of legislation creates a demonstration program in nine States that will correct the flaws in the system in two ways, and then will track health professionals in each demonstration State through a state-specific health professions database. Demonstration States would be identified using three criteria including an uninsured rate above the U.S. average, lack of primary care access above the U.S. average, and a combined Medicare and Medicaid population above 20 percent.

The first flaw in the system is the capitation limit placed on all residency graduate medical education positions in 1996. Whereas this action may have been appropriate for some States, maybe even most States, it has been extremely damaging to rural States where we know physicians are in short supply. This bill allows a sponsoring institution to increase the number of residency and fellowship positions by up to 50 percent if the sponsoring institution agrees to require that each resident or fellow in the affected training programs would spend an aggregate of 10 percent of their time during training providing supervised specialty services to underserved and rural community populations outside of their training institution. A waiver from this rural outreach requirement can be granted by the Secretary for certain hospital-based subspecialists, like neurosurgeons, if the demonstration State can demonstrate a shortage of physicians in that specialty statewide.

The second flaw in the system revolves around the debt load carried by many physicians when they finish their training program. Currently there are several Federal and State programs that will help repay education loans. The problem lies in the fact that only primary care specialties currently qualify for these loan repayment programs. This legislation creates a similar loan repayment program for underserved specialists who agree to practice for one year in the demonstration State for each year of education loans that are repaid.

Thus, this demonstration project does two critical things for recruitment and retention in rural States. It exposes to underserved areas that they may never have otherwise been exposed to, which increases the possibility that they will stay and practice there. It also relieves some of their economic burden from loans which may help to moderate the effect of lower Medicare reimbursement rates in rural areas.

I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1387

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Rural States Physician Recruitment and Retention Demonstration Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Rural States Physician Recruitment and Retention Demonstration Program.
Sec. 4. Establishment of the Health Professions Database.
Sec. 5. Evaluation and reports.
Sec. 6. Contracting flexibility.

SEC. 2. DEFINITIONS.

In this Act:

(1) COGME.—The term ''COGME'' means the Council on Graduate Medical Education established under section 762 of the Public Health Service Act (42 U.S.C. 294o).

(2) DEMONSTRATION PROGRAM.—The term ''demonstration program'' means the Rural States Physician Recruitment and Retention Demonstration Program established by the Secretary under section 3(a).

(3) DEMONSTRATION STATES.—The term ''demonstration States'' means each State identified by the Secretary, based upon data from the most recent year for which data are available—

(A) that has an uninsured population above 16 percent (as determined by the Bureau of the Census);

(B) for which the sum of the number of individuals who are entitled to benefits under the medicare program and the number of individuals who are eligible for medical assistance under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) equals or exceeds 20 percent of the total population of the State (as determined by the Centers for Medicare & Medicaid Services); and

(C) that has an estimated number of individuals in the State without access to a primary care provider of at least 17 percent (as published in ''HRSA's Bureau of Primary Health Care: BPHC State Profiles'').

(4) ELIGIBLE RESIDENCY OR FELLOWSHIP GRADUATE.—The term ''eligible residency or fellowship graduate'' means a graduate of an approved medical residency training program (as defined in section 1886(h)(5)(A) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(A))) in a shortage physician specialty.

(5) HEALTH PROFESSIONS DATABASE.—The term ''Health Professions Database'' means the database established under section 4(a).

(6) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) MEDPAC.—The term ''MedPAC'' means the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(9) SHORTAGE PHYSICIAN SPECIALTY.—The term ''shortage physician specialty'' means a medical or surgical specialty identified in a demonstration State by the Secretary based on—

(A) an analysis and comparison of national data and demonstration State data; and

(B) recommendations from appropriate Federal, State, and private commissions, centers, councils, medical and surgical physician specialty boards, and medical societies or associations involved in physician workforce, education and training, and payment issues.

SEC. 3. RURAL STATES PHYSICIAN RECRUITMENT AND RETENTION DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a Rural States Physician Recruitment and Retention Demonstration Program for the purpose of ameliorating physician shortage, recruitment, and retention problems in rural States in accordance with the requirements of this section.

(2) CONSULTATION.—For purposes of establishing the demonstration program, the Secretary shall consult with—

(A) COGME;

(B) MedPAC;

(C) a representative of each demonstration State medical society or association;

(D) the health workforce planning and physician training authority of each demonstration State; and

(E) any other entity described in section 2(9)(B).

(b) DURATION.—The Secretary shall conduct the demonstration program for a period of 10 years.

(c) CONDUCT OF PROGRAM.—

(1) FUNDING OF ADDITIONAL RESIDENCY AND FELLOWSHIP POSITIONS.—

(A) IN GENERAL.—As part of the demonstration program, the Secretary (acting through the Administrator of the Centers for Medicare & Medicaid Services) shall—

(i) notwithstanding section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)) increase, by up to 50 percent of the total number of residency and fellowship positions approved at each medical residency training program in each demonstration State, the number of residency and fellowship positions in each shortage physician specialty; and

(ii) subject to subparagraph (C), provide funding under subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) for each position added under clause (i).

(B) ESTABLISHMENT OF ADDITIONAL POSITIONS.—

(i) IDENTIFICATION.—The Secretary shall identify each additional residency and fellowship position created as a result of the application of subparagraph (A).

(ii) NEGOTIATION AND CONSULTATION.—The Secretary shall negotiate and consult with representatives of each approved medical residency training program in a demonstration State at which a position identified under clause (i) is created for purposes of supporting such position.

(C) CONTRACTS WITH SPONSORING INSTITUTIONS.—

(i) IN GENERAL.—The Secretary shall condition the availability of funding for each residency and fellowship position identified under subparagraph (B)(i) on the execution of a contract containing such provisions as the Secretary determines are appropriate, including the provision described in clause (ii) by each sponsoring institution.

(ii) PROVISION DESCRIBED.—

(I) IN GENERAL.—Except as provided in subclause (II), the provision described in this clause is a provision that provides that, during the residency or fellowship, the resident or fellow shall spend not less than 10 percent of the training time providing specialty services to underserved and rural community populations other than an underserved population of the sponsoring institution.

(II) EXCEPTIONS.—The Secretary, in consultation with COGME, shall identify shortage physician specialties and subspecialties for which the application of the provision described in subclause (I) would be inappropriate and the Secretary may waive the requirement under clause (i) that such provision be included in the contract of a resident or fellow with such a specialty or subspecialty.

(D) LIMITATIONS.—

(i) PERIOD OF PAYMENT.—The Secretary may not fund any residency or fellowship position identified under subparagraph (B)(i) for a period of more than 5 years.

(ii) REASSESSMENT OF NEED.—The Secretary shall reassess the status of the shortage physician specialty in the demonstration State prior to entering into any contract under subparagraph (C) after the date that is 5 years after the date on which the Secretary establishes the demonstration program.

(2) LOAN REPAYMENT AND FORGIVENESS PROGRAM.—

(A) IN GENERAL.—As part of the demonstration program, the Secretary (acting through the Administrator of the Health Resources and Services Administration) shall establish a loan repayment and forgiveness program, through the holder of the loan, under which the Secretary assumes the obligation to repay a qualified loan amount for an educational loan of an eligible residency or fellowship graduate—

(i) for whom the Secretary has approved an application submitted under subparagraph (D); and

(ii) with whom the Secretary has entered into a contract under subparagraph (C).

(B) QUALIFIED LOAN AMOUNT.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary shall repay the lesser of—

(I) 25 percent of the loan obligation of a graduate on a loan that is outstanding during the period that the eligible residency or fellowship graduate practices in the area designated by the contract entered into under subparagraph (C); or

(II) $25,000 per graduate per year of such obligation during such period.

(ii) LIMITATION.—The aggregate amount under this subparagraph may not exceed $125,000 for any graduate and the Secretary may not repay or forgive more than 30 loans per year in each demonstration State under this paragraph.

(C) CONTRACTS WITH RESIDENTS AND FELLOWS.—

(i) IN GENERAL.—Each eligible residency or fellowship graduate desiring repayment of a loan under this paragraph shall execute a contract containing the provisions described in clause (ii).

(ii) PROVISIONS.—The provisions described in this clause are provisions that require the eligible residency or fellowship graduate—

(I) to practice in a health professional shortage area of a demonstration State during the period in which a loan is being repaid or forgiven under this section; and

(II) to provide health services relating to the shortage physician specialty of the graduate that was funded with the loan being repaid or forgiven under this section during such period.

(D) APPLICATION.—

(i) IN GENERAL.—Each eligible residency or fellowship graduate desiring repayment of a loan under this paragraph shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(ii) REASSESSMENT OF NEED.—The Secretary shall reassess the shortage physician specialty in the demonstration State prior to accepting an application for repayment of any loan under this paragraph after the date that is 5 years after the date on which the demonstration program is established.

(E) CONSTRUCTION.—Nothing in the section shall be construed to authorize any refunding of any repayment of a loan.

(F) PREVENTION OF DOUBLE BENEFITS.—No borrower may, for the same service, receive a benefit under both this paragraph and any loan repayment or forgiveness program under title VII of the Public Health Service Act (42 U.S.C. 292 et seq.).

(d) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary is authorized to waive any requirement of the medicare program, or approve equivalent or alternative ways of meeting such a requirement, if such waiver is necessary to carry out the demonstration program, including the waiver of any limitation on the amount of payment or number of residents under section 1886 of the Social Security Act (42 U.S.C. 1395ww).

(e) APPROPRIATIONS.—

(1) FUNDING OF ADDITIONAL RESIDENCY AND FELLOWSHIP POSITIONS.—Any expenditures resulting from the establishment of the funding of additional residency and fellowship positions under subsection (c)(1) shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i).

(2) LOAN REPAYMENT AND FORGIVENESS PROGRAM.—There are authorized to be appropriated such sums as may be necessary to carry out the loan repayment and forgiveness program established under subsection (c)(2).

SEC. 4. ESTABLISHMENT OF THE HEALTH PROFESSIONS DATABASE.

(a) ESTABLISHMENT OF THE HEALTH PROFESSIONS DATABASE.—

(1) IN GENERAL.—Not later than 7 months after the date of enactment of this Act, the Secretary (acting through the Administrator of the Health Resources and Services Administration) shall establish a State-specific health professions database to track health professionals in each demonstration State with respect to specialty certifications, practice characteristics, professional licensure, practice types, locations, education, and training, as well as obligations under the demonstration program as a result of the execution of a contract under paragraph (1)(C) or (2)(C) of section 3(c).

(2) DATA SOURCES.—In establishing the Health Professions Database, the Secretary shall use the latest available data from existing health workforce files, including the AMA Master File, State databases, specialty medical society data sources and information, and such other data points as may be recommended by COGME, MedPAC, the National Center for Workforce Information and Analysis, or the medical society of the respective demonstration State.

(b) AVAILABILITY.—

(1) DURING THE PROGRAM.—During the demonstration program, data from the Health Professions Database shall be made available to the Secretary, each demonstration State, and the public for the purposes of—

(A) developing a baseline with respect to a State's health professions workforce and to track changes in a demonstration State's health professions workforce;

(B) tracking direct and indirect graduate medical education payments to hospitals;

(C) tracking the forgiveness and repayment of loans for educating physicians; and

(D) tracking commitments by physicians under the demonstration program.

(2) FOLLOWING THE PROGRAM.—Following the termination of the demonstration program, a demonstration State may elect to maintain the Health Professions Database for such State at its expense.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the purpose of carrying out this section.

SEC. 5. EVALUATION AND REPORTS.

(a) EVALUATION.—

(1) IN GENERAL.—COGME and MedPAC shall jointly conduct a comprehensive evaluation of the demonstration program.

(2) MATTERS EVALUATED.—The evaluation conducted under paragraph (1) shall include an analysis of the effectiveness of the funding of additional residency and fellowship positions and the loan repayment and forgiveness program on physician recruitment, retention, and specialty mix in each demonstration State.

(b) PROGRESS REPORTS.—

(1) COGME.—Not later than 1 year after the date on which the Secretary establishes the demonstration program, 5 years after such date, and 10 years after such date, COGME shall submit a report on the progress of the demonstration program to the Secretary and Congress.

(2) MEDPAC.—MedPAC shall submit biennial reports on the progress of the demonstration program to the Secretary and Congress.

(c) FINAL REPORT.—Not later than 1 year after the date on which the demonstration program terminates, COGME and MedPAC shall submit a final report to the President, Congress, and the Secretary which shall contain a detailed statement of the findings and conclusions of COGME and MedPAC, together with such recommendations for legislation and administrative actions as COGME and MedPAC consider appropriate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to COGME such sums as may be necessary for the purpose of carrying out this section.

SEC. 6. CONTRACTING FLEXIBILITY.

For purposes of conducting the demonstration program and establishing and administering the Health Professions Database, the Secretary may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

By Ms. LANDRIEU:

S. 1388. A bill to make election day a Federal holiday; to the Committee on the Judiciary

Ms. LANDRIEU. 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. 1388

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

SECTION 1. FINDINGS.

Congress finds that—

(1) democracy is an invaluable birthright of American citizens and each generation must sustain and improve the democratic process for its successors;

(2) the Federal Government must actively create and enforce laws that protect the voting rights of all Americans, and further create an equal opportunity for all Americans to participate in the voting process;

(3) the Federal Government should encourage the value of the right to vote;

(4) 22.6 percent of Americans who do not vote in elections give the reasoning that they are too busy and have a conflicting work or school schedule;

(5) the creation of a legal public holiday on election day will increase the availability of poll workers and suitable polling places; and

(6) the creation of a legal public holiday on election day might make voting easier for some workers and increase voter participation by the American public.

SEC. 2. ESTABLISHMENT OF ELECTION DAY IN FEDERAL ELECTION YEARS AS A LEGAL PUBLIC HOLIDAY.

Section 6103(a) of title 5, United States Code, is amended by inserting immediately below the item relating to Veterans Day the following:

''Election Day, the Tuesday next after the first Monday in November in each even-numbered year.''.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1389. A bill to provide for the conveyance of certain real property in south Dakota to the State of South Dakota with indemnification by the United States government, and for other purposes; to the Committee on Environment and Public Works.

Mr. DASCHLE. Mr. President, today Senator JOHNSON and I are introducing the Homestake Mine Conveyance Act of 2001 to enable the construction of a new, world-renowned science laboratory in the Black Hills of South Dakota.

Last Year, the Homestake Mining Company announced it is closing its gold mine in Lead, SD after 125 years of operation. This mine has been an important part of the economy in the Black Hills, and its closure presented South Dakota with a serious challenge.

New opportunities for Lead became possible, however, when we learned that a group of prominent scientists had identified the mine as a potential site to establish a national underground science laboratory. Composed of some of the foremost researchers in the country, the National Underground Science Laboratory Committee found that Homestake's unique combination of depth, geologic stability and outstanding infrastructure made it an ideal location for an underground laboratory that could support groundbreaking new scientific research. In just the last few months, a $281 million proposal to construct the laboratory has been submitted to the National Science Foundation.

As I learned, tiny particles known as neutrinos hold the answer to fundamental questions about the nature of the universe. These particles cannot be detected on the surface of the Earth due to the immense amount of interference coming in from outer space. However, research laboratories located deep underground, where detectors are shielded by thousand of feet of rock, have been able to detect these particles and provide important new information to scientists. Because the Homestake mine in Lead is over 8,000 feet deep, it offers outstanding opportunities for such research. In fact one neutrino experiment has been operating there since the 1960s.

I have never seen such excitement in Lead as I have seen in relation to this proposal. Banners welcoming visiting scientists to Lead have been hung over the streets. The local chamber of commerce held a ''Neutrino Day'' in February and reported the highest attendance for any even in recent memory. Students, teachers, miners, business

owners, people from every walk of life, have contacted me to express their excitement about the possibility of building a laboratory. The support for this proposal is overwhelming.

In order to make the mine available for research, it is necessary for the facility to be transferred to the State of South Dakota and for the United States to assume a portion of the liability currently associated with the property. The purpose of the legislation Senator JOHNSON and I are introducing today is to ensure that this transfer takes places in a way that is fair to taxpayers, that protects the environment, and that ensures this facility can ultimately become available for research.

This legislation establishes a number of steps that must be taken to meet these goals. First it requires that an independent inspection of the property take place to identify any condition that could pose a threat to human health or the environment. The Environmental Protection Agency must review the report accompanying this inspection and ensure that any problematic conditions are mitigated before transfer may be allowed to take place. Second, it requires that the State of South Dakota purchase environmental insurance to protect the taxpayers against any issue that may arise as a result of acquiring the mine. Third, it establishes a trust fund to provide a permanent source of revenue to finance any clean-up that may be necessary. Finally, this bill would take effect only if the National Science Foundation approves the construction of the laboratory.

To be clear, only a portion of Homestake's existing facilities that are required for the laboratory are being considered for transfer. These include the underground portion of the mine and a small ''footprint'' on the surface. The legislation specifically prohibits any tailings storage sites, waste rock dumps or other areas from being transferred, as these sites must be reclaimed by Homestake Mining Company.

The final point I want to make is that this legislation is time-sensitive. Homestake's current plan to reclaim the underground mine is to let it slowly flood with water once the mine closes in January of 2001. If that happens, we will forever lose the opportunity to create this laboratory.

This legislation has been developed over a period of months in close consultation with Homestake Mining Company, the environmental community, the scientific community, the State of South Dakota and the South Dakota School of Mines and Technology. I want to thank all the individuals involved with this effort for their help. In particular, I'd like to thank Governor Bill Janklow, whose help and support is this process have been invaluable.

I believe the resulting legislation is fair to all involved, and that it will ensure the success of the laboratory while protecting the environment. Moreover, by enabling the construction of this laboratory, it ultimately will bring significant benefits to the United States and make an important contribution to human knowledge. I look forward to working with all interested parties to make additional improvements to this legislation when we return in September, and I am personally committed to passing this legislation in a timely manner this fall.

I urge my colleagues to give this legislation their support. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1389

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 ''Homestake Mine Conveyance Act of 2001''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the United States is among the leading nations in the world in conducting basic scientific research;

(2) that leadership position strengthens the economy and national defense of the United States and provides other important benefits;

(3) the Homestake Mine in Lead, South Dakota, owned by the Homestake Mining Company of California, is approximately 8,000 feet deep and is situated in a unique physical setting that is ideal for carrying out certain types of particle physics and other research;

(4) the Mine has been selected by the National Underground Science Laboratory Committee, an independent panel of distinguished scientists, as the preferred site for the construction of a national underground laboratory;

(5) such a laboratory would be used to conduct scientific research that would be funded and recognized as significant by the United States;

(6) the establishment of the laboratory is in the national interest, and would substantially improve the capability of the United States to conduct important scientific research;

(7) for economic reasons, Homestake intends to cease operations and close the Mine in 2001;

(8) on cessation of operations of the Mine, Homestake intends to implement reclamation actions that would preclude the establishment of a laboratory at the Mine;

(9) Homestake has advised the State that, after cessation of operations at the Mine, instead of carrying out those reclamation actions, Homestake is willing to donate the underground portion of the Mine and certain other real and personal property of substantial value at the Mine for use as the underground science laboratory;

(10) use of the Mine as the site for the laboratory, instead of other locations under consideration, would result in a savings of millions of dollars;

(11) if the National Science Foundation selects the Mine as the site for the laboratory, it is essential that Homestake not complete certain reclamation activities that would preclude the location of the laboratory at the Mine;

(12) Homestake is unwilling to donate, and the State is unwilling to accept, the property at the Mine for the laboratory if Homestake and the State would continue to have potential liability with respect to the transferred property; and

(13) to secure the use of the Mine as the location for the laboratory, and to realize the benefits of the proposed laboratory, it is necessary for the United States to—

(A) assume a portion of any potential future liability of Homestake concerning the Mine; and

(B) address potential liability associated with the operation of the laboratory.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AFFILIATE.—

(A) IN GENERAL.—The term ''affiliate'' means any corporation or other person that controls, is controlled by, or is under common control with Homestake.

(B) INCLUSIONS.—The term ''affiliate'' includes a director, officer, or employee of an affiliate.

(3) CONVEYANCE.—The term ''conveyance'' means the conveyance of the Mine to the State under section 4(a).

(4) FUND.—The term ''Fund'' means the Environment and Project Trust Fund established under section 7.

(5) HOMESTAKE.—

(A) IN GENERAL.—The term ''Homestake'' means the Homestake Mining Company of California, a California corporation.

(B) INCLUSION.—The term ''Homestake'' includes—

(i) a director, officer, or employee of Homestake; and

(ii) an affiliate of Homestake.

(6) LABORATORY.—

(A) IN GENERAL.—The term ''laboratory'' means the national underground science laboratory proposed to be established at the Mine after the conveyance.

(B) INCLUSION.—The term ''laboratory'' includes operating and support facilities of the laboratory.

(7) MINE.—

(A) IN GENERAL.—The term ''Mine'' means the portion of the Homestake Mine in Lawrence County, South Dakota, proposed to be conveyed to the State for the establishment and operation of the laboratory.

(B) INCLUSIONS.—The term ''Mine'' includes—

(i) real property, mineral and oil and gas rights, shafts, tunnels, structures, in-Mine backfill, in-Mine broken rock, fixtures, and personal property to be conveyed for establishment and operation of the laboratory, as agreed upon by Homestake, the State, and the Director of the laboratory; and

(ii) any water that flows into the Mine from any source.

(C) EXCLUSIONS.—The term ''Mine'' does not include—

(i) the feature known as the ''Open Cut'';

(ii) any tailings or tailings storage facility (other than in-Mine backfill); or

(iii) any waste rock or any site used for the dumping of waste rock (other than in-Mine broken rock).

(8) PERSON.—The term ''person'' means—

(A) an individual;

(B) a trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, or any other type of business entity;

(C) a State or political subdivision of a State;

(D) a foreign governmental entity; and

(E) any department, agency, or instrumentality of the United States.

(9) PROJECT SPONSOR.—The term ''project sponsor'' means an entity that manages or

pays the costs of 1 or more projects that are carried out or proposed to be carried out at the laboratory.

(10) STATE.—

(A) IN GENERAL.—The term ''State'' means the State of South Dakota.

(B) INCLUSIONS.—The term ''State'' includes an institution, agency, officer, or employee of the State.

SEC. 4. CONVEYANCE OF REAL PROPERTY.

(a) IN GENERAL.—

(1) DELIVERY OF DOCUMENTS.—Subject to paragraph (2) and subsection (b) and notwithstanding any other provision of law, on the execution and delivery by Homestake of 1 or more quit-claim deeds or bills of sale conveying to the State all right, title, and interest of Homestake in and to the Mine, title to the Mine shall pass from Homestake to the State.

(2) CONDITION OF MINE ON CONVEYANCE.—The Mine shall be conveyed as is, with no representations as to the conditions of the property.

(b) REQUIREMENTS FOR CONVEYANCE.—

(1) IN GENERAL.—As a condition precedent of conveyance and of the assumption of liability by the United States in accordance with this Act, the Administrator shall accept the final report or certification of the independent entity under subparagraphs (A) through (E) of paragraph (3).

(2) DUE DILIGENCE INSPECTION.—

(A) IN GENERAL.—As a condition precedent of conveyance and of Federal participation described in this Act, Homestake shall permit an independent entity that is selected jointly by Homestake, the South Dakota Department of Environment and Natural Resources, and the Administrator to conduct a due diligence inspection of the Mine to determine whether any condition of the Mine poses a substantial risk to human health or the environment.

(B) CONSULTATION.—As a condition precedent of the conduct of a due diligence inspection, Homestake, the South Dakota Department of Environment and Natural Resources, the Administrator, and the independent entity shall consult and agree upon the methodology and standards to be used, and other factors to be considered, by the independent entity in—

(i) the conduct of the due diligence inspection;

(ii) the scope of the due diligence inspection; and

(iii) the time and duration of the due diligence inspection.

(3) REPORT TO ADMINISTRATOR.—

(A) IN GENERAL.—The independent entity shall submit to the Administrator a report that—

(i) describes the results of the due diligence inspection under paragraph (2); and

(ii) identifies any condition of or in the Mine that poses a substantial risk to human health or the environment.

(B) PROCEDURE.—

(i) DRAFT REPORT.—Before finalizing the report under this paragraph, the independent entity shall—

(I) issue a draft report;

(II) submit to the Administrator a copy of the draft report;

(III) issue a public notice requesting comments on the draft report that requires all such comments to be filed not later than 45 days after issuance of the public notice; and

(IV) during that 45-day public comment period, conduct at least 1 public hearing in Lead, South Dakota, to receive comments on the draft report.

(ii) FINAL REPORT.—In the final report submitted to the Administrator under this paragraph, the independent entity shall respond to, and incorporate necessary changes suggested by, the comments received on the draft report.

(4) REVIEW AND APPROVAL BY ADMINISTRATOR.—

(A) IN GENERAL.—Not later than 60 days after receiving the final report under paragraph (3), the Administrator shall—

(i) review the report; and

(ii) notify the State in writing of acceptance or rejection of the final report.

(B) CONDITIONS FOR REJECTION.—The Administrator may reject the final report only if the Administrator identifies 1 or more conditions of the Mine that—

(i) pose a substantial risk to human health or the environment, as determined by the Administrator; and

(ii) require response action to correct each condition causing the substantial risk to human health or the environment identified in clause (i) before conveyance and assumption by the Federal Government of liability concerning the Mine under this Act.

(C) REMEDIAL MEASURES AND CERTIFICATION.—

(i) REMEDIATION.—

(I) IN GENERAL.—If the Administrator rejects the final report, Homestake may carry out, or permit the State to carry out, such measures as are necessary to remove or remediate any condition identified by the Administrator under subparagraph (B)(i) as posing a substantial risk to human health or the environment.

(II) LONG-TERM REMEDIATION.—

(aa) IN GENERAL.—In a case in which the Administrator determines that a condition identified by the Administrator under subparagraph (B)(i) requires continuing remediation, or remediation that can only be completed as part of the final closure of the Mine, it shall be a condition of conveyance that Homestake or the National Science Foundation shall deposit into the Fund such funds as are necessary to pay the costs of that remediation.

(bb) SOURCE OF FUNDS.—Any funds deposited by the National Science Foundation under this paragraph shall be made available from grant funding provided for the construction of the Laboratory.

(ii) CERTIFICATION.—After the remedial measures described in clause (i)(I) are carried out and funds are deposited under clause (i)(II), the independent entity may certify to the Administrator that the conditions for rejection identified by the Administrator under subparagraph (B) have been corrected.

(iii) ACCEPTANCE OR REJECTION OF CERTIFICATION.—Not later than 60 days after an independent entity makes a certification under clause (ii), the Administrator shall accept or reject the certification.

SEC. 5. LIABILITY.

(a) ASSUMPTION OF LIABILITY.—Notwithstanding any other provision of law, on completion of the conveyance in accordance with this Act, the United States shall assume any and all liability relating to the Mine and laboratory, including liability for—

(1) damages;

(2) reclamation;

(3) the costs of response to any hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)), contaminant, or other material on, under, or relating to the Mine and laboratory; and

(4) closure of the Mine and laboratory.

(b) LIABILITY PROTECTION.—On completion of the conveyance, neither Homestake nor the State shall be—

(1) liable to any person or the United States for injuries, costs, injunctive relief, reclamation, damages (including damages to natural resources or the environment), or expenses, or liable under any other claim (including claims for indemnification or contribution, claims by third parties for death, personal injury, illness, or loss of or damage to property, or claims for economic loss), under any law (including a regulation) for any claim arising out of or in connection with contamination, pollution, or other condition, use, or closure of the Mine and laboratory, regardless of when a condition giving rise to the liability originated or was discovered; or

(2) subject to any claim brought by or on behalf of the United States under section 3730 of title 31, United States Code, relating to negligence on the part of Homestake in carrying out activities for the conveyance of, and in conveying, the Mine.

(c) INDEMNIFICATION.—Notwithstanding any other provision of law, on completion of the conveyance in accordance with this Act, the United States shall indemnify, defend, and hold harmless Homestake and the State from and against any and all liabilities and claims described in subsections (a) and (b).

(d) WAIVER OF SOVEREIGN IMMUNITY.—For the purposes of this Act, the United States waives any claim to sovereign immunity.

(e) TIMING FOR ASSUMPTION OF LIABILITY.—If the conveyance is effectuated by more than 1 legal transaction, the assumption of liability, liability protection, indemnification, and waiver of sovereign immunity provided for under this section shall apply to each legal transaction, as of the date on which the transaction is completed and with respect to such portion of the Mine as is conveyed under that transaction.

(f) EXCEPTIONS FOR HOMESTAKE CLAIMS.—Nothing in this section constitutes an assumption of liability by the United States, or relief of liability of Homestake, for—

(1) any unemployment, worker's compensation, or other employment-related claim of an employee of Homestake that arose before the date of conveyance;

(2) any claim or cause of action, other than an environmental claim or a claim concerning natural resources, that arose before the date of conveyance;

(3) any violation of any provision of criminal law; or

(4) any claim, injury, damage, liability, or reclamation or cleanup obligation with respect to any property or asset that is not conveyed under this Act, except to the extent that any such claim, injury, damage, liability, or reclamation or cleanup obligation arises out of the continued existence or use of the Mine subsequent to the date of conveyance.

SEC. 6. INSURANCE COVERAGE.

(a) PROPERTY AND LIABILITY INSURANCE.—

(1) IN GENERAL.—To the maximum extent practicable, subject to the requirements described in paragraph (2), the State shall purchase property and liability insurance for the Mine and the operation of the laboratory to provide coverage against the liability described in subsections (a) and (b) of section 5.

(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are the following:

(A) TERMS OF INSURANCE.—In determining the type, extent of coverage, and policy limits of insurance purchased under this subsection, the State shall—

(i) periodically consult with the Administrator and the Director of the National Science Foundation; and

(ii) consider certain factors, including—

(I) the nature of the projects and experiments being conducted in the laboratory;

(II) the availability of commercial insurance; and

(III) the amount of funding available to purchase commercial insurance.

(B) ADDITIONAL TERMS.—The insurance purchased by the State under this subsection may provide coverage that is—

(i) secondary to the insurance purchased by project sponsors; and

(ii) in excess of amounts available in the Fund to pay any claim.

(3) FINANCING OF INSURANCE PURCHASE.—

(A) IN GENERAL.—Subject to section 7, the State may finance the purchase of insurance required under this subsection by using—

(i) funds made available from the Fund; and

(ii) such other funds as are received by the State for the purchase of insurance for the Mine and laboratory.

(B) NO REQUIREMENT TO USE STATE FUNDS.—Nothing in this Act requires the State to use State funds to purchase insurance required under this subsection.

(4) ADDITIONAL INSURED.—Any insurance purchased by the State under this subsection shall—

(A) name the United States as an additional insured; or

(B) otherwise provide that the United States is a beneficiary of the insurance policy having the primary right to enforce all rights of the United States under the policy.

(5) TERMINATION OF OBLIGATION TO PURCHASE INSURANCE.—The obligation of the State to purchase insurance under this subsection shall terminate on the date on which—

(A) the Mine ceases to be used as a laboratory; or

(B) sufficient funding ceases to be available for the operation and maintenance of the Mine or laboratory.

(b) PROJECT INSURANCE.—

(1) IN GENERAL.—The State, in consultation with the Administrator and the Director of the National Science Foundation, may require, as a condition of approval of a project for the laboratory, that a project sponsor provide property and liability insurance or other applicable coverage for potential liability associated with the project described in subsections (a) and (b) of section 5.

(2) ADDITIONAL INSURED.—Any insurance obtained by the project sponsor under this section shall—

(A) name the State and the United States as additional insureds; or

(B) otherwise provide that the State and the United States are beneficiaries of the insurance policy having the primary right to enforce all rights under the policy.

(c) STATE INSURANCE.—

(1) IN GENERAL.—To the extent required by State law, the State shall purchase, with respect to the operation of the Mine and the laboratory—

(A) unemployment compensation insurance; and

(B) worker's compensation insurance.

(2) PROHIBITION ON USE OF FUNDS FROM FUND.—A State shall not use funds from the Fund to carry out paragraph (1).

SEC. 7. ENVIRONMENT AND PROJECT TRUST FUND.

(a) ESTABLISHMENT.—On completion of the conveyance, the State shall establish, in an interest-bearing account at an accredited financial institution located within the State, an Environment and Project Trust Fund.

(b) AMOUNTS.—The Fund shall consist of—

(1) an annual deposit from the operation and maintenance funding provided for the laboratory in an amount to be determined—

(A) by the State, in consultation with the Director of the National Science Foundation and the Administrator; and

(B) after taking into consideration—

(i) the nature of the projects and experiments being conducted at the laboratory;

(ii) available amounts in the Fund;

(iii) any pending costs or claims that may be required to be paid out of the Fund; and

(iv) the amount of funding required for future actions associated with the closure of the facility;

(2) an amount determined by the State, in consultation with the Director of the National Science Foundation and the Administrator, and to be paid by the appropriate project sponsor, for each project to be conducted, which amount—

(A) shall be used to pay—

(i) costs incurred in removing from the Mine or laboratory equipment or other materials related to the project;

(ii) claims arising out of or in connection with the project; and

(iii) if any portion of the amount remains after paying the expenses described in clauses (i) and (ii), other costs described in subsection (c); and

(B) may, at the discretion of the State, be assessed—

(i) annually; or

(ii) in a lump sum as a prerequisite to the approval of the project;

(3) interest earned on amounts in the Fund, which amount of interest shall be used only for a purpose described in subsection (c); and

(4) all other funds received and designated by the State for deposit in the Fund.

(c) EXPENDITURES FROM FUND.—Amounts in the Fund shall be used only for the purposes of funding—

(1) waste and hazardous substance removal or remediation, or other environmental cleanup at the Mine;

(2) removal of equipment and material no longer used, or necessary for use, in conjunction with a project conducted at the laboratory;

(3) a claim arising out of or in connection with the conducting of such a project;

(4) purchases of insurance by the State as required under section 6;

(5) payments for and other costs relating to liability described in section 5; and

(6) closure of the Mine and laboratory.

(d) FEDERAL PAYMENTS FROM FUND.—The United States—

(1) to the extent the United States assumes liability under section 5—

(A) shall be a beneficiary of the Fund; and

(B) may direct that amounts in the Fund be applied to pay amounts and costs described in this section; and

(2) may take action to enforce the right of the United States to receive 1 or more payments from the Fund.

(e) NO REQUIREMENT OF DEPOSIT OF PUBLIC FUNDS.—Nothing in this section requires the State to deposit State funds as a condition of the assumption by the United States of liability, or the relief of the State or Homestake from liability, under section 5.

SEC. 8. REQUIREMENTS FOR OPERATION OF LABORATORY.

After the conveyance, nothing in this Act exempts the laboratory from compliance with any law (including a Federal environmental law).

SEC. 9. CONTINGENCY.

This Act shall be effective contingent on the selection, by the National Science Foundation, of the Mine as the site for the laboratory.

SEC. 10. PAYMENT AND REIMBURSEMENT OF COSTS.

The United States may seek payment—

(1) from the Fund, under section 7(d), to pay or reimburse the United States for amounts payable or liabilities incurred under this Act; and

(2) from available insurance, to pay or reimburse the United States and the Fund for amounts payable or liabilities incurred under this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. BINGAMAN (for himself, Mr. LUGAR, Mr. TORRICELLI, and Mr. CORZINE):

S. 1390. A bill to amend title XXI of the Social Security Act to require the Secretary of Health and Human Services to make grants to promote innovative outreach and enrollment efforts under the State children's health insurance program, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the bipartisan legislation I am introducing today with Senators LUGAR, TORRICELLI, and CORZINE entitled the ''Children's Health Coverage Improvement Act of 2001'' would improve outreach and enrollment efforts targeted at children to dramatically reduce the number of uninsured children in this country. This legislation is a companion bill to S. 1016, the ''Start Healthy, Stay Healthy Act of 2001,'' which would expand and improve coverage to children and pregnant women through Medicaid and the State Children's Health Insurance Program, CHIP.

The legislation provides $100 million in grants annually from the unspent allocations in CHIP to community-based public or non-profit organizations, including community health centers, children's hospitals, disproportionate share hospitals, local and county government, and public health departments, for the purposes of conducting innovative outreach and enrollment efforts.

The bill further clarifies that the outstationed workers requirement in Medicaid, which requires that eligibility workers be available in the public in our nation's community health centers and safety net hospitals, shall also enroll children in CHIP if they are eligible for coverage under that program as well.

As you are aware, the State Children's Health Insurance Program, which was passed as part of the Balanced Budget Act of 1997, was the largest expansion of health coverage since the enactment of Medicare and Medicaid in 1965. The program, designed to cover low-income children under age 18, provides on average $4 billion a year to the states to either expand Medicaid, establish a separate state program apart from Medicaid, or a combination of the two approaches.

Unfortunately, according to an Urban Institute report entitled How Familiar Are Low-Income Parents with Medicaid and SCHIP?, it is estimated that up to 80 percent of the 11 million uninsured children in the country are eligible for but unenrolled in Medicaid or SCHIP. Thus, ineligibility for coverage is no longer a barrier for the vast majority of uninsured children. Instead, as the report notes, ''A major challenge today is how to reach and enroll the millions of children who are eligible but who remain uninsured.''

The biggest problems are knowledge gaps, confusion about program rules, and problems created by bureaucratic barriers to coverage. According to the study, ''Only 38 percent of low-income uninsured children have parents who have heard of Medicaid or SCHIP programs and who also understand the basic eligibility rules,'' Moreover, less than half of parents, 47 percent, of low income uninsured children were even aware of the separate SCHIP program.

As the authors conclude, ''For SCHIP expansions to reduce uninsurance among children, it is critical that families know about the coverage available through separate non-Medicaid SCHIP programs . . . .''

In addition, senior health researcher Peter J. Cunningham at the Center for Studying Health System Change recently published an article in Health Affairs entitled ''Targeting Communities With High Rates of Uninsured Children'' that highlights that the ''key to getting children insured'' is improved ''enrollment outreach.''

As the article notes, ''Policymakers have understood from the beginning that the key to the success of SCHIP is in getting eligible children to enroll . . . The results of this study suggest that outreach activities and other efforts to stimulate enrollment need to be especially focused in high-uninsurance areas, both because they include a large concentration of the nation's uninsured children and because take-up rates of public and private coverage have historically been lower in these areas.''

Cunningham particularly notes that children in high-uninsured communities are disproportionately Hispanic. As he points out, ''Hispanics typically have lower take-up rates for health insurance programs for which they are eligible. This could be attributable to immigration concerns, language barriers, lack of awareness of public programs, or not understanding the roll that insurance coverage plays in the United States in securing access to high-quality health care.''

As a result, the legislation also contains a provision giving priority to community-based organizations in communities with high rates of eligible but unenrolled children and in areas with high rates of families for whom English is not their primary language. It is certainly my desire for programs such as ''promotoras'' or community health advisors to receive these grants, as they have been incredibly effective in New Mexico in improving health insurance coverage to children.

An estimated 11 million children under age 19 were without health insurance in 1999, including 129,000 in New Mexico, representing 15 percent of all children in the United States and 22 percent of children in New Mexico, the fourth highest rate of uninsured children in the country. An estimated 103,000 of those children are in families with incomes below 200 percent of poverty, so the majority of those children are already eligible for but unenrolled in Medicaid.

Why is this important? According to the American College of Physicians-American Society of Internal Medicine, uninsured children, compared to the insured, are: up to 6 times more likely to have gone without needed medical, dental or other health care; 2 times more likely to have gone without a physician visit during the previous year; up to 4 times more likely to have delayed seeking medical care; up to 10 times less likely to have a regular source of medical care; 1.7 times less likely to receive medical treatment for asthma; and, up to 30 percent less likely to receive medical attention for any injury.

In fact, one study has ''estimated that the 15 percent rise in the number of children eligible for Medicaid between 1984 and 1992 decreased child mortality by 5 percent.'' This expansion of coverage for children occurred, I would add, during the Reagan and Bush Administrations, so this is clearly a bipartisan issue that deserves further bipartisan action.

Mr. President, I urge this legislation's immediate passage. We can and must do better for our children.

I ask unanimous consent for the text of the bill to be printed in the RECORD.

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

S. 1390

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children's Health Coverage Improvement Act of 2001''.

SEC. 2. GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT EFFORTS UNDER SCHIP.

(a) IN GENERAL.—Section 2104(f) of the Social Security Act (42 U.S.C. 1397dd(f)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary''; and

(2) by adding at the end the following:

''(2) GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT EFFORTS.—

''(A) IN GENERAL.—Prior to any redistribution under paragraph (1) of unexpended allotments made to States under subsection (b) or (c) for fiscal year 2000 and any fiscal year thereafter, the Secretary shall—

''(i) reserve from such unexpended allotments the lesser of $100,000,000 or the total amount of such unexpended allotments for grants under this paragraph for the fiscal year in which the redistribution occurs; and

''(ii) subject to subparagraph (B), use such reserved funds to make grants to local and community-based public or nonprofit organizations (including organizations involved in pediatric advocacy, local and county governments, public health departments, Federally-qualified health centers, children's hospitals, and hospitals defined as disproportionate share hospitals under the State plan under title XIX) to conduct innovative outreach and enrollment efforts that are consistent with section 2102(c) and to promote parents' understanding of the importance of health insurance coverage for children.

''(B) PRIORITY FOR GRANTS IN CERTAIN AREAS.—In making grants under subparagraph (A)(ii), the Secretary shall give priority to grant applicants that propose to target the outreach and enrollment efforts funded under the grant to geographic areas—

''(i) with high rates of eligible but unenrolled children, including such children who reside in rural areas; or

''(ii) with high rates of families for whom English is not their primary language.

''(C) APPLICATIONS.—An organization that desires to receive a grant under this paragraph shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide.''.

(b) EXTENDING USE OF OUTSTATIONED WORKERS TO ACCEPT TITLE XXI APPLICATIONS.—Section 1902(a)(55) of such Act (42 U.S.C. 1396a(a)(55)) is amended by inserting '', and applications for child health assistance under title XXI'' after ''(a)(10)(A)(ii)(IX)''.

By Mr. SCHUMER (for himself and Mr. DEWINE):

S. 1391. A bill to establish a grant program for Sexual Assault Forensic Examiners, and for other purposes; to the Committee on the Judiciary.

Mr. SCHUMER. Mr. President, I rise today to introduce the Sexual Assault Forensic Examiners Act of 2001, which is being co-sponsored by Senator DEWINE. This bill aims to vastly improve the care of victims of sexual assault and help see to it that their attackers end up behind bars.

Over 300,000 women are sexually assaulted each year in the United States. Unlike all other violent crimes, rape is not declining in frequency. When a woman suffers the horrific crime of sexual assault, there are two minimal things our system owes her. First, we owe it to her to do everything in our power to find and put her assailants behind bars. Second, we owe her prompt and caring treatment when she's reported the crime, which in itself is often an act of great courage. Yet, all too often, we fail in these basic obligations.

Most rape victims who seek treatment go to hospital emergency rooms, where they often wait hours in public waiting rooms. Some leave the hospital altogether rather than endure extended delay, decreasing the likelihood the offense will ever be reported or prosecuted. Once victims are finally attended to, most victims are treated by a series of rushed emergency room nurses, doctors and lab technicians who often lack specialized training in the particular physical and psychological care rape victims need. Emergency room nurses and doctors also typically have little training in collecting, correctly handling and preserving forensic evidence from rape victims. Moreover, many hospitals lack the last forensic tools, such as dye that reveals microscopic scratches, and colposcopes, which detect and photograph otherwise invisible pelvic injuries. As a result, evidence is mishandled or never uncovered in the first place—jeopardizing prosecutions. Finally, emergency room personnel, already overworked, are sometimes reluctant to cooperate with police and prosecutors in sexual assault cases,

knowing this entails time-consuming interviews, witness preparation and court appearances—to say nothing of unpleasant cross-examinations.

SAFE programs dramatically improve the situation. SAFE examiners are specially trained in the latest techniques of forensic evidence gathering. They cooperate fully with police and prosecutors, and their specialized training and experience makes them better witnesses in court. When defendants claim consent, physical evidence of force, which can be difficult to uncover and explain to juries—can make all the difference. Prosecutors support SAFE programs because they lead to more prosecutions and convictions.

SAFE programs also provide better care to victims. Rather than face a long public wait and a revolving door of emergency room care-givers, victims treated by SAFEs are seen immediately in private, tell their story to and receive care from a single attendant, and are treated with greater sensitivity by examiners with specialized psychological training.

There are now fewer than 750 SAFE programs in the United States, serving less than 5 percent of all victims. Our bill aims to expand SAFE programs by providing $10 million a year from 2002 to 2006 in grants to new or existing SAFE programs. SAFE programs currently have to compete against a myriad of other law enforcement and victims' programs for federal funding under the Violence Against Women Act and the Victims of Crime Act; by contrast, the SAFE Grant Act of 2001 will provide a unique and direct source of Federal funding for SAFEs. The Department of Justice, which is already responsible for developing national standards for SAFE programs, will administer the grants, ensure that recipients conform to the national standards, and give priority to SAFE programs in currently undeserved areas.

Being the victims of a sexual assault is bad enough. We have to see to it that the system doesn't exacerbate the problem with shoddy care and mishandled cases. This bill should provide some help and I'm proud to introduce it today.

Mr. DEWINE. Mr. President, today I rise as a cosponsor of the Sexual Assault Forensic Examiners Act of 2001, sponsored by my colleague, Senator CHARLES SCHUMER, to whom I am grateful for introducing this important legislation. The purpose of this legislation is to appropriate $10 million annually for the support of programs that utilize Sexual Assault Forensic Nurses in the treatment and counseling of rape victims.

Somewhere in America, a woman is sexually assaulted every two minutes. In the past year alone, 307,000 women were sexually assaulted in this country, and unlike other violent crimes, rape is not decreasing in frequency. Unfortunately, the treatment that many rape victims presently receive is far from adequate. Most victims of sexual assault who report their crimes do so in a hospital emergency room, where they frequently wait hours for treatment only to see doctors without specialized training who lack the proper forensic tools for evidence collection. Many victims report that their post-traumatic experiences in hospitals constitute another humiliating victimization. Victims of sexual assault should not be traumatized twice, especially when there are better programs in place that could help them.

A Sexual Assault Forensic Examiner, often referred to as a SAFE, is a registered nurse who has received advanced training and clinical preparation in the forensic examination of sexual assault victims. As opposed to rape survivors seen by typical emergency room personnel, patients seen by these SAFEs rarely wait for treatment, see a single specially trained examiner instead of any number of different doctors, and receive sensitive, specialized care. The intervention of SAFEs in a sex crimes case bolsters the odds of prosecution and conviction of offenders, as these nurses are trained in the proper methods to utilize ''rape kits'' and collect forensic evidence. Furthermore, the expertise of SAFE nurses renders them better witnesses than most emergency room personnel during trials, which can make the difference between a conviction and an acquittal. The Department of Justice reports that in areas where SAFE programs have been established for more than 10 years, there is a 96 percent rape conviction rate, as opposed to the 4% average conviction rate in areas without SAFE facilities.

Five hundred SAFE programs currently exist in the United States, but these programs treat less than 5 percent of all sexual assault victims. Financial hurdles hinder the growth of SAFE programs, which frequently compete with other law enforcement and victims' programs to obtain the limited Federal funds available from existing sources. By creating a specific and substantial source of Federal funding for SAFE programs, more SAFE programs will be established, improving both the quality of care provided to victims and the conviction rate of their assailants.

In the short time that I have been speaking here, two women became victims of sexual violence. By lending your support to the ''Sexual Assault Forensic Examiner Grant Act of 2001,'' you can help assure that the hundreds of thousands of women who are raped each year receive the sensitive medical care that hey both require and deserve.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1392. A bill to establish procedures for the Bureau of Indian Affairs of the Department of the Interior with respect to tribal recognition; to the Committee on Indian Affairs.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1393. A bill to provide grants to ensure full and fair participation in certain decisionmaking processes at the Bureau of Indian Affairs; to the Committee on Indian Affairs.

Mr. DODD. Mr. President, I rise today to introduce two pieces of legislation intended to help reform and improve the process by which the Federal Government acknowledges the sovereign rights of American Indian tribes and their Governments.

I offer these bills with a sense of hope and with the expectation that they will contribute to the larger national conversation about how the Federal Government can best fulfill its obligations to America's native peoples. Senator INOUYE and Senator CAMPBELL have provided invaluable leadership on this issue and I hope that the bills I am introducing today will serve as a modest, but useful contribution that will help move us toward a more speedy and more fair recognition process.

Currently there are more than 150 Indian groups that have petitions for recognition as sovereign tribes pending before the Bureau of Indian Affairs, BIA. No fewer than nine of those petitions are from groups based in Connecticut.

Several recent actions by the BIA have generated considerable debate about the timeliness, accuracy, and fairness of the BIA's actions. I believe that careful reform of the recognition process can help prevent future doubts before they emerge.

As we consider how best to reform the process for tribal recognition, we ought to be guided by several firm principles: fairness, openness, respect, and a common interest in bettering the quality of life for all Americans. The two bills that I am introducing today are based on these principles and I believe will bring us closer to our shared objectives.

Problems with the current recognition process have been well documented. It is widely recognized that the process is taking too long to resolve the claims of many Indian groups. It is also known that towns and other interested parties often believe that their input is ignored.

Last year, the then-Assistant Secretary for Indian Affairs testified before the Senate Indian Affairs Committee on the BIA's tribal recognition process. In a remarkable statement, he called for an overhaul of that process. I do not disagree. In fact, I believe that we have an obligation to restore public confidence in the recognition process.

I have proposed a three-part legislative initiative to make the process more accurate, more fair, and more timely. Those parts are: one, provide more money to the Bureau of Indian Affairs. I have previously called for increases in the budget for the BIA so it can upgrade its recognition process. For several years, I have sought and supported additional funding for the BIA's branch of acknowledgment and

research. The legislation that I am introducing today would dramatically increase the BIA's budget for this office. Right now, the BIA has about 150 recognition petitions pending. At the current pace, it takes an average of eight to ten years for a tribe's petition to be decided upon. It seems to me that is an unacceptably long amount of time. Indeed, I can think of no other area of law where Americans must wait as long to have their rights adjudicated and vindicated. Under any scenario for reform, the BIA should have more resources to get the job done efficiently, thoroughly, and most importantly, accurately. The tribal recognition and Indian Bureau Enhancement Act, which I am introducing would authorize $10 million to help BIA quickly address its backlog. This funding increase is critical to help remedy deficiencies in the process by which Indian groups are evaluated and recommended for acknowledgment as sovereign legal entities.

Two, this legislation will provide assistance grants to local governments and tribes so that they can fully participate in the recognition process and other BIA proceedings. Any government or tribe would have to demonstrate financial need as a condition of receiving these funds. And they would have to demonstrate that a grant would promote the interests of just administration at the BIA. My intention here is to help improve the fact-finding process and ensure that the Bureau's recognition decisions are based on the best available information.

Three, I propose that we make the recognition process more transparent. It bears noting that there has never been an unambiguous grant of authority from Congress to the Bureau of Indian Affairs to administer a program for the recognition of Indian Tribes. I believe that it is time for Congress to make such a clear grant of authority. The legislation I am proposing would essentially codify many of the regulations that the BIA has been operating under for years. I believe that it is in the interest of the general public and American's sovereign tribes to ensure that those parts of the BIA regulations that are working well will have the full force of statutory law. Relying on statutory authority, rather than regulations, will afford the public and tribes with a measure of certainty and permanency that has heretofore been lacking. Anchoring the BIA's authority in legislation will also restore Congress to an appropriate position where it can more effectively monitor and oversee execution of its law.

Let me stress something about these proposed reforms: We should seek not to dictate an outcome, but to ensure a process that is fair, open, and respectful to all. That is the best guarantee of an outcome that is just whatever it may be.

In concluding, I appreciate that the steps I announced today may appear modest to some, excessive to others. I know they will not please everyone. But they do, I believe, outline a series of actions that can bring greater fairness, openness, and respect to this area of Federal policy. That is my sincere hope, in any event.

I look forward to discussing these and other ideas with Chairman INOUYE, Senator CAMPBELL, and their colleagues on the Indians Affairs Committee. I submit these bills to them in humble recognition of their wealth of wisdom and understanding about these matters. I also look forward to discussing them with our other colleagues here in the Senate and with members of the communities that may be impacted by these proposals.

I ask unanimous consent that the text of both bills be printed in the RECORD.

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

S. 1392

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tribal Recognition and Indian Bureau Enhancement Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.
Sec. 5. Effect of acknowledgment of tribal existence.
Sec. 6. Scope.
Sec. 7. Letter of intent.
Sec. 8. Duties of the Department.
Sec. 9. Requirements for the documented petition.
Sec. 10. Mandatory criteria for Federal acknowledgment.
Sec. 11. Previous Federal acknowledgment.
Sec. 12. Notice of receipt of a letter of intent or documented petition.
Sec. 13. Processing of the documented petition.
Sec. 14. Testimony and the opportunity to be heard.
Sec. 15. Written submissions by interested parties.
Sec. 16. Publication of final determination.
Sec. 17. Independent review, reconsideration, and final action.
Sec. 18. Implementation of decision acknowledging status as an Indian tribe.
Sec. 19. Authorization of appropriations.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States has an obligation to recognize and respect the sovereignty of Native American peoples who have maintained their social, cultural, and political identity.

(2) All Native American tribal governments that represent tribes that have maintained their social, cultural, and political identity, to the extent possible within the context of history, are entitled to establish government-to-government relations with the United States and are entitled to the rights appertaining to sovereign governments.

(3) The Bureau of Indian Affairs of the Department of the Interior exercises responsibility for determining whether Native American groups constitute ''Federal Tribes'' and are therefore entitled to be recognized by the United States as sovereign nations.

(4) In recent years, the decisionmaking process used by the Bureau of Indian Affairs to resolve claims of tribal sovereignty has been widely criticized.

(5) In order to ensure continued public confidence in the Federal Government's decisions pertaining to tribal recognition, it is necessary to reform the recognition process.

SEC. 3. PURPOSES.

The purposes of this Act are as follows:

(1) To establish administrative procedures 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 group, the Federal Government does so based upon clear, factual evidence derived from an open and objective administrative process.

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

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

SEC. 4. DEFINITIONS.

In this Act:

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

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

(3) DOCUMENTED PETITION.—The term ''documented petition'' means the detailed arguments made by a petitioner to substantiate the petitioner's claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that the arguments address the mandatory criteria set forth in section 10.

(4) HISTORICALLY, HISTORICAL, OR HISTORY.—The term ''historically'', ''historical'', or ''history'' means dating from the first sustained contact with non-Indians.

(5) INDIAN GROUP OR GROUP.—The term ''Indian group'' or ''group'' means any Indian or Alaska Native aggregation within the continental United States that the Secretary does not acknowledge to be an Indian tribe.

(6) INDIAN TRIBE; TRIBE.—The terms ''Indian tribe'' and ''tribe'' mean any group that the Secretary determines to have met the mandatory criteria set forth in section 10.

(7) PETITIONER.—The term ''petitioner'' means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that the entity is an Indian tribe.

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

SEC. 5. EFFECT OF ACKNOWLEDGMENT OF TRIBAL EXISTENCE.

Acknowledgment of an Indian tribe under this Act—

(1) confers the protection, services, and benefits of the Federal Government available to Indian tribes by virtue of their status as tribes;

(2) means that the tribe is entitled to the immunities and privileges available to other

federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States;

(3) means that the United States recognizes that the tribe has the responsibilities, powers, limitations, and obligations of a federally acknowledged Indian tribe; and

(4) subjects the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

SEC. 6. SCOPE.

(a) IN GENERAL.—This Act applies only to those Native American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply only to groups that can present evidence of a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the date of the submission of the documented petition.

(b) EXCLUSIONS.—The procedures established under this Act shall not apply to any of the following:

(1) Any Indian tribe, organized band, pueblo, Alaska Native village, or community that, as of the date of enactment of this Act, has been acknowledged as such and is receiving services from the Bureau.

(2) An association, organization, corporation, or group of any character that has been formed after December 31, 2002.

(3) Splinter groups, political factions, communities, or groups of any character that separate from the main body of a currently acknowledged tribe, except that any such group that can establish clearly that the group has functioned throughout history until the date of the submission of the documented petition as an autonomous tribal entity may be acknowledged under this Act, even though the group has been regarded by some as part of or has been associated in some manner with an acknowledged North American Indian tribe.

(4) Any group which is, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

(5) Any group that previously petitioned and was denied Federal acknowledgment under part 83 of title 25 of the Code of Federal Regulations prior to the date of enactment of this Act, including reorganized or reconstituted petitioners previously denied, or splinter groups, spinoffs, or component groups of any type that were once part of petitioners previously denied.

(c) PENDING PETITIONS.—Any Indian group whose documented petition is under active consideration under the regulations referred to in subsection (b)(5) as of the date of enactment of this Act, and for which a determination is not final and effective as of such date, may opt to have their petitioning process completed in accordance with this Act. Any such group may request a suspension of consideration in accordance with the provisions of section 83.10(g) of title 25 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, of not more than 180 days in order to provide additional information or argument.

SEC. 7. LETTER OF INTENT.

(a) IN GENERAL.—Any Indian group in the continental United States that desires to be acknowledged as an Indian tribe and that can satisfy the mandatory criteria set forth in section 10 may submit a letter of intent to the Secretary. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.

(b) APPROVAL OF GOVERNING BODY.—A letter of intent must be produced, dated, and signed by the governing body of the Indian group submitting the letter.

SEC. 8. DUTIES OF THE DEPARTMENT.

(a) PUBLICATION OF LIST OF INDIAN TRIBES.—The Department shall publish in the Federal Register, no less frequently than every 3 years, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Secretary deems it necessary.

(b) GUIDELINES FOR PREPARATION OF DOCUMENTED PETITIONS.—

(1) IN GENERAL.—The Secretary shall make available guidelines for the preparation of documented petitions. Such guidelines shall include the following:

(A) An explanation of the criteria and other provisions relevant to the Department's consideration of a documented petition.

(B) A discussion of the types of evidence which may be used to demonstrate satisfaction or particular criteria.

(C) General suggestions and guidelines on how and where to conduct research.

(D) An example of a documented petition format, except that such example shall not preclude the use of any other format.

(2) SUPPLEMENTATION AND REVISION.—The Secretary may supplement or update the guidelines as necessary.

(c) ASSISTANCE.—The Department shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The Department shall not be responsible for any actual research necessary to prepare such petition.

(d) NOTICE REGARDING CURRENT PETITIONS.—Any Indian group whose documented petition is under active consideration as of the date of enactment of this Act shall be notified of the opportunity under section 6(c) to choose whether to complete their petitioning process under the provisions of this Act or under the provisions of part 83 of title 25 of the Code of Federal Regulations, as in effect on the day before such date.

(e) NOTICE TO GROUPS WITH A LETTER OF INTENT.—Any group that has submitted a letter of intent to the Department as of the date of enactment of this Act shall be notified that any documented petition submitted by the group shall be considered under the provisions of this Act.

SEC. 9. REQUIREMENTS FOR THE DOCUMENTED PETITION.

(a) IN GENERAL.—The documented petition may be in any readable form that contains detailed, specific evidence in support of a request to the Secretary to acknowledge tribal existence.

(b) APPROVAL OF GOVERNING BODY.—The documented petition must include a certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition.

(c) SATISFACTION OF MANDATORY CRITERIA.—A petitioner must satisfy all of the mandatory criteria set forth in section 10 in order for tribal existence to be acknowledged. The documented petition must include thorough explanations and supporting documentation in response to all of such criteria.

(d) STANDARDS FOR DENIAL.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), a petitioner shall not be acknowledged if the evidence presented by the petitioner or others is insufficient to demonstrate that the petitioner meets each of the mandatory criteria in section 10.

(2) REASONABLE LIKELIHOOD OF VALIDITY.—A criterion shall be considered met if the Secretary finds that it is more likely than not that the evidence presented demonstrates the establishment of the criterion.

(3) CONCLUSIVE PROOF NOT REQUIRED.—Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) CONSIDERATION OF HISTORICAL SITUATIONS.—Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but such demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria.

SEC. 10. MANDATORY CRITERIA FOR FEDERAL ACKNOWLEDGMENT.

The mandatory criteria for Federal acknowledgment are the following:

(1) IDENTIFICATION ON A SUBSTANTIALLY CONTINUOUS BASIS.—The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character 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 to be relied upon in determining a group's Indian identity may consist of any 1, or a combination, of the following, as well as other evidence of identification by other than the petitioner itself or its members:

(A) Identification as an Indian entity by Federal authorities.

(B) Relationships with State governments based on identification of the group as Indian.

(C) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(D) Identification as an Indian entity by anthropologists, historians, or other scholars.

(E) Identification as an Indian entity in newspapers and books.

(F) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or State Indian organizations.

(2) DISTINCT COMMUNITY.—

(A) IN GENERAL.—A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the date of the submission of the documented petition. This criterion may be demonstrated by some combination of the following evidence or other evidence:

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

(ii) Significant social relationships connecting individual members.

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

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

(v) Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. Such patterns must function as more than a symbolic identification of the group as Indian, and may include language, kinship organization, or religious beliefs and practices.

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

(ix) A demonstration of historical political influence under the criterion in paragraph (3) shall be evidence for demonstrating historical community.

(B) SUFFICIENT EVIDENCE.—A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any 1 of the following:

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

(ii) At least 50 percent of the marriages in the group are between members of the group.

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as language, kinship organization, or religious beliefs and practices.

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(A).

(3) POLITICAL INFLUENCE OR AUTHORITY.—

(A) IN GENERAL.—The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the date of the submission of the documented petition. This criterion may be demonstrated by some combination of the following evidence or by other evidence:

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in paragraph (2) at more than a minimal level.

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

(B) SUFFICIENT EVIDENCE.—

(i) IN GENERAL.—A petitioning group shall be considered to have 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 existed that—

(I) allocate group resources such as land and residence rights on a consistent basis;

(II) settle disputes between members or subgroups by mediation or other means on a regular basis;

(III) 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; or

(IV) organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(ii) PRESUMPTIVE EVIDENCE.—A group that has met the requirements in paragraph (2)(A) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(4) GOVERNING DOCUMENT AND MEMBERSHIP CRITERIA.—Submission of a copy of the group's governing document and membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(5) DESCENDANTS FROM A HISTORICAL INDIAN TRIBE.—

(A) IN GENERAL.—The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Evidence acceptable to the Secretary which can be used for this purpose includes the following:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) Federal, State, or other official records or evidence identifying group members or ancestors of such members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying group members or ancestors of such members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying group members or ancestors of such members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying members or ancestors of such members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(B) CERTIFIED MEMBERSHIP LIST.—The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. The list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner shall also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(6) MEMBERSHIP IS COMPOSED PRINCIPALLY OF INDIVIDUALS WHO ARE NOT MEMBERS OF AN ACKNOWLEDGED TRIBE.—

(A) IN GENERAL.—The membership of the petitioning group is composed principally of individuals who are not members of any acknowledged North American Indian tribe.

(B) EXCEPTION.—A petitioning group may be acknowledged even if its membership is composed principally of individuals whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe, if the group establishes that it has functioned throughout history until the date of the submission of the documented petition as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

(7) NO LEGISLATION TERMINATES OR PROHIBITS THE FEDERAL RELATIONSHIP.—Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

SEC. 11. PREVIOUS FEDERAL ACKNOWLEDGMENT.

The provisions of section 83.8 of title 25 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, shall apply with respect to petitioners claiming previous Federal acknowledgment under this Act.

SEC. 12. NOTICE OF RECEIPT OF A LETTER OF INTENT OR DOCUMENTED PETITION.

(a) NOTICE AND PUBLICATION.—

(1) IN GENERAL.—Within 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Secretary shall acknowledge such receipt in writing and shall have published within 60 days in the Federal Register a notice of such receipt.

(2) REQUIREMENTS.—The notice published in the Federal Register shall include the following:

(A) The name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the letter of intent or documented petition.

(B) The date the letter or petition was received.

(C) Information regarding how interested and informed parties may submit factual or legal arguments in support of, or in opposition to, the petitioner's request for acknowledgment or to request to be kept informed of all general actions affecting the petition.

(D) Information regarding where a copy of the letter of intent and the documented petition may be examined.

(b) OTHER NOTIFICATION.—The Secretary shall notify, in writing, the chief executive officer, members of Congress, and attorney general of the State in which a petitioner is located and of each State in which the petitioner historically has been located. The Secretary shall also notify any recognized tribe and any other petitioner which appears to have a relationship with the petitioner, including a historical relationship, or which may otherwise be considered to have a potential interest in the acknowledgment determination. The Secretary shall also notify the chief executive officers of the counties and municipalities located in the geographic area historically occupied by the petitioning group.

(c) OTHER PUBLICATION.—The Secretary shall also publish the notice of receipt of the letter of intent, or documented petition if a letter of intent has not been previously received, in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. Such notice shall include the information required under subsection (a)(2).

SEC. 13. PROCESSING OF THE DOCUMENTED PETITION.

The provisions of section 83.10 of title 25 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, shall apply with respect to the processing of a documented petition under this Act.

SEC. 14. TESTIMONY AND THE OPPORTUNITY TO BE HEARD.

(a) IN GENERAL.—The Secretary shall consider all relevant evidence from any interested party including neighboring municipalities that possess information bearing on whether to recognize an Indian group or not.

(b) HEARING UPON REQUEST.—Upon an interested party's request, and for good cause shown, the Secretary shall conduct a formal hearing at which all interested parties may present evidence, call witnesses, cross-examine witnesses, or rebut evidence in the record or presented by other parties during the hearing.

(c) TRANSCRIPT REQUIRED.—A transcript of any hearing held under this section shall be made and shall become part of the administrative record upon which the Secretary is entitled to rely in determining whether to recognize an Indian group.

SEC. 15. WRITTEN SUBMISSIONS BY INTERESTED PARTIES.

The Secretary shall consider any written materials submitted to the Bureau from any interested party, including neighboring municipalities, that possess information bearing on whether to recognize an Indian group.

SEC. 16. PUBLICATION OF FINAL DETERMINATION.

The Secretary shall publish in the Federal Register a complete and detailed explanation of the Secretary's final decision regarding a documented petition under this Act, including express finding of facts and of law with regard to each of the critera listed in section 10.

SEC. 17. INDEPENDENT REVIEW, RECONSIDERATION, AND FINAL ACTION.

The provisions of section 83.11 of title 25 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, shall apply with respect to the independent review, reconsideration, and final action of the Secretary on a documented petition under this Act.

SEC. 18. IMPLEMENTATION OF DECISION ACKNOWLEDGING STATUS AS AN INDIAN TRIBE.

The provisions of section 83.12 of title 25 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, shall apply with respect to the implementation of a decision under this Act acknowledging a petitioner as an Indian tribe.

SEC. 19. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, $10,000,000 for fiscal year 2002 and each fiscal year thereafter.

S. 1393

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

SECTION 1. GRANT PROGRAM.

(a) IN GENERAL.—To the extent that amounts are appropriated and acceptable requests are submitted, the Secretary shall award grants to eligible local governments and eligible Indian groups to promote the participation of such governments and groups in the decisionmaking process related to the actions described in subsection (b), if the Secretary determines that the assistance provided under such a grant is necessary to protect the interests of the government or group and would otherwise promote the interests of just administration within the Bureau of Indian Affairs.

(b) ACTIONS FOR WHICH GRANTS MAY BE AVAILABLE.—The Secretary may award grants under this section for participation assistance related to the following actions:

(1) ACKNOWLEDGMENT.—An Indian group is seeking Federal acknowledgment or recognition, or a terminated Indian tribe is seeking to be restored to Federally-recognized status.

(2) TRUST STATUS.—A Federally-recognized Indian tribe has asserted trust status with respect to land within the boundaries of an area over which a local government currently exercises jurisdiction.

(3) TRUST LAND.—A Federally-recognized Indian tribe has filed a petition with the Secretary of the Interior requesting that land within the boundaries of an area over which a local government is currently exercising jurisdiction be taken into trust.

(4) LAND CLAIMS.—An Indian group or a Federally-recognized Indian tribe is asserting a claim to land based upon a treaty or a law specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian tribe, or group, or band of Indians (including the Acts commonly known as the Trade and Intercourse Acts (1 Stat. 137; 2 Stat. 139; and 4 Stat. 729).

(5) OTHER ACTIONS.—Any other action or proposed action relating to an Indian group or Federally-recognized Indian tribe if the Secretary determines that the action or proposed action is likely to significantly affect the citizens represented by a local government.

(c) AMOUNT OF GRANTS.—Grants awarded under this section to a local government or eligible Indian group for any one action may not exceed $500,000 in any fiscal year.

(d) DEFINITIONS.—In this section:

(1) ACKNOWLEDGED INDIAN TRIBE.—The term ''acknowledged Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) ELIGIBLE INDIAN GROUP.—The term ''eligible Indian group'' means a group that—

(A) is determined by the Secretary to be in need of financial assistance to facilitate fair participation in a pending action described in subsection (b);

(B) is an acknowledged Indian Tribe or has petitioned the Secretary to be acknowledged as a Indian Tribe; and

(C) petitions the Secretary for a grant under subsection (a).

(3) ELIGIBLE LOCAL GOVERNMENT.—The term ''eligible local government'' means a municipality or county that—

(A) is determined by the Secretary to be in need of financial assistance to facilitate fair participation in a pending action described in subsection (b); and

(B) petitions the Secretary for a grant under subsection (a).

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

(e) EFFECTIVE DATE.—Grants awarded under this section may only be applied to expenses incurred after the date of enactment of this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $8,000,000 for each fiscal year that begins after the date of the enactment of this Act.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 150—DESIGNATING THE WEEK OF SEPTEMBER 23 THROUGH SEPTEMBER 29, 2001, AS ''NATIONAL PARENTS WEEK''

Mr. VOINOVICH (for himself and Mr. DEWINE) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 150

Whereas parents play an indispensable role in the rearing of their children;

Whereas good-parenting is a time-consuming, emotionally demanding task that is essential not only to the health of a household but to the well-being of our Nation;

Whereas without question, the future of our Nation depends largely upon the willingness of mothers and fathers, however busy or distracted, to embrace their parental responsibilities and to vigilantly watch over and guide the lives of their children;

Whereas mothers and fathers must strive tirelessly to raise children in an atmosphere of decency, discipline, and devotion, where encouragement abounds and where kindness, affection, and cooperation are in plentiful supply;

Whereas the journey into adulthood can be perilous and lonely for a child without stability, direction, and emotional support;

Whereas children benefit enormously from parents with whom they feel safe, secure, and valued, and in an environment where adult and child alike can help one another aspire to joy and fulfillment on a variety of levels; and

Whereas such a domestic climate contributes significantly to the development of healthy, well-adjusted adults, and it is imperative that the general population not underestimate the favorable impact that positive parenting can have on society as a whole: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of September 23 through September 29, 2001, as ''National Parents Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. DEWINE. Mr. President, I rise today to join my friend and colleague from Ohio, Senator VOINOVICH, to offer a resolution designating September 23 through September 29, 2001, as ''National parents Week.'' During this week, advocates would wear purple ribbons and communities all over would take time to reflect on how important parents are in our children's lives.

As proud parents of eight children and now six grandchildren, my wife, Fran, and I know that our Nation's future is in the hands of our children. They are the next doctors, firefighters, teachers, and parents, themselves. To quote Abraham Lincoln, ''a child is a person who is going to carry-on what you have started . . . the fate of humanity is in his hands.'' President Lincoln's worlds hold as true today as they did well over one hundred years ago.

To safeguard this future, parents must fulfill many demanding responsibilities. They must guide their children, teach them right from wrong, share in their joy and comfort, and support them in times of need. As any parent knows, this is not always easy. It takes a parent's constant dedication, constant attention, and constant love. This resolution will serve as a giant ''thank you'' to all the parents who work so hard every day to provide for their children.

With this resolution, we congratulate and adulate parents in order to assure them that we are behind them—100 percent. They must know how important it is to stay the course and continue to provide the values and lessons that will secure a bright and promising future for our children.

Mr. VOINOVICH. Mr. President, I rise today to join my friend and colleague, Senator MIKE DEWINE, to introduce legislation that will highlight the week of September 23, 2001 as National Parent's Week.

Positive parenting is a task that is crucial to the future of our Nation, yet the responsibilities and burdens that fall upon parents are too often undervalued. I believe it is essential that we highlight the importance of parents in developing healthy and productive children in our society.

Children thrive in homes where parents take an active role in providing