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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

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

Bless the Lord, O my soul; and all that is within me, bless His holy name! Bless the Lord, O my soul, and forget not all His benefits.—Psalm 103:1.

Let us pray:

Gracious Father, source of all the blessings of life, You have made us rich spiritually. We realize that You have placed in our spiritual bank account abundant deposits for the work of this day. You assure us of Your everlasting, loving kindness. You give us the gift of faith to trust You for exactly what we will need each hour of this busy day ahead. You promise to go before us, preparing people and circumstances so we can accomplish our work without stress or strain. You guide us when we ask You to help us. You give us gifts of wisdom, discernment, knowledge of Your will, prophetic speech, and hopeful vision. Help us to draw on the constantly replenished spiritual reserves You provide. Bless the Senators this day with great trust in You, great blessings from You, and great effectiveness for You. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 14, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, this morning the Senate will resume consideration of the energy reform bill. The first amendment will be offered by the Senator from Wyoming, Mr. THOMAS. It is believed that will take several hours this morning. We hope and intend to have a vote before 12:30 today on that amendment one way or the other.

After we complete work on the Thomas amendment, it has been contemplated by the two managers that we will go to a series of amendments dealing with renewability. We know Senator JEFFORDS is going to offer an amendment; we know Senator KYL is going to be offering an amendment. We want to complete that this afternoon as soon as we can.

There are a number of other issues. Certainly one of the issues we need to dispose of—we have spoken to Senator MURKOWSKI in this regard—is whatever he intends to do regarding drilling in the ANWR wilderness. He will make a decision as to whether he is going to do that late this afternoon or tomorrow—or Monday, whatever he decides.

MEASURE PLACED ON THE CALENDAR—H.R. 2175

Mr. REID. Madam President, I understand H.R. 2175 is at the desk and due for its second reading.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask that H.R. 2175 be read a second time, but I also object to any further proceedings.

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

The legislative clerk read as follows:

A bill (H.R. 2175) to protect infants who are born alive.

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

RESERVATION OF LEADER TIME

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

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 517, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 517) to authorize funding for the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Feinstein amendment No. 2989 (to amendment No. 2917) to provide for increased average fuel economy standards for passenger automobiles and light trucks.

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

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Kerry/McCain amendment No. 2999 (To amendment No. 2917) to provide for increased average fuel economy standards for passenger automobiles and light trucks.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wyoming, Mr. THOMAS, is recognized to offer an amendment.

AMENDMENT NO. 3012 TO AMENDMENT NO. 2917

Mr. THOMAS. Madam President, I send to the desk an amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS], for himself and Mr. MURKOWSKI, proposes an amendment numbered 3012.

Mr. THOMAS. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 21, strike line 16 and all that follows through page 23, line 24 and insert the following:

''Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following after section 215 as added by this Act:

''SEC. 216. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section—

''(1) 'bulk-power system' means the network of interconnected transmission facilities and generating facilities;

''(2) 'electric reliability organization' means a self-regulating organization certified by the Commission under subsection (c) whose purpose is to promote the reliability of the bulk power system; and

''(3) 'reliability standard' means a requirement to provide for reliable operation of the bulk power system approved by the Commission under this section.

''(b) JURISDICTION AND APPLICABILITY.—The Commission shall have jurisdiction, within the United States, over an electric reliability organization, any regional entities, and all users, owners and operators of the bulk power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(c) CERTIFICATION.—

''(1) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(2) Following the issuance of a Commission rule under paragraph (1), any person may submit an application to the Commission for certification as an electric reliability organization. The Commission may certify an applicant if the Commission determines that the applicant—

''(A) has the ability to develop, and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(B) has established rules that—

''(i) assure its independence of the users and owners and operators of the bulk power system; while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any committee or subordinate organizational structure;

''(ii) allocate equitably dues, fees, and other charges among end users for all activities under this section;

''(iii) provide fair and impartial procedures for enforcement of reliability standards through imposition of penalties (including limitations on activities, functions, or operations, or other appropriate sanctions); and

''(iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.

''(3) If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best implement the provisions of this section.

''(d) RELIABILITY STANDARDS.—

''(1) An electric reliability organization shall file a proposed reliability standard or modification to a reliability standard with the Commission.

''(2) The Commission may approve a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a proposed standard or modification to a reliability standard, but shall not defer with respect to its effect on competition.

''(3) The electric reliability organization and the Commission shall rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the electric reliability organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order an electric reliability organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(e) ENFORCEMENT.—

''(1) An electric reliability organization may impose a penalty on a user or operator of the bulk power system if the electric reliability organization, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator of the bulk power system has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice with the Commission, which shall affirm, set aside or modify the action.

''(2) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk power system has violated or threatens to violate a reliability standard.

''(3) The Commission shall establish regulations authorizing the electric reliability organization to enter into an agreement to delegate authority to a regional entity for the purpose of proposing and enforcing reliability standards (including related activities) if the regional entity satisfies the provisions of subsection (c)(2)(A) and (B) and the agreement promotes effective and efficient administration of bulk power system reliability, and may modify such delegation. The electric reliability organization and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved. Such regulation may provide that the Commission may assign the electric reliability organization's authority to enforce reliability standards directly to a regional entity consistent with the requirements of this paragraph.

''(4) The Commission may take such action as is necessary or appropriate against the electric reliability organization or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the electric reliability organization or a regional entity.

''(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—An electric reliability organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the electric reliability organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c)(2).

''(g) COORDINATION WITH CANADA AND MEXICO.—

''(1) The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

''(2) The President shall use his best efforts to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the electric reliability organization in the United States and Canada or Mexico.

''(h) RELIABILITY REPORTS.—The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America.

''(i) SAVINGS PROVISIONS.—

''(1) The electric reliability organization shall have authority to develop and enforce compliance with standards for the reliable operation of only the bulk-power system.

''(2) This section does not provide the electric reliability organization or the Commission with the authority to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the electric reliability organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a state action is inconsistent with a reliability standard, taking into consideration any recommendations of the electric reliability organization.

''(5) The Commission, after consultation with the electric reliability organization, may stay the effectiveness of any state action, pending the Commission's issuance of a final order.

''(j) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—To the extent undertaken to develop, implement, or enforce a reliability standard, each of the following activities shall not, in any action under the antitrust laws, be deemed illegal per se:

''(A) activities undertaken by an electric reliability organization under this section, and

''(B) activities of a user or owner or operator of the bulk power system undertaken in good faith under the rules of an electric reliability organization.

''(2) RULE OF REASON.—In any action under the antitrust laws, an activity described in paragraph (1) shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition and reliability.

''(3) DEFINITION.—For purposes of this subsection, 'antitrust laws' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

''(k) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each state, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the electric reliability organization, a regional reliability entity, or the Commission regarding the governance of an existing or proposed regional reliability entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the regional are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an interconnection-wide basis.

''(l) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

Mr. THOMAS. Madam President, I ask that Senator CRAPO and Senator GORDON SMITH be added as sponsors, please.

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

Mr. THOMAS. Madam President, we of course are into our energy bill. One of the important components of an energy bill is the electricity section. There are a number of things we have done. Yesterday we did some things on PUHCA and PURPA—had those eliminated. We have done some other things to make it work. The committee chairman and others were gracious enough to accept those.

Today we have some other issues we want to talk about, that are very important. This amendment deals with one of those. It is called reliability.

Of course, there is nothing more important than ensuring our electric transmission grid will continue to be safe and continue to be reliable; that consumers will be able to get the power they need where they need it and when they need it, the lights will go on and stay on. In fact, probably no aspect of our energy program touches more people than does electricity.

The amendment we are offering today does those things. It makes electricity available and puts some reliability into it by establishing a nationwide organization which has the authority to establish and enforce reliability standards.

We have had our reliability standards, we have worked with them, there are organizations, but we have not really been able to cause those things to happen. This amendment takes into account—and this is very important—the regional differences that occur between the West and the East. You can imagine, simply by geography, how different they are.

Under this amendment, the new reliability organization will be run by market participants and will be overseen by FERC. Basically what we are saying is that the States and local people and various interested parties can participate in setting this up and will participate in it, overseen by FERC to make sure it works. The reliability organization will be made up of representatives from everyone who is affected—residential, commercial, industrial consumers, State public utility commissioners, independent power producers, electric utilities, and others.

There is no question we need a new system to safeguard the integrity of our power grid. Both the amendment and the Daschle bill create mandatory and enforceable reliability rules, and they do so in different ways, and that is what we are talking about—the difference. The Daschle bill gives all the authority and responsibility to FERC. FERC is to set the standards, FERC is to enforce the standards. The fact is, FERC is not prepared to do this job, nor do they have the expertise to do it.

The amendment, instead, establishes a participant-run, FERC-overseen electric reliability organization. This is key to this whole amendment and this whole direction. It is a blend of Federal oversight along with industry expertise. It is similar to the bill the Senate passed unanimously in this Congress last year.

Over the years, the grid has been well protected through the voluntary standards established by the North American Electric Reliability Council. NERC's voluntary reliability standards, which are not enforceable currently, have generally been complied with by the electric power industry. But with the opening of wholesale power market to competition, our transmission grid is being used in ways in which it has not been used before and, frankly, was not designed to be used.

This is one of the big changes that has happened. It used to be that a utility that did the distribution in the area produced the power for that area. Now, of course, we have merchant generators. And more and more of that will go, where they sell it outside of their distribution area or, indeed, have no distribution area at all.

New system strains are also being created by the disillusion of vertically integrated utilities and by the emergence of new market structures and participants. Cooperation is being replaced with competition.

The result of these changes has been an increase in the number and severity of violations of NERC's voluntary reliability rules.

On occasion, we have even seen utilities take power from the grid in direct violation of NERC's rules, and they suffer no penalty.

We all agree we need to protect reliability. The question is not whether we protect it. The question is, How do we protect it? That is, of course, what this issue is all about.

Unfortunately, the reliability provisions in the Daschle bill take the wrong approach. The Daschle bill gives FERC the exclusive responsibility for establishing and enforcing reliability standards. This is very technical work that will require a very large commitment of resources.

Unfortunately, FERC does not have either the technical capability or the manpower to take on such a significant new responsibility. FERC's expertise is ratemaking, not in technical standard setting.

Another key problem with the Daschle bill is that it does not recognize regional differences in electrical systems due to the geography, the market design, the economics, and the operational factors. Many fear that FERC does not have the sensitivity to the regional differences that are so critically important, and I suppose you could say particularly in the West, in that the West has moved a little more quickly to this, but the rest of the country will be moving necessarily soon.

Regional differences are best taken into account by those who are closest to the problem and those who understand what needs to be done, and that, unfortunately, is not FERC.

In addition, the Daschle bill simply does not address adequately the needs of the States for a meaningful role in the process of setting and enforcing reliability standards. This is, of course, an issue in lots of things, but it has always been an issue in this electric reregulation business; that is, that the States outside of a State ought to have a great deal of involvement. And particularly when we end up, as inevitably we will, with RTOs and different kinds of distribution systems coming off a main national distribution transmission channel, then the States and the regions need to have that ability to have input.

Under the Daschle bill, the States, as any other interested or affected party, can make their views known to FERC as part of any formal rulemaking, but

FERC can disregard those State views, substituting FERC's judgment for that of the States.

So I ask, who is more interested in ensuring reliability than those who would be directly affected? Why would anyone believe that FERC knows better what to do than those who are directly affected? I feel very strongly about that, as I think most of us do.

Far too often we have seen that FERC is more interested in abstract notions of competition instead of concrete issues of price and supply, which is what is really important in this reliability aspect to consumers.

The Daschle bill also fails to account for the international nature of our transmission grid. Canada is already part of a seamless North American grid, and Mexico is also an interconnect.

If reliability is given to FERC, as in the Daschle bill, FERC will be trying to set standards applicable to and affecting transmission in Canada and Mexico, over which FERC has no authority. I fear Canada and Mexico simply will not allow their systems to be regulated directly or indirectly by FERC. After all, of course, they are sovereign nations.

If these two nations withdraw from collaborative efforts, not only will it jeopardize the reliability of the entire North American grid, it will certainly also seriously impair cross-border trade in electricity.

Continued international trade is critical to our supply of power. As we have seen in California, even a minor shortfall of electricity can create significant problems in terms of price spikes and blackouts. In short, we need to have that Canadian component. And they are a voluntary part of this system.

This amendment addresses all of those concerns. In a nutshell, the amendment converts the existing NERC voluntary reliability system into a mandatory reliability system.

The new reliability organization will have enforcement powers, with real teeth to ensure reliability. The amendment provides that mandatory reliability rules will apply to all users of the transmission grid. There are no loopholes. No one will be exempt.

It will be participant run but subject to oversight by FERC in the United States and with the appropriate regulatory authorities in Canada and Mexico.

It will utilize industry's technical expertise to create reliability rules, and everyone will be able to participate. It assures a meaningful role for the States and regional organizations in the development and enforcement of the reliability standards.

There can be appropriate regional variations that recognize that the East is different from the West. It will allow the participation of Canada and Mexico without violating national sovereignty.

The amendment has the backing of the North American Electric Reliability Council; the National Association of Regulatory Utility Commissioners, which represent State public utility commissions, the Western Governors' Association, and the administration.

The need for such a reliability system has been cited in the President's national energy policy. It is one thing that Congress really should do as part of any energy bill. We have the opportunity now to do that.

Both the Daschle bill and the amendment speak to reliability of the transmission system. If you want more Federal command and control by the FERC, and if you do not mind jeopardizing cross-border electric trade with Canada and Mexico, then vote against this amendment. But if you want a realistic and effective reliability program that protects consumers, does not disrupt international trade, and allows for regional differences to be taken into account, then we need to vote for this amendment.

There are a couple letters I would like to read from that we have received. This one is from the North American Electric Reliability Council. It says:

> For more than 30 years, NERC has sought to assure the reliability of the North American bulk transmission system, working with all segments of the industry, consumers and federal and state regulators. Your amendment would put in place a reliability management system that builds upon this proven reliability mechanism, but upgrades it to provide for mandatory and enforceable reliability standards. The Federal Energy Regulatory Commission, FERC, will provide oversight and coordination in the United States, but unlike the existing language in S. 517, your amendment would not have FERC directly promulgating and enforcing reliability rules.

That is from this national group that, by the way, is located in New Jersey.

This one is from APPA's over 2,000 State and locally owned not-for-profit electric utilities:

> [This] amendment would ensure that a broad-based industry self-regulating reliability organization would be vested with the authority to set and enforce reliability standards. This type of organization—the North American Electric Reliability Council—already exists, but legislation is required to give NERC the ability to enforce the standards that industry agrees should be promulgated. . . .
>
> In contrast, [the Daschle bill] would allow the Federal Energy Regulatory Commission to confer enforcement authority to a wide range of organizations—with potential for varied and conflicting enforcement.

We also have a letter from the Canadian Embassy and from the Western Governors' Association.

I think there is a real opportunity, obviously, to deal with reliability. Our choices are whether we want to use what is in place that has been proven or whether we want to shift it to another agency of the Federal Government to make all the decisions at the top level rather than including everyone in it.

Madam President, I yield the floor.

Mr. BINGAMAN. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Madam President, I rise to discuss the issue before the Senate and explain my perspective on it and hope that Senators can give their attention, those in their offices, and their staffs. This is a complex issue we are debating, the issue of reliability and how we deal with it.

The underlying energy bill contains provisions that are intended to create a system to ensure that the grid for delivery of electricity is reliable. This is an issue on which, as the Senator from Wyoming indicated, we all agree. Something needs to change in Federal law to ensure that the grid is reliable.

The most recent wake-up call was what happened in California when the lights went out. All of a sudden, everybody starts looking around. Who do we hold accountable? Whose job was it to keep the lights on?

We have an interstate transmission system in this country. It is one which most would acknowledge is not adequate for future demands. For that reason, we are trying to ensure that the proper safeguards and mechanisms are in place to keep this system reliable.

Up until now, the reliability of the transmission system has been up to a private organization. There is no Federal responsibility for it. You could call the head of the Federal Energy Regulatory Commission over and have a hearing in front of the Energy Committee. He could say: You haven't given us that job. You, the Congress, have not given us, the Federal Energy Regulatory Commission, the job of keeping this system reliable. That belongs to NERC, which is the North American Electric Reliability Council. They are the ones responsible.

Everybody, the industry included, realizes that is not adequate for today's demands. We need to have some governmental accountability in addition to the expertise that NERC and other organizations can bring to the system.

The reliability system needs to apply to all users. The rules need to be enforceable. There need to be penalties if you do not comply with the rules. Someone has to be able to slap your wrist and say: Get in line and do what everyone has agreed to do.

Nobody disagrees with the conclusion that FERC should have oversight of the system that contains these requirements. There are differences, however, about how these principles should be implemented.

I believe the provisions in the bill before us, S. 517, take the simplest approach possible. That is what we have tried to do. We give FERC the responsibility. We provide tremendous flexibility for FERC to defer to experts, to

defer to regional entities, to defer to private groups to implement the obligation. But when push comes to shove, FERC has the responsibility to be sure this system is reliable so when the lights go out, we have someone to hold accountable.

The Western Governors' Association has proposed an amendment—the Senator from Wyoming has now offered that amendment—that would take a far more cumbersome and complicated approach to accomplishing these goals. The proposal would create a tangle of procedural red tape that could tie up attempts to make certain the grid is reliable. For that reason, I have to oppose the amendment.

The Thomas amendment would require FERC to create a reliability structure that first creates a national electric reliability organization to be approved by FERC. Clearly, there are such organizations. We have NERC, which I referred to a few minutes ago, that exists. That should continue. But to put this requirement in law takes away flexibility.

The amendment allows creation of regional reliability entities. It creates a rebuttable presumption that the standard set by any such regional entity, on an interconnection-wide basis, should be accepted by FERC. That is a concern I will get into in more detail.

The amendment creates a rebuttable presumption that standards offered by an interconnection-wide entity are just and reasonable and not unduly discriminatory. It writes that into the law. It allows FERC only to remand to an electricity reliability organization or to regional entity rules that it determines are not just and reasonable. It creates a complaint process that is very cumbersome and would take months, if not years, to finally result in a compliance award.

The structure is complex. It is largely unworkable as proposed. If someone is acting in a way that the national reliability experts think endangers the stability of the delivery system, those experts should not have to go through a cumbersome process in order to remedy the problem.

These problems in the reliability of the system are extremely time sensitive. And you can't set up a maze of procedural requirements that have to be maneuvered before a remedy can be found. Only in one part of the country is there any likelihood that an interconnection-wide entity can be created, and that is the West, beyond the Rocky Mountains.

Let me put up a map of the country. As I indicated, the amendment the Senator is proposing is being offered by Governors from the western part of the country—his Governor, my Governor from New Mexico, who—I don't know the extent to which he is focused on what he is proposing here. The only interconnection-wide entity that is likely to exist and meet these requirements—or get the provisions under here is in the West, this large pink area here.

The reliability structure, in my view, needs to be simple and dependable. We should require that FERC implement a system, give them guidelines and flexibility to confer with experts, flexibility to defer to regional bodies. That is what we do in the underlying bill. We should not create a system that is too complicated and causes the reliability of our electric system to remain in question.

Let me take this down and just go through more of a detailed explanation of what I understand this proposal to be. This amendment that the Senator from Wyoming is offering would add a new section, No. 215, to the Federal Power Act.

Just a second here. Let me jump ahead. The provision the Senator from Wyoming is proposing contains a provision that is as a result of an attempt by NERC to reach a consensus among industry participants about what needs to be done about reliability. This process has been going on many years now.

About 4 years ago, they came up with a 30-page document purporting to represent the agreement of a broad range of industry participants. The proposal was renegotiated several times over the course of the years, often with key constituencies dropping out of that consensus as they went forward. The most recent iteration—the one we are considering here—was a result of discussions last fall. At the conclusion of those discussions, very few of the original consentees—if that is a good word—remained on board. The Electric Power Supply Association and the Association of Marketers and Independent Power Producers oppose this new version—the version now being offered as an amendment. The Electric Institute—which is, of course, central in issues related to electricity—was unable to endorse the proposal because they had opposition from several of their members.

The Western Governors' Association has proposed language and that is what we have before us.

Let me try to summarize their proposal. Their proposal gives the Commission jurisdiction within the U.S. over an electric reliability organization and any regional entities and all users, owners, and operators for the bulk power system for the purpose of improving reliability and enforcing reliability standards. The FERC must issue a rule within 180 days of enactment of this law, if it is enacted. FERC must certify an applicant, if it determines it has the ability to develop and enforce reliability standards, and that the applicant has rules that assure its independence of users, owners, and operators while assuring fair stakeholder representation of directors in balanced decisionmaking in any committee.

Compliance with standards is mandatory. So the electric reliability organization must file proposed standards or modifications with FERC. This is under the amendment of the Senator from Wyoming. Instead of FERC issuing them, the electric reliability organization would file the proposed standards of modification with FERC. FERC may approve them if it determines that the standards are just, reasonable, and not unduly discriminatory or preferential and in the public interest. FERC must give due weight to the technical expertise of the electric reliability organization but shall not defer with respect to a standard's effect on competition.

The electric reliability organization and FERC must rebuttably presume—and that is in the statute. I know our Presiding Officer is very familiar with presumptions in the law and rebuttal presumptions in the law, and here there is a rebuttable presumption that a proposal for a standard or a modification that comes from a regional entity that is organized on an interconnection-wide basis is just and reasonable and not unduly discriminatory.

Let me go to the map again. As to that provision that says there is a rebuttable presumption, a rebuttable presumption that any proposal for a standard or modification that comes from a regional entity organized on an interconnection-wide basis is just and reasonable, where do we have a regional entity organized on an interconnection-wide basis? One place: California, in the West. The rest of the country doesn't benefit from that so-called rebuttable presumption.

If FERC cannot approve a standard, it must remand the standard to the electric reliability organization. FERC may order the electric reliability organization to propose a different standard or a modification. The electric reliability organization may impose a penalty on a user of the system that violates a standard. After notice and the opportunity for hearing, filing with the Commission, the FERC may order compliance or a penalty. The Federal Energy Regulatory Commission must establish rules authorizing the electric reliability organization to delegates its authority to a regional entity.

All of this is in the amendment the Senator from Wyoming is proposing. This goes on and on. Let me try to summarize this by putting up a chart or two and try to explain to the Senate how this would work, as I understand it. Let me start with ''Standard Proposal.'' It really should have been entitled, ''How Do You Propose a Reliability Standard?'' What is the process for proposing a reliability standard? FERC has a responsibility and jurisdiction to establish an electric reliability organization. That is what they do here. So the ERO, electric reliability organization, under the Senator's amendment, would be established.

Now, the ERO can delegate its authority to a regional entity for standard proposals and enforcement. That is this box over here, which says ''delegated regional entity.'' Remember that the regional entity is organized on an interconnection-wide basis. Then that is when the rebuttable presumption

comes in. So if you are in the western part of the country, then there is the rebuttable presumption that comes in that the regional entity should be approved. There is only one region in the country where this interconnection-wide deference is applicable, and that is the West. The rest of the country doesn't benefit.

There are three interconnections: The 14 Western States that are in the Western Electric Coordinating Council; ERCOT, Electric Reliability Council of Texas; and then there is the rest of the country. Currently, there are eight regional reliability councils besides these two—the one in the West and the one in Texas. They are all in the eastern interconnection. It is a near certainty that these eight entities will not be able to organize into an interconnection-wide regional body so that the rest of the country does not receive, under this amendment, the same deference as the West would receive.

As a consequence, there will be different structures for reliability compliance and enforcement in different parts of the country.

Perhaps the most disturbing detail of the proposal is that any entity that is organized on an interconnection-wide basis must be assumed to be functional just because it is organized on an interconnection-wide basis. We are saying if you are organized on an interconnection-wide basis, shown in pink on this map of the country, then you have the presumption that you are a functional organization. In the rest of the country, a regional entity must prove it is up to the task before there can be any delegation of authority to it. In the West, and perhaps in Texas, it would work the other way around.

The Commission and the national reliability organization on which we will be depending to keep the lights on, to keep the electricity operating, must prove that any regional entity is not adequate, instead of requiring the entity to prove it is adequate. Reliability, in my view, is more important than that, and we need to require that all parts of the structure in all parts of the country demonstrate competence to shoulder this heavy responsibility.

There is no reason we should write into law presumptions that any particular organization, which we do not yet even have established in some cases, knows what they are doing.

How are standards proposed? Let me go through this chart as best I can. If the electric reliability organization, the ERO, that has been set up by FERC, wants to propose a standard, it needs to file that with FERC.

The Commission has the choice: It can approve the standard or, if it does not find it is just and reasonable and not unduly discriminatory or preferential, it can remand the proposal back to the electric reliability organization. It has two options: It can approve it or remand it.

If the electric reliability organization has delegated its authority to a regional entity, the proposal will then be remanded to the regional entity instead of FERC. If the regional entity does not accept the proposal, it may resubmit it to the electric reliability organization, and the electric reliability organization then resubmits it to FERC. It would go up to a delegated regional entity, over to the electric reliability organization, and then to FERC.

Remember, there is a rebuttable presumption for both the electric reliability organization and for FERC that any proposal from a regional entity that is organized on an interconnection-wide basis is just and reasonable and not unduly discriminatory or preferential. We have these rebuttable presumptions to which everyone is obligated to defer.

The consequence of this rebuttable presumption/remand circle is that a regional entity that wanted to prevent a change in a standard could tie up the decision for virtually forever. The important rule that governs reliability of the transmission system could circle through this system pretty much indefinitely, with nobody ever able to come to a final decision.

These are time-sensitive decisions. We are trying to keep the lights on. These are not the kinds of decisions that should be allowed to bog down in this maze.

Let me change charts and put up a different chart. This is one that is called FERC Proposed Modification. Again, I am trying to describe the amendment as I understand it, and if I am wrong about how this amendment works, then I invite my colleagues who are proposing the amendment to explain why I am wrong.

This is called FERC Proposed Modification. If FERC believes it needs to propose a change, it can order the electric reliability organization to submit the modification. We have an order going from FERC to the electric reliability organization. Then the electric reliability organization submits the modification to FERC and the circle starts again. There are rebuttal presumptions in here. There are remands going around in this chart as well. Neither the electric reliability organization nor FERC is empowered under this amendment, as I read it, to bring this to a conclusion.

Let me go to one other chart. This is a chart on how complaints are to be handled under the system that is being proposed in this amendment.

If the electric reliability organization receives a complaint that someone has failed to comply with a rule—and that is obviously what this whole system is intended to deal with—it may, after notice of hearing—that is shown on the chart as: Does the electric reliability organization want to act? The complaint is filed. If they want to act, they have to give notice, have a hearing, and propose a penalty.

They do not have authority under this amendment—and I underline this—they do not have authority to issue a compliance order. They cannot say: Do this. All they can do is penalize for failing to comply, and they can impose a penalty. The penalty is then submitted to FERC, which reviews it and may modify, affirm, or set aside the electric reliability organization's action.

That is, they have that authority unless the electric reliability organization has already delegated its authority to a regional entity. If there is a regional entity with a delegated enforcement authority, then they have first dibs at dealing with this issue.

If the regional entity disagrees with the electric reliability organization, it may not have the authority to file an enforcement action with FERC. But that action needs to be filed by the regional entity, so that the electric reliability organization is essentially displaced from its authority and the authority then has to be exercised by the regional entity at that point. Whether the electric reliability organization then files with FERC—exactly what happens in that circumstance is not very clear.

This may seem confusing. To me it is confusing. I have heard other bills over the course of the time in the Senate referred to as the lawyer's full employment act of 19 whatever. This is the Lawyer's Full Employment Act of 2002, particularly the Utility Lawyer's Full Employment Act of 2002.

I hope that if a participant in a market is acting in some manner that is not in compliance with reliability rules, some action can be taken to change that behavior quickly. That is in everyone's interest. That is what we were trying to do when we proposed language to essentially say, OK, FERC, you are responsible for being sure the reliability is guaranteed in the system.

With this structure that is proposed in this amendment, the complaint has come to the ERO, to this electric reliability organization. They have to have time for notice. They have to have a hearing. They, then, can impose a penalty. They cannot issue a compliance order. Then their proposal needs to be filed with FERC for further review and further action.

So the real question is, Will the lights still be on? Will the electricity still be flowing? How long does this take before a compliance order can be issued to stop the action that is threatening the reliability of the system? Is it going to take weeks? Is it going to take months? Is it going to take years?

This amendment requires FERC to establish regional advisory councils on the petition of at least two-thirds of the States in the region. This is a good idea. This is a part of the amendment I think is a good idea. I am not sure as much process needs to be specified as the amendment does, but the general idea is one that I certainly support. If this were the amendment being offered, we would gladly accept that amendment.

I think, though, the amendment that is offered and the way it is worded gives most States less deference than the language in our bill does. Our bill would allow FERC to defer to NERC, to defer to a regional council, to a similar organization, or to a State regulatory authority. In other words, if States create a regional advisory council, FERC clearly can defer to that under the legislation that we proposed.

The language we have before us in this amendment would allow FERC to defer only to a regional advisory body if it is organized on an interconnection-wide basis.

So, again, we have this map. I will put the map up again to reiterate the point.

This amendment was put together by the Western Governors' Association. I understand that. That is the part of the country in which I live. I know that is the part of the country in which my colleagues who are proposing the amendment live. But in each case, the preference under the amendment goes to this part of the country. The deference goes to another part of the country.

I do not really think that is the right way to make national policy. I think we ought to have a uniform national policy. The whole idea is to set up a system that will work everywhere.

I will summarize my objections. I know my colleague from Oregon is anxious to speak in favor of the amendment. I will summarize some of my other views, and then I will defer to him.

In general, the proposal of the Western Governors' Association specifies matters that I believe are better left to experts to sort out. The proposal we have in the bill would allow FERC to approve a reliability organization that fits this description to defer to regional entities or to the electric reliability organization, but it does not require it. Our language does not contain all of these rebuttable presumptions.

When I first read through this, I thought to myself: Why in the world are we putting in all these rebuttable presumptions? A rebuttable presumption is essentially a burden of proof, a standard of proof, that is put in in order to be in a position that later on someone can review that, when it is appealed, to see whether the standard was met, whether or not the burden of proof was met.

I shudder to think of the number of appeals that will be taken from decisions by one or another of these entities on the basis that the presumption, which we are being asked to write into law, was not adequately rebutted. I do not really know why we see it in our interest, why it would be in the national interest, for us to write into law all sorts of rebuttable presumptions which then complicate the situation and invite appeal from whatever decision is made. We have some real interest in seeing some finality brought to these decisions if we are going to have a reliable system.

I think the requirement that FERC only be able to remand standards that it finds not to be just and reasonable eliminates flexibility that FERC may well need to have. This interconnection-wide presumption essentially says, if one happens to be in this pink area of the country, they are in this interconnection-wide area, and therefore all these rebuttable presumptions apply. And what they say gets particular deference.

I do not, quite frankly, understand, and we are still trying to educate people on this amendment, but I cannot understand why Governors of these other States—there are a lot of States that are not in this pink area. I do not know why Governors in these other States and commissioners in these other States would support this proposal. It gives them far fewer rights than the Governors and the commissioners in the West have. So I have some concerns about it.

I will mention one other concern, and then I will defer to my colleague, who is anxious to speak. As chairman of the Energy Committee, we have had several hearings so far this last year where we bring in the FERC Commissioners and we basically try to cross-examine them and ask them why they have not done this and why they have not done that and why they are not living up to their responsibilities in this regard. We had a bunch of those hearings when the lights were going out in California.

If we pass this amendment, my firm belief is next time the lights go out somewhere, and we bring those Commissioners before the committee and say, now, why were you not carrying out your responsibility, they have a ready answer. Their answer will be: We were carrying out our responsibility. You told us our responsibility was to presume these folks knew what they were doing, and we have been presuming it, and now it turns out they did not know what they were doing. So do not criticize us. You are putting the responsibility somewhere else. You told us there is a rebuttable presumption that they know exactly what they are doing and they can handle all of this.

So we were trying to get out of that. We were trying to say: Look, let us fix responsibility in the hands of a group that the President appoints and that we confirm and then encourage them to delegate that as they say fit, but not give them the out of saying they are not responsible; that it was someone else's job and it was not theirs.

I very much fear this amendment, if adopted, will give them a very convenient out. We will then be having long, complicated hearings going through charts about whose rebuttable presumption was met and whose rebuttable presumption was rebutted, and that is not going to be good for the country. It is not going to keep the electricity going. It is not going to keep the lights on.

For those reasons, I urge that my colleagues oppose the amendment and keep the bill as it is, which is much simpler, which is much more straightforward and which does not get into all kinds of complexities which will be contrary to our national interest.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I thank our chairman for his statement. I rise, though, in opposition to his view, and I support the view of the Senator of Wyoming and his amendment. I happen to be a cosponsor of it.

I think for people looking in, the C–SPAN junkies like ourselves, may wonder what all the charts and all the maps and all the rhetoric might boil down to. In my view, it really boils down to this: Should all power over power be vested within the beltway or should we trust regional organizations that know their areas, that know their systems, to manage these systems? That, in my view, is what this debate is all about.

It is very important. There are great implications for how we reliably transmit energy and keep the lights on in the regions of this country.

This amendment would ensure that a self-regulating organization would be given the authority to establish and enforce reliability standards. This amendment is supported by the Western Governors' Association, the American Public Power Association, and most of the transmitting utilities of the West.

For those in the West who lived through the blackout of August 10, 1996, the need for an enforcement mechanism for transmission reliability standards is clear. That blackout, which literally stretched from Texas to Portland to Los Angeles, was the result of a series of seemingly independent events that sent the western transmission system cascading into a blackout. The ensuing blackout covered parts of seven Western States and caused severe economic disruption on the west coast. The event caused the Western Systems Coordinating Council to reevaluate its notification procedures. Such an event has not been repeated since.

The only thing that regional transmission reliability organizations lack is an enforcement mechanism. That is what we provide in this amendment.

To date, we have relied upon voluntary compliance by transmitting utilities to keep the lights on. While such voluntary compliance has been largely successful, there are growing concerns that such voluntary means may not work in a deregulated wholesale electricity market. Frankly, if we are going to move away from a voluntary system, I would much rather give the enforcement authority envisioned under this bill to established regional organizations that are well respected and know the intricacies of the systems which they regulate.

This approach is embodied in the amendment before the Senate today. I thank Senator THOMAS for offering this commonsense solution to transmission reliability. Our chairman's approach, again, moves all enforcement authority to Washington, DC, under FERC's jurisdiction. We do not need to vest this authority with FERC, which has no history on this issue and, in my view, no technical expertise on standards for transmission systems.

The amendment before the Senate mirrors in spirit, if not in detail, the reliability legislation which was reported out of the Senate Energy and Natural Resources Committee in the 106th Congress and was passed by the full Senate. I introduced this legislation at the beginning of this Congress, and I urge my colleagues to follow the action of this body in the last Congress. We do not need to change that. What was offered then, what is offered today, is the right fix for transmission reliability.

In conclusion, I reference a letter by the Canadian Ambassador to Senator DASCHLE dated March 13, 2002. I ask unanimous consent the letter be printed in the RECORD.

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

CANADIAN EMBASSY,
Washington, DC, March 13, 2002.

Hon. THOMAS A. DASCHLE,
Senate Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR DASCHLE: I wrote to you on November 2, 2001, to express concern that certain legislative proposals regarding electricity reliability could have a negative impact on Canada-U.S. electricity trade. I also met with Senator Bingaman to discuss this issue in early January 2002.

These problematic proposals have now found their way into the new Energy Policy Act of 2002 (S. 517). The electricity reliability section would vest the U.S. Federal Energy Regulatory Commission (FERC) with the authority to establish and enforce mandatory reliability standards for the electricity grid.

The approach taken in S. 517 could impede our strong cross-border electricity trade. While this bill suggests some cooperation with Canadian utilities, it does not provide for meaningful coordination between regulators in the United States and Canada. As I explained in my earlier letter, different jurisdictions could develop and enforce different standards in the absence of such meaningful coordination: this could lead to variations in reliability standards which could impede trade. Consistent standards are required for the interconnected North American grid.

An essential tool for managing the reliability of the interconnected grid is the remand function, which is key for ensuring consistent standards and respect for the jurisdiction of sovereign regulatory bodies. This function would allow regulatory bodies to return any standards that are not approved to the reliability organization for reconsideration. In this manner, the reliability organization can work with all relevant regulatory bodies to avoid inconsistent standards. A remand function therefore provides meaningful recognition that U.S. and Canadian regulators share an important role in establishing and enforcing standards in the interconnected grid.

Canada's position is that a self-regulating reliability organization, with members representing both countries, would be best placed to develop, implement and enforce consistent reliability standards for the interconnected North American electricity grid, while respecting the jurisdiction of sovereign regulatory bodies. I understand that a similar position is supported by the Western Governors Association and by major electricity associations.

The approach in S. 517 will not provide for the effective management of reliability standards for the interconnected North American electricity grid. I urge you to give strong consideration to our shared interest in an increasingly integrated North American market and to our mutually beneficial electricity trade.

Yours sincerely,

MICHAEL KERGIN,
Ambassador.

Mr. SMITH of Oregon. I note a few of the words in particular. He expressed to Senator DASCHLE a concern that this legislation would ''have a negative impact on Canadian-U.S. electricity trade.''

I can say in the California debacle last year, but for Canadian power, it would have been far worse than it ended up being. Anything we are doing that could disrupt the trade we have with Canada on energy would be a step back, not a step forward. That is why the Canadian Government has notified the Senate leadership that the amendment offered by the Senator from Wyoming is the right thing to do. The underlying proposal is the wrong thing to do in terms of our relationship with Canada.

I urge support for the Thomas amendment. It is the amendment we passed in the Senate in the 106th Congress. We ought to pass it again in the 107th Congress as part of this important energy regulation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I thank the Senator from Oregon for his insight. I cannot think, frankly, of anyone in the whole country who has had more experience in this than the people on the west coast connected to the California project. I appreciate very much the Senator's thoughts.

This bill has come to the Senate without the committee being involved. This very bill was passed by the committee last year with no objection from the Senator from New Mexico. This went through the committee, although what is before the Senate now was never talked about in the committee. That is a procedural question we have discussed quite a bit.

Now I will discuss some of the objections. There are two points of view, very clearly. The Senator from Oregon said it very well: To whom are you going to look?

I have been involved in this business in the past. The people in the business, the people who are responsible in your State, the people who have joined together in a region, have a much better view than bringing it back to the beltway for these decisions. That is the bottom line.

It is a complicated business. However, in the current underlying bill, practically anyone can go to FERC. It is not uncomplicated there. The bill we are discussing gives FERC responsibility to defer to other organizations. FERC need not defer to anyone on anything if they choose not to. It is given sweeping new authority to preempt the judgments of existing State and national organizations with respect to the availability for transmission systems to supply the demand. That is where we are with the amendment.

The amendment builds on an existing system. If you go to FERC, there is nothing to build on. Here, there is. Go to FERC: There are no people who have the expertise to do these things. In the existing system, there are.

It does not require a new bureaucracy which would come about under the existing bill. Bulk power system reliability will continue to be managed outside of FERC's hearing rooms unless a problem arises. Then, of course, we can invoke FERC's intervention. That is the way it is designed to be, to start at the grassroots, do the decision-making there, and still have the opportunity to go to FERC through the network. That is not strange and unusual. That is why we have States. That is why we have local government.

The amendment in the existing bill, under the Daschle bill, requires FERC to create a reliability structure. Ours does not. FERC need only approve reliability organizations that meet the requirements specified. S. 517 requires FERC to create a new reliability bureaucracy to take over the function that FERC now does not have the expertise to perform—where, indeed, we have expertise now.

Cumbersome? We talked about it being cumbersome. Nothing in the amendment makes it cumbersome. FERC can entertain a complaint at any time, move as quickly as it deems warranted. I do not think you can ask for much more than that.

We talked about only one part of this country when this was created. The interconnect-wide entity exists in Texas. Whether an eastern-wide entity is created is up to the East. It has been done in the West because there are unique problems there. These problems can be solved better by an interconnect and will be done throughout the rest of the country as well. This is what we are seeking to do.

The complaint here is the structure is so complicated as to render it unworkable. Actually, the structure reflects the way the reliability has been managed by the North American bulk power system—rather successfully, as a matter of fact—and the legislation is needed to ensure that reliability experts who are not at FERC can take the actions necessary to protect the grid. That is what it is all about. We have people, and it has been successful. Certainly we need to build on that. It becomes more important as we go.

It would be ironic for the industry to come to consensus on how to deal with these issues. There is no industry consensus on how to structure the relationship. That is why the arrangement is there. The bulk of the industry agrees they should continue with separate organizations that focus solely on reliability. That organization should coordinate closely with whatever organization devises the business practices. Because FERC has the ultimate oversight for reliability and whatever business standard is ultimately approved, FERC can assure the necessary coordination exists.

That is really what it is all about. Out there, there are people who have done this. We know how to do it. We have evidence of that. But what we have not had is the opportunity for someone to really have the authority to do that. So this is what this does, giving that to FERC.

You can argue if you want to, and I understand that and I hope Members understand, if you like having the Federal Government do it from here, that is what you ought to do. If you like working with your own public service commission—and by the way, the national public service commissions have supported this amendment. Talk about being just a regional thing, the national public service commissions support this amendment.

I think we will have some more Senators over here to speak shortly. I think we ought to continue to delve into how we can best serve the American people with electric reliability, whether we transfer that to an agency that does not have the expertise or whether we try to use what is in place to make it more efficient.

I ask unanimous consent to add Senator CAMPBELL of Colorado as a cosponsor of the amendment.

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

Mr. BINGAMAN. Mr. President, at this point I want to refer to and then have printed in the RECORD a few letters that support the underlying provision that we have in the bill on reliability and oppose the Thomas amendment. I have five. Let me go through each of them and indicate what they are and what they say.

This first one is a letter from the Mid-Atlantic Area Council, the regional reliability council for this area of the country. It is located in Norristown, PA. It is directed to me. It is dated March 13. It says:

The Mid-Atlantic Area Council—

MAAC is the acronym. We always like acronyms here in Washington—

would like to express its support for the reliability provisions in section 207 of your amendment in the nature of a substitute to S. 517.

They are supporting the underlying bill, not the amendment by the Senator from Wyoming.

MAAC appreciates your continued efforts to promote legislation that increases our energy supply and advances the effort to establish wholesale electricity markets in the United States.

It is our understanding that the North American Electric Reliability Council (NERC) and the Western Governors' Association are seeking to strike your language in order to substitute an amendment they drafted. This amendment is based upon the now very stale NERC reliability proposal developed over three years ago. The subsequent convergence of reliability and market issues has rendered this language obsolete, and we urge you to oppose the amendment.

MAAC recognizes the need for mandatory reliability standards that are broadly applicable to the wholesale power industry. However, the language in the amendment will limit the Federal Energy Regulatory Commission's—FERC—and the industry's ability to properly restructure the wholesale transmission system which is essential for reliable, efficient and well-functioning markets. As currently drafted, the amendment removes most aspects of standards development and enforcement from FERC and grants sweeping powers to a new electric reliability organization, likely to be NERC.

The amendment largely ignores the important role that regional transmission organizations—RTOs—will play in reliability and market management and appears to assume that assuring real-time reliability is purely an engineering function with no significant economic content or effect on markets, while your language would permit FERC to recognize the interplay between reliability and markets and allow RTO-administered market mechanisms to preserve and foster reliability.

Furthermore, a December, 2001 FERC Order commenced a broad industry collaborative effort to arrive at a consensus on how to best merge NERC's activities into the standard setting process of the new North American Energy Standards Board—NAESB, formerly Gas Industry Standards Board. The industry will make a filing to FERC by March 15. This amendment could derail the efforts supported by a large number to stakeholders to establish NAESB as the standards developer best able to accommodate NERC and commercial concerns.

Your reliability language is compatible with recent efforts by the industry to develop a new and innovative approach to standards setting. The amendment would stifle industry efforts to forge a standards setting process that is in the best interest of America. Unlike the amendment [the Thomas amendment], your language does not set into law a complex and burdensome set of rules and processes which would institute a command and control system of enforcement ignoring was that market forces could enhance reliability. The language of the amendment, if substituted for your language, would result in a major setback of the efforts to reduce power costs through innovation and market forces.

MAAC urges that you strenuously oppose the changes to your reliability provision, and offers our assistance to you as the Senate considers this important legislation.

The States that are covered by MAAC are Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. That is an indication at least that some States are not totally enthusiastic about this amendment Senator THOMAS is proposing.

Next, I refer to a letter we have received, also directed to me, dated March 13, from the Electric Consumers Resource Council—ELCON. This is the national association representing large industrial users of electricity. They indicate in their letter they were established in 1976, their member companies have long supported policies furthering competition in wholesale and retail electric markets, and their members operate in every State in the Union.

I will quote a couple of sentences out of their letter:

We are obviously following the Senate debate on S. 517 very closely. One provision that might be overlooked is the issue labeled ''reliability.'' By way of background, ELCON was part of the original group working on this issue with the North American Electric Reliability Council (NERC) to develop then-consensus language roughly four years ago. We have continued to work with NERC and with the Gas Industry Standards Board (GISB), now the North American Energy Standards Board (NAESB), to develop a structure for an organization to develop reliability standards for our interstate electricity grid and the impact of those standards on commercial activity.

Since our members operate throughout the Nation, we strongly believe that rules should be as consistent as possible in every area. To do otherwise would balkanize the grid and hinder competition. For that reason we find the proposal now being promoted by NERC (and supported by several groups including the Western Governors Association) to be counterproductive. Granting deference to any region, even if that region constitutes an entire interconnection, invites conflict with other regions. By diminishing the authority of the national standard-setting organization, we are less likely, not more likely, to have an effective and fully functioning wholesale market.

We hope that these views are helpful to you in your deliberations.

I will go next to the PJM Interconnection. It is the Pennsylvania-New Jersey-Maryland interconnection. This, again, is a letter dated the same date, March 13, to me, by Phillip Harris. He is the president and CEO of PJM. He says:

I am writing to express our support for electricity title, Title II, of Senator BINGAMAN's energy legislation, S. 517. We believe Title II will serve to fundamentally improve electricity markets in North America and urge your support of it.

Then, going down the letter, it says:

In the PJM region, we have been able to work successfully with States and local governments to ensure that electricity markets and the grid work in a way that meets the needs of wholesale and retail electric customers, while improving regional reliability. We are pleased that section 207 of Title II contains simplified reliability legislation that places reliability authority directly with the Federal Energy Regulatory Commission and enables it to objectively defer to regional solutions without preference. We urge you to reject any attempts by Senators from other regions to impose alternative legislation that would significantly blur or weaken the government accountability over reliability found in Section 207 or impose improper restrictions on FERC's authority over Regional Transmission Organizations. The substance of the reliability amendment runs counter to an ongoing industry effort to reconcile business and reliability concerns.

As I said, that was signed by Phillip Harris, the president and chief executive officer for PJM.

Next, I will refer to a letter dated March 14, 2002, from Elizabeth Moler,

who is representing Exelon, Commonwealth Edison of Chicago, and PECO Energy in Pennsylvania.

She says:

DEAR MR. CHAIRMAN: I am writing to share Exelon Corporation's views on the Sen. Thomas' proposed reliability amendment to S. 517, the pending energy bill.

Exelon Corporation is one of the nation's largest electric utilities. Our major subsidiaries are Commonwealth Edison, the public utility that serves Chicago; PECO Energy, the public utility that serves the Philadelphia area, and Exelon Generation. We have roughly five million retail customers in Illinois and Pennsylvania, which have both restructured their electricity markets. Exelon owns 22.5 gigawatts of generation (including nuclear, coal-fired, gas-fired, gas-oil fired, pumped storage and run-of-river hydro units) and controls an additional 15 gigawatts of capacity. We have additional capacity under development.

Then the letter goes on and says:

Exelon opposes the Thomas amendment, principally because we believe it would interfere with the development of competitive wholesale markets. As the United States Supreme Court recognized just last week in reviewing FERC Order No. 888, electricity markets are fundamentally interstate in nature. The Thomas amendment seeks to deny this fact, by encouraging individual states or regions to development unique reliability standards. We believe that the Nation needs uniform, national reliability standards. The rules should not vary from region to region. National reliability guidelines and standards will facilitate the development of more seamless electricity markets and encourage much-needed investment in both generation and transmission. We believe that the Thomas amendment would further balkanize electricity markets, rather than facilitating development of a national electricity marketplace.

That is a quotation out of that letter from Exelon.

The final letter I wish to refer to is the one from the Electric Power Supply Association. Quoting their letter:

The Electric Power Supply Association would like to affirm our support for the reliability provision in Section 207 of your amendment in the nature of a substitute to S. 517. We appreciate your continued efforts to promote legislation that increases our energy supply and advances the effort to establish wholesale electricity markets in the United States.

It has come to our attention that efforts are being made to strike your language in order to substitute an amendment supported by the North American Electric Reliability Council and the Western Governors' Association. This amendment is based upon the NERC reliability proposal development over three years ago. However, the subsequent convergence of reliability and market issues has rendered this language obsolete, and we urge you to oppose the amendment.

The Electric Power Supply Association endorses the need for mandatory reliability standards that are broadly applicable to the wholesale power industry. However, the language in the amendment could limit the industry's ability to address the challenges presented by the ongoing development and restructuring of the wholesale transmission system which is essential for reliable, efficient and well-functioning markets. As currently drafted, the amendment shifts significant aspects of standards development and enforcement away from the Federal Energy Regulatory Commission to a new electric reliability organization. The text also does little to reflect the role that will need to be played by regional transmission organizations in future market management.

This amendment would prevent FERC from carrying out its responsibility to ensure the reliable and efficient operation of the transmission grid and would hinder the development of effective RTOs. Energy standards have an inevitable impact on bulk power transmission systems and market operation essential for reliability. Accordingly, the standard setting process outlined in the amendment raises serious concerns that failing to centralize this activity with FERC could lead to confusion and conflicts among multiple entities.

Further, the amendment fails to account for recent industry efforts to rethink the nature, scope and organizational structure for a new standard setting process that recognizes the need to integrate reliability and market practices. The industry, spurred by a December, 2001 FERC Order and encouraged by the U.S. Department of Energy, is currently engaged in a broad collaborative effort to consider how to combine NERC's activities with standard setting that will be done by the new North American Energy Standards Board, that the Gas Industry Standards Board approved in December of 2001. The industry will make a filing to FERC by March 15. This amendment [the Thomas amendment] could preempt the more extensive consolidation of NERC into NEASB that is supported by many industry stakeholders.

Mr. President, I ask unanimous consent that these letters in their entirety be printed in the RECORD.

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

MID-ATLANTIC AREA COUNCIL,
Norristown, PA, March 13, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, Washington, DC.

DEAR CHAIRMAN BINGAMAN: The Mid-Atlantic Area Council (''MAAC,'' a NERC regional reliability council covering all or part of Pennsylvania, New Jersey, Maryland, Delaware, Virginia, and the District of Columbia) would like to express its support for the reliability provision in Section 207 of your amendment in the nature of a substitute to S. 517. MAAC appreciates your continued efforts to promote legislation that increases our energy supply and advances the effort to establish wholesale electricity markets in the United States.

It is our understanding that the North American Electric Reliability Council (NERC) and the Western Governors' Association are seeking to strike your language in order to substitute an amendment they drafted. This amendment is based upon the now very stale NERC reliability proposal developed over three years ago. The subsequent convergence of reliability and market issues has rendered this language obsolete, and we urge you to oppose the amendment.

MAAC recognizes the need for mandatory reliability standards that are broadly applicable to the wholesale power industry. However, the language in the amendment will limit the Federal Energy Regulatory Commission's (FERC) and the industry's ability to properly restructure the wholesale transmission system which is essential for reliable, efficient and well-functioning markets. As currently drafted, the amendment removes most aspects of standards development and enforcement from FERC and grants sweeping powers to a new electric reliability organization, likely to be NERC.

The amendment largely ignores the important role that regional transmission organizations (RTOs) will play in reliability and market management and appears to assume that assuring real-time reliability is purely an engineering function with no significant economic content or effect on markets, while your language would permit FERC to recognize the interplay between reliability and markets and allow RTO-administered market mechanisms to preserve and foster reliability.

Furthermore, a December, 2001 FERC Order commenced a broad industry collaborative effort to arrive at a consensus on how to best merge NERC's activities into the standard setting process of the new North American Energy Standards Board (NAESB) (formerly Gas Industry Standards Board). The industry will make a filing to FERC by March 15. This amendment could derail the efforts supported by a large number to stakeholders to establish NAESB as the standards developer best able accommodate NERC and commercial concerns.

Your reliability language is compatible with recent efforts by the industry to develop a new and innovative approach to standards setting. The amendment would stifle industry efforts to forge a standards setting process that is in the best interest of America. Unlike the amendment, your language does not set into law a complex and burdensome set of rules and processes which would institute a command and control system of enforcement ignoring ways that market forces could enhance reliability. The language of the amendment, if substituted for your language, would result in a major setback of the efforts to reduce power costs through innovation and market forces.

MAAC urges that you strenuously oppose the changes to your reliability provision, and offers our assistance to you as the Senate considers this important legislation. Please contact us with any questions or requests for additional information.

Very truly yours,

P.R.H. LANDRIEU,
Chairman.

ELCON,
March 13, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Electricity Consumers Resource Council (ELCON) is the national association representing large industrial users of electricity. We were established in 1976 and our member companies have long supported policies furthering competition in wholesale and retail electricity markets. Our members operate in every State.

We are obviously following the Senate debate on S. 517 very closely. One provision that might be overlooked is the issued labeled ''reliability.'' By way of background, ELCON was part of the original group working on this issue with the North American Electric Reliability Council (NERC) to develop then-consensus language roughly four years ago. We have continued to work with NERC and with the Gas Industry Standards Board (GISB), now the North American Energy Standards Board (NAESB), to develop a structure for an organization to develop reliability standards for our interstate electricity grid and the impact of those standards on commercial activity.

Since our members operate throughout the Nation, we strongly believe that rules should be as consistent as possible in every area. To do otherwise would balkanize the grid and hinder competition. For that reason we find the proposal now being promoted by NERC (and supported by several groups including

the Western Governors Association) to be counterproductive. Granting deference to any region, even if that region constitutes an entire interconnection, invites conflict with other regions. By diminishing the authority of the national standard-setting organization, we are less likely, not more likely, to have an effective and fully functioning wholesale market.

We hope that these views are helpful to you in your deliberations. Please feel free to call on us for additional information.

Sincerely,

JOHN A. ANDERSON.

PJM INTERCONNECTION,
March 13, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: I am writing to express our support for electricity title (Title II) of Senator Bingaman's energy legislation (S. 517). We believe Title II will serve to fundamentally improve electricity markets in North America and urge your support of it. We also urge you to resist any amendments that would weaken important provisions associated with reliability of the electric grid or the authority of the Federal Energy Regulatory Commission (FERC) to oversee the operation of electricity markets.

PJM operates the largest competitive wholesale electricity market in the world. We maintain reliability of the electric transmission grid and also operate a successful spot market for electricity in a five state region, which includes all or a portion of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia. We are awaiting final FERC approval of PJM West which will expand the market to include significant parts of Ohio and West Virginia. PJM has been recognized as a deregulation success story.

In the PJM region, we have been able to work successfully with States and local governments to ensure that electricity markets and the grid work in a way that meets the needs of wholesale and retail electric customers, while improving regional reliability. We are pleased that Section 207 of Title II contains simplified reliability legislation that places reliability authority directly with the FERC and enables it to objectively defer to regional solutions without preference. We urge you to reject any attempts by Senators from other regions to impose alternative legislation that would significantly blur or weaken the government accountability over reliability found in Section 207 or impose improper restrictions on FERC's authority over Regional Transmission Organizations. The substance of the reliability amendment runs counter to an ongoing industry effort to reconcile business and reliability concerns. I have attached talking points and a comparison chart in furtherance of our position.

As this debate unfolds, many important issues will arise. I have instructed my Washington staff to be available to meet your needs and respond promptly to question about the effect of various electricity issue legislative provisions on your State. If we learn of any harmful electricity amendments, we will alert your office as soon as possible. Please feel free to call Craig Glazer, PJM's Manager of Regulatory Affairs in Washington at 202–393–7756 or Robert Lamb of Wright & Talisman at 202–393–1200.

We look forward to working with you and meeting the needs of the millions of citizens you so ably represent in the United States Senate.

Very truly yours,

PHILLIP G. HARRIS,
President and CEO.

MARCH 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to share Exelon Corporation's views on the Sen. Thomas' proposed reliability amendment to S. 517, the pending energy bill.

Exelon Corporation is one of the nation's largest electric utilities. Our major subsidiaries are Commonwealth Edison, the public utility that serves Chicago; PECO Energy, the public utility that serves the Philadelphia area, and Exelon Generation. We have roughly five million retail customers in Illinois and Pennsylvania, which have both restructured their electricity markets. Exelon owns 22.5 gigawatts of generation (including nuclear, coal-fired, gas-fired gas-oil fired, pumped storage and run-of-river hydro units) and controls an additional 15 gigawatts of capacity. We have additional capacity under development. Exelon's PowerTeam is one of the largest power marketers in North America; we market power nationally 24 hours a day, seven days a week.

Exelon opposes the Thomas amendment, principally because we believe it would interfere with the development of competitive wholesale markets. As the United States Supreme Court recognized just last week in reviewing FERC Order No. 888, electricity markets are fundamentally interstate in nature. The Thomas amendment seeks to deny this fact, by encouraging individual states or regions to develop unique reliability standards. We believe that the Nation needs uniform, national reliability standards. The rules should not vary from region to region. National reliability guidelines and standards will facilitate the development of more seamless electricity markets and encourage much-needed investment in both generation and transmission. We believe that the Thomas amendment would further balkanize electricity markets, rather than facilitating development of a national electricity marketplace.

We appreciate the leadership that you and Sen. Murkowski have shown on electricity issues. The bipartisan electricity amendment adopted unanimously yesterday by the United States Senate is a giant step toward enactment of much-needed legislation to reform the laws that govern our industry. We look foward to continuing to work with you in the days and weeks ahead in support of enacting a comprehensive national energy policy that will enable us to continue to provide our customers reliable service at reasonable prices.

Thank you for your consideration of our views.

With best wishes,

Sincerely,

ELIZABETH A. MOLER.

EPSA,
Washington, DC, March 6, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, Washington, DC.

DEAR CHAIRMAN BINGAMAN: The Electric Power Supply Association (EPSA) would like to affirm our support for the reliability provision in Section 207 of your amendment in the nature of a substitute to S. 517. We appreciate your continued efforts to promote legislation that increases our energy supply and advances the effort to establish wholesale electricity markets in the United States.

It has come to our attention that efforts are being made to strike your language in order to substitute an amendment supported by the North American Electric Reliability Council (NERC) and the Western Governors' Association. This amendment is based upon the NERC reliability proposal developed over three years ago. However, the subsequent convergence of reliability and market issues has rendered this language obsolete, and we urge you to oppose the amendment.

EPSA endorses the need for mandatory reliability standards that are broadly applicable to the wholesale power industry. However, the language in the amendment could limit the industry's ability to address the challenges presented by the ongoing development and restructuring of the wholesale transmission system which is essential for reliable, efficient and well-functioning markets. As currently drafted, the amendment shifts significant aspects of standards development and enforcement away from the Federal Energy Regulatory Commission (FERC) to a new electric reliability organization. The text also does little to reflect the role that will need to be played by regional transmission organizations (RTOs) in future market management.

This amendment would prevent FERC from carrying out its responsibility to ensure the reliable and efficient operation of the transmission grid and would hinder the development of effective RTOs. Energy standards have an inevitable impact on bulk power transmission systems and market operation essential for reliability. Accordingly, the standard setting process outlined in the amendment raises serious concerns that failing to centralize this activity with FERC could lead to confusion and conflicts among multiple entities.

Further, the amendment fails to account for recent industry efforts to rethink the nature, scope and organizational structure for a new standard setting process that recognizes the need to integrate reliability and market practices. The industry, spurred by a December, 2001 FERC Order and encouraged by the U.S. Department of Energy, is currently engaged in a broad collaborative effort to consider how to combine NERC's activities with standard setting that will be done by the new North American Energy Standards Board (NAESB) that the Gas Industry Standards Board (GISB) approved in December of 2001. The industry will make a filing to FERC by March 15. This amendment could preempt the more extensive consolidation of NERC into NAESB that is supported by many industry stakeholders.

The implications of these developments are clear: legislation should not deny FERC or industry stakeholders the opportunity to develop new approaches to energy standards development. Your reliability language is compatible with recent efforts by the industry to develop a new and innovative approach to standards setting. Furthermore, your language does not set into law a complex and burdensome set of rules and processes which would hamper the development and enforcement of standards. Replacing your language with the amendment can only serve to delay the evolution of the energy markets and threaten the reliable operation of the transmission grid.

We urge you to fight efforts to make such changes to your reliability provision, and we look forward to working with you as the Senate considers this important legislation. Please don't hesitate to contact us with further questions or to request additional information.

Sincerely,

LYNNE H. CHURCH,
President.

Mr. BINGAMAN. Mr. President, I will yield the floor. I see my colleague from Massachusetts is prepared to speak. I will defer to him.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to be able to speak for 10 minutes as in morning business and that my remarks be printed at the appropriate place in the RECORD and not interfere with the debate on the energy bill.

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

(The remarks of Mr. KENNEDY are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Wyoming.

Mr. THOMAS. Mr. President, I rise to address the pending amendment. The Senator from New Mexico cited a number of the people supporting his part of the bill, several of whom were companies, of course. Maybe the fact that the National Association of Regulatory Utility Commissioners supports the amendment would be an interesting change. In terms of looking out for the public's interest, I would guess that is more likely to be the case—certainly the North American Electric Reliability Council. Again, there are letters on each one's desk that the administration supports this proposal. We are looking toward getting together a balanced program.

A number of things have been mentioned that need to be talked about a little bit. The FERC industry standards board was mentioned as being an alternative. The fact is that is only a concept. Years of work will be needed to make it happen. There is no consensus among industry stakeholders. More has developed in the West, and that is why this has sort of started there because these people were forced to come together and others will be as well.

I don't think it is time to jettison 30 years of experience in doing this thing so that you can hand it over to a new bureaucracy that has neither the expertise nor, indeed, the background to take care of this task.

It has been mentioned, but it is very true that we need to have an opportunity for whatever we put into place to deal also with uniformity in reliability with the United States, Mexico, and western Canada. That is very important, particularly to the Northwest, of course, as mentioned by the Senator from Oregon.

There is a need to move fairly quickly. I don't think there is much doubt that the NERC process would be able to act much more quickly in consensus building than FERC. The thing that it seems we always try to push aside is that FERC still has the final responsibility. That is probably the way it ought to be.

The standard setting, we talked a little about that. I don't think that system has to recognize the realities of the differences that do exist. The enforcement of standards is well defined and responsive to differences in interactions, and it has to be that way. There is no definition process that is going to emerge from the industry. Often there are things going on here that just aren't actually the case on the ground.

There was some suggestion that NERC's proposal was organized 3 years ago and is now obsolete. There is nothing obsolete about the NERC proposal.

In fact, during this Western crisis of the last couple years, reliability standards was one of the few elements that worked well. So I think the evidence is that we have on the ground a group that is deeply involved and has shown expertise, representing different parts of the country, the needs of different parts of the country—certainly with the oversight that exists.

So the Bingaman approach—the Daschle bill—does not provide a role for the States. There is no assurance of independence or any standard setting. Therefore, we need to look at the concept of how we are doing this. We are expecting a couple more Senators to come and speak momentarily. In the meantime, I yield the floor.

Mr. REID. Mr. President, we are in the process of preparing to propound a unanimous consent request. That should be done within the next few minutes. We hope we can set up a vote at 2 o'clock this afternoon. Prior to that time, Senator BINGAMAN is planning to start debate on renewable portfolio. Senator JEFFORDS is standing by to come at the appropriate time. It is my understanding that Senator KYL will follow with his amendment. We should be able to do that in the next few minutes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that the Thomas amendment No. 3012 be set aside to recur at 2 p.m. today; that at 2 p.m., the Senate vote in relation to the amendment, with no second-degree amendments in order prior to the vote in relation to the Thomas amendment; that Senators may speak until 2 p.m. today on the Thomas amendment, notwithstanding its pendency; that Senator DAYTON be recognized to offer an amendment relating to gasohol; that after a period of debate, the amendment be set aside for consideration later today; that following that period of debate, Senator BINGAMAN be recognized to offer an amendment relating to renewable portfolio standards.

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

Mr. REID. Mr. President, we will have a vote at 2 o'clock. Senator DAYTON is going to offer an amendment on his behalf and that of Senator GRASSLEY. That debate will take just a few minutes. There are others who want to speak on the amendment of Senator THOMAS. They can do that until 2 o'clock.

In the meantime, Senator BINGAMAN is going to start the debate today dealing with renewable portfolio standards. A very important part of the bill deals with renewables. He will offer his amendment and Senator JEFFORDS will offer a second-degree amendment, I am told. I spoke with his chief of staff. Following that, Senator KYL will offer another amendment dealing with renewables. This should take care of renewables once and for all on this bill.

Once we get that done, there are some other amendments, but the big one still left is that dealing with ANWR. We are eliminating a lot of contentious matters on this bill.

Senators can be expected to come to the Chamber a number of times this afternoon and evening regarding votes on renewable portfolio standards.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 3008 TO AMENDMENT NO. 2917

Mr. DAYTON. I thank the Chair. I thank Senator THOMAS for his acquiescence.

Mr. President, I offer this amendment on behalf of myself and Senator GRASSLEY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON], for himself and Mr. GRASSLEY, proposes an amendment numbered 3008 to amendment No. 2917.

The amendment is as follows:

(Purpose: To require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available)

At the end of subtitle B of title VIII, add the following:

SEC. 8___. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

''SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is available, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol (or the highest available percentage of ethanol), rather than nonethanol-blended gasoline, for use in vehicles used by the agency.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled—

''(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.''.

Mr. DAYTON. Mr. President, I thank the Senators from Nevada and New Mexico for making the time available.

I am pleased to offer today, along with my very distinguished colleague from our neighboring State of Iowa, Senator GRASSLEY, an amendment that will significantly increase the use of ethanol and soy diesel fuels across our country.

Our amendment requires all Federal Government vehicles to use 10-percent ethanol-blended gasoline where it is available or whatever lesser percent of ethanol blend is available in that particular locale.

Our amendment also requires Federal vehicles which run on diesel fuel to use at least a 2-percent biodiesel blend or higher by the year 2007, and a 20-percent biodiesel blend by the year 2012.

If we want to improve our Nation's energy security, provide cleaner air, boost farm income, and strengthen many rural communities across this country, increasing the use of ethanol and soy diesel is a golden opportunity. Both of these fuels have come into their own as better alternatives to blend with regular gasoline and diesel fuel than the oil-based additives which currently predominate across the country.

Regular car and truck engines can use up to 10-percent ethanol with no modifications required, and centrally fueled trucks and other vehicles can similarly use up to 20-percent biodiesel blend even more efficiently and effectively than other diesel blends today. In fact, my Minnesota office leases a regular Chrysler minivan that travels all across Minnesota burning fuel which is 85-percent ethanol. That van has had no problems whatsoever in its performance and, fortunately, we have had no problem finding this 85-percent ethanol throughout my State.

One of the reasons ethanol is so readily available in Minnesota is that our State legislature had the foresight 7 years ago to pass a law requiring that a 10-percent ethanol blend be available to all gas stations across the State. Just 3 days ago, the Minnesota Legislature passed a similar mandate which, if signed by the Governor, will require stations to provide a 2-percent blend of biodiesel fuel.

When people have positive experiences using these blends and then become confident they can obtain them wherever they travel, the usage of these alternative fuels sores.

By the end of this year, it is estimated that our country's ethanol production capacity will reach 2.7 billion gallons. If this amount of ethanol were used in cars and trucks across our country, it would displace approximately 9 percent of all the foreign oil imported into our Nation this year.

Of all the measures being considered in this legislation and of all the measures that are being discussed or implemented in America today, nothing can reduce our dependency on foreign oil or increase our domestic energy production but ethanol and biodiesel fuels.

Increasing the use of these fuels is what I call the grand slam: No. 1, it boosts the prices of corn and soybeans and other suitable crops in the marketplace and, thus, both raises farmers' incomes and reduces taxpayers' subsidies; No. 2, it improves the local economies and communities throughout agricultural America; No. 3, it reduces U.S. dependence on foreign oil; and No. 4, it provides cleaner air.

The Federal Government ought to be leading the way in expanding these markets for these renewable fuels, but, unfortunately, the Federal fleet consumption of these fuels is currently only 2 percent, despite several Executive orders signed by President Clinton during his two terms. Thus, our amendment is essential to requiring that the 600,000 vehicles in the Federal fleet do their part in expanding the utilization of ethanol and soy diesel.

When I was commissioner of energy and economic development for the State of Minnesota back in the 1980s, ethanol was being produced and touted as just this kind of alternative fuel blend for this Nation. Unfortunately, like so many other forms of alternative energy which have been around for years or even decades, it has been sadly underutilized.

I believe as a nation we are utilizing less than 5 percent of our potential for alternative sources of energy, energy conservation, and other economically and ecologically sound measures to improve our energy security. We have been taking these small baby steps when we could have and should have been progressing by leaps and bounds.

This energy bill is an opportunity we cannot afford to miss. Senator DASCHLE and Senator BINGAMAN have performed a great service to all of us and to our entire country by bringing before us this bill which makes so many important contributions to a balanced national energy policy.

Senator GRASSLEY and I believe our amendment is another important contribution, and I respectfully urge our colleagues to support it.

Mr. GRASSLEY. Mr. President, as all of my colleagues know, I strongly support the production of renewable domestic fuels, particularly ethanol and biodiesel. As domestic, renewable sources of energy, ethanol and biodiesel can increase fuel supplies, reduce our dependence on foreign oil, and increase our national and economic security.

Historically, Congress and the administration have asked the Federal Government to lead by example when moving this country to new standards. Since we are talking about the future of energy in this country, we as a Federal Government must lead by example. The Dayton-Grassley amendment is largely symbolic and it will codify what many administrations have already directed the Federal Government to do: to use renewable fuels where practicable.

For instance, the last administration issued an Executive order directing the Federal Government to exercise leadership in the use of alternative fuel vehicles, to develop and implement aggressive plans to fulfill the alternative fueled vehicle acquisition requirements of the Energy Policy Act of 1992, which required 25 percent in 1996, 33 percent in 1997, 50 percent in 1998, and 75 percent in 1999 and thereafter.

The Executive order was never adhered to because it was not generally practicable, but the Dayton-Grassley amendment is much easier to implement, because we are talking about setting a standard using normally blended renewable fuels.

The Federal Government should be using as much renewable fuels as is practicably available.

This amendment would require just that—where available, Federal fleet vehicles should be using ethanol and biodiesel, the two most practicably available renewable fuels.

I support this amendment, because it makes good sense for the Federal fleet to use as much ethanol and biodiesel as it possibly can.

The requirements for ethanol and biodiesel usage under this amendment are easily attainable and does not require the Federal fleet to comply if the blended fuel is not readily available.

I am pleased to offer this amendment with Senator DAYTON.

Mr. DAYTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DAYTON). Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, I rise in support of the amendment of the Senator from Minnesota. His amendment is the kind of creativity and inventiveness and American can-do ingenuity we have to have as we approach this energy crisis, energy shortage.

Clearly, the production of ethanol and its substitution for otherwise fossil fuels is of benefit to Minnesota. There is not particularly any benefit to my State, so I wish to rise as a nonconflicted party to endorse the Chair's amendment to say, as we approach the crisis of how we are going to continue to have the energy resources we need for a nation that consumes a lot of energy, we have to be inventive and creative.

I think the Senator from Minnesota has proposed one alternative. I think we will see other alternatives produced in an amendment by the Senator from New Mexico on renewables, wind, the

use of waste to produce energy which we do in Florida in 13 different locations. I have been assured by the Senator from New Mexico that we will be able to continue, as part of the credit, with those existing facilities which are turning waste into energy.

Years ago, when I was in the Florida Legislature, we established the Florida Solar Energy Center, which is in the shadow of Cape Canaveral right outside the gates of our space center. It, today, is a thriving center of research and development in using the God-given rays and heat of the Sun and converting that into energy.

Clearly, we have seen that, for example, so successfully employed in our space program, of taking the solar arrays, very high-tech kinds of mechanisms, folded out in huge arrays in the zero gravity and vacuum of space and having that sunlight come down and penetrate those arrays and that being converted into electricity for the spacecraft.

Another thing used on the spacecraft called the space shuttle is a device that takes oxygen and hydrogen and suddenly makes electricity and has water as a byproduct. That is why our astronaut crews on the space shuttle have to perform, at the end of each flight day, water dumps where water, which is the byproduct of making this electricity by the combining of hydrogen and oxygen, is dumped overboard in space. As one sees it come out the nozzle and it starts to freeze in that very cold atmosphere of space, it is a beautiful sight, particularly when the rays of the Sun happen to hit those water crystals. It is another example.

Ultimately, we will be able to use hydrogen in automobiles. Think what that will save us in the way of fossil fuels.

Why do we need to find alternatives to fossil fuels? Because of the obvious: They are limited. The amounts of oil for energy purposes are going to be used up over the course of the next 50 years. So we have to be planning for that.

There is another reason right now that is so important, and that is the United States is dependent on foreign-imported oil, and that dependence causes us to be in the unenviable position that we have to assure the flow of that oil out of the Persian Gulf region. As we are engaged in this war against terrorism, where is a lot of that activity? It is over in the Middle East. It is over in central Asia.

I will never forget. I clearly learned what a military chokepoint was when I looked out the window of our spacecraft as we were coming across the Persian Gulf and from that altitude of space saw the 19-mile-wide Strait of Hormuz. That is a military chokepoint, and we have understood that and that is why we have so much military over in that part of the world to assure that oil in the supertankers of the world flows out of that oil-rich region of the gulf, and those supertankers flow to the industrialized world.

So somewhere there is a terrorist who is planning to try to sink one of those supertankers in the Strait of Hormuz, and if that were to occur, what huge economic dislocations and economic disruptions would occur throughout the globe. And it is because we are dependent on that oil.

We ought to be reducing our dependence, and I think the amendment of the Senator from Minnesota is one good illustration of how we lessen our dependence on that foreign oil.

Another good illustration is—and unfortunately, we were not successful yesterday—increasing the miles per gallon, otherwise known as the CAFE standards. That does not mean anything to most Americans, but when we start talking about do Americans want to get more miles per gallon in their automobile, the answer is a resounding ''yes.'' Yet yesterday we were not able to increase the miles per gallon in our fleet of automobiles.

That is a political travesty. It will have profound economic consequences. Sooner or later, when we have another crisis, that oil is not going to be able to be as accessible from foreign shores; then we will have to get serious again about the greatest consumption of energy in America, which is in the transportation sector, about increasing miles per gallon.

That is a decision the Senate rendered yesterday. I think it is unfortunate. However, the fact is there are creative and genius Senators, such as the Senator from Minnesota, who is offering his amendment. I add my voice of support to his amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

The Senator from Alaska.

AMENDMENT NO. 3012

Mr. MURKOWSKI. Mr. President, I rise to support the amendment offered by the Senator from Wyoming, Mr. CRAIG THOMAS. I will discuss the amendment. It is an amendment that deserves understanding. I compliment the Senator from Wyoming for the manner in which he has focused on this amendment from the standpoint of keeping responsibility for the most part at the level where it belongs, which is at the State level.

The amendment replaces the Federal command and control in the Daschle substitute. That amendment has FERC setting and enforcing reliability standards. There are some things wrong with that, and I will go through that in detail. This is a provision similar to legislation the Senate unanimously passed last Congress which has the North American Electric Reliability Council continuing to set standards but not with the ability to enforce them. This is a group that knows what they are talking about when it comes to reliability.

Under this amendment, there is an enforcement mechanism. It is important to note that the amendment is broadly supported by Governors and State public utility commissions. Since Ben Franklin went kite flying, we have known of electricity's unique attributes. Customers count on the fact that when they turn the light on, it goes on; the electricity will be there. It is probably one of the largest industries in our country that is so taken for granted. It works. Anytime Congress comes in and proposes to fix it when it is still working, there are those who become concerned. I am one.

More than reading lights and television are at stake. Reliable, affordable electricity moves the economy forward. It makes possible computers that research solutions to our most pressing problems and the instruments that save lives.

This amendment ensures our electric transmission grid will continue to be safe and reliable. We know that grid, in some areas particularly, is overtaxed, with inadequate transmission lines. Yet it works. So the tendency is, do not disturb it. We have to recognize there are more and more demands for greater electric energy as a consequence of computers and various other appliances we take for granted in our homes.

This amendment ensures that our electric transmission grid will continue to be safe and reliable. Consumers will be able to get the power they need when they need it—the lights will go on, and they will stay on.

The amendment establishes a nationwide reliability organization which has the authority to establish and enforce reliability standards. I emphasize two words: Establish and enforce. This is a nationwide reliability organization that has proven itself. The new reliability organization will be run by market participants and will be overseen by the FERC.

To give an example: When the Enron company collapsed, the system worked. There was not a price increase. There was not a shortage of electricity. The free market system worked. I have often said, if those companies, on the demise of Enron, had to go to FERC to get authority to take over the slack, one wonders how long it would take. The public would probably be inconvenienced. The price would probably be adjusted because of a crisis.

My point is, the free market system can work. That is why it is so important we address reliability. This amendment does it.

Our existing voluntary reliability system has been with us for some time. Under current law, reliability standards are set by the North American Electric Reliability Council and its 10 regional councils. These standards are entirely voluntary. There is no penalty

mechanism for violation. The pending amendment gives an enforcement mechanism that is good. In a nutshell, the pending amendment takes the existing voluntary program and gives it some enforcement powers. The new reliability organization sets the standard with FERC, and FERC becomes the backstop, not the individual who necessarily carries the ball upfront. The reliability organization will be made up of representatives of those who are affected: Residents, commercial and industrial customers, independent power producers, electric utilities, and others.

There is no question we need a system to safeguard the integrity of our electric grid. Both the amendment and the Daschle bill create mandatory and enforceable reliability rules. But they do so in very different ways. This is where Members are going to have to look at this amendment and recognize its contribution vis-a-vis what is in the Daschle bill.

The Daschle bill gives all authority and responsibility to FERC. This is a States rights issue. Clearly, when it comes to interstate transmission of power, FERC has, and should have, a role. We believe the Daschle bill, in giving all the authority and responsibility to FERC, takes away from the States their right to address intrastate power matters that can best be addressed by the States. In the Daschle bill, in giving all the authority and responsibility to FERC, FERC sets the standards and FERC enforces the standards. It is that simple.

Unfortunately, in our opinion, FERC does not have all the expertise in the world to set highly technical and complex reliability standards that can only be done by industry experts. Where do the industry experts reside? They reside within the States.

The amendment instead establishes a participant-run, FERC-overseeing, electric reliability organization. It is a blend of Federal oversight along with industry expertise. It is similar to the bill that passed unanimously last Congress.

Over the years, the grid has been well protected through voluntary standards established by the North American Electric Reliability Council. FERC's voluntary reliability standards, which are not necessarily enforceable, have subsequently been complied with by the electric power industry; in other words, a kind of self-policing mechanism.

But with the changing nature of the electric power market, it is time to change that to create a new organization with enforcement powers. That is what we have done. The answer to every problem is not necessarily another layer of Federal command and control or, in this case, more FERC. This is the central failure, in our opinion, of the Daschle bill. Federal standards and Federal enforcement are simply not necessary across the board.

The amendment offered by the Senator from Wyoming adopts the language developed by the North American Reliability Council. It recognizes and addresses the regional differences. It is supported by State Governors, including western Governors, and State public utility commission. As we did last year, the Senate should unanimously support the language and reject the Federal preemption and command and control that is in the Daschle legislation.

I support the amendment and encourage its adoption.

I would like to point out that this is a pretty complex piece of legislation contained in this amendment. I encourage Members to talk to members of the Energy and Natural Resources Committee because we have had previously—not this time—hearings on this matter.

I previously discussed my displeasure with the process that brought the bill to the Senate floor. However, unlike most of this bill, the reliability language does have some committee history. During the last Congress, the Committee on Energy and Natural Resources specifically considered the issue of whether we should have more Federal controls or whether we should, instead, provide enforcement authority to the current voluntary standards and those would be administered by NERC.

On June 21, 2000, the committee reported legislation that took the approach contained in the amendment offered by Senator THOMAS and the Senate passed that approach. That approach recommended by the Energy Committee and passed by the Senate has been abandoned in this legislation. I think that is regrettable.

The reliability language in the current legislation was circulated by the chairman of the committee as part of the chairman's mark on electricity. They ignored our committee position and the action taken by the Senate at that time. We had a markup scheduled to consider electricity. This is when the majority leader basically shut down the committee process and, in my opinion, obstructed the advancement of this energy legislation.

We have never had the opportunity to vote on this provision. I can tell you what that vote would have been, however. I have said the majority leader shut down the Energy Committee because he feared our vote over ANWR. Everyone knows a majority of the committee and a bipartisan majority of the Senate support responsible development of a resource that could replace some 30 years of imports from Iraq. However, in all honesty, ANWR was not the pending subject when the chairman and majority leader started counting votes—electricity was the subject.

Reliability, Federal mandates, Federal command and control—these were the issues. I went through this in great detail in the last Congress. We had 2 days of markup going through these issues. When we were done, the committee voted and, as I said, the Senate decided to do reliability in a manner substantially similar to that being proposed by Senator THOMAS.

I agree with many of my colleagues that we should have done this in committee and not be conducting these business meetings, necessarily, or educational processes, in the Chamber. That is not our option, however. Given the circumstances, the Senate should follow the recommendations of the Energy Committee on this matter and its own unanimous action in the last Congress and support the Thomas amendment.

I see the Senator from Louisiana seeking recognition, and I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thought I would come to the floor and speak for just a moment about an amendment that I propose to lay down sometime either today or tomorrow, for, hopefully, a good debate next week.

This amendment is rather simple. I am sure it is going to cause a lot of interest and debate. I am going to explain it in a moment, but it will be proposed because of what I have come to believe after studying now for several years the current situation with our energy policy. Senator BINGAMAN and Senator MURKOWSKI have worked so hard on the bill before us, and I have supported many of their efforts. I have nothing but the most wonderful things to say about the two of them and the patience they displayed trying to bring the bill together into one that can unite this body and one that can really help move this country forward.

I am going to vote for the bill, whether ANWR is in it or not. I am supporting Senator MURKOWSKI's effort to open up more domestic drilling in this Nation because I think he was absolutely correct. But I want to say I think it is going to take a more fundamental shift in attitude and policy. Although the bill gives us great hope in tax credits for more production, great hope in tax credits for more alternatives, we are still, if you will, arguing about the margins and missing the big picture.

The big picture is really this: I think the solution is for this country to get serious about becoming energy independent. I think the President is absolutely right when he talks about a freedom car or a freedom truck or a freedom system. This is about freedom. This is about being able to be a leader in the world based on what our real values are, and not being held hostage because we need something that someone else has and because we will not produce it, even though we have it. Our foreign policy is compromised and the lives of our men and women are put in danger.

It is not right. It is not smart. It is dangerous. If we did a better job of communicating to the American people this reality, I think they would rise and demand a fundamental change.

So the amendment I am going to lay down is a simple one. It says this: All States are to submit a plan to the Secretary of Energy within 1 year to show how they can become basically energy self-sufficient.

Whatever they are consuming, they must come up with a plan of producing—not 100 percent, because I think that would be very difficult for some States, recognizing that some States are small. So my amendment is going to say that whatever you consume, you must try to produce 85 percent of what you consume. The money in this budget, the money that the Federal Government—taxpayers—provide, is contingent upon the State submitting such a plan.

If you do not submit a plan, you are not permitted to receive any money. I will tell you why. On the floor I said one of the founding principles of this Nation was: He who doesn't work doesn't eat. It is why the Plymouth Colony survived. It is why this Nation not only is surviving but thriving; it is because it is an American principle that we live by every day—not perfectly, but it is an undergirding principle of this Nation.

It is not the communistic principle, not other principles. The principle in America is you live by the fruit of your labor. You work and use the talents that God has given you. When you produce, you can live and consume. But if you don't work, if you don't produce, you should not pick up the paycheck. We have done it in welfare reform. We do it everywhere. But we do not do it in energy.

I will show you why we do not do it. This is a chart of the States that produce power. The purple States shown here produce enough power for themselves, and are net exporters of power. They produce it in all different ways. Some produce it by coal, some produce it by oil and gas, some produce it by using their great water resources with which their regions are blessed. These States have figured out what resources they have.

They are trying—I admit with a lot of mistakes in the past. When we didn't have the great science and technology of today—using basically just carriages and horseback—we were just trying to make it work and build this country. So they found all these resources and started putting them together, to give power to a nation that is truly the light of the world.

Now notice the red States here. They are consuming much more—in some cases dramatically more—than they are producing. That is the problem. I will submit for the RECORD the numbers that are quite dramatic for these consuming States which indicate their unwillingness and their reluctance to produce the energy they need to sustain their economy and their dependence on others to produce.

If that were as far as we have gone, maybe we could even live with that. Not only are these States not willing to produce, but they are telling other States they can't produce—not only not in my backyard, but not in your backyard. I think that kind of attitude is driven by populations that might not quite realize what is at stake. It is, I think, jeopardizing our Nation and causing us to work around the margins and not really work on the core points.

We cannot conserve our way out of where we are. We have to produce more domestically.

Let me give you another reason why I am very passionate about this.

Every time we drive domestic production off our shores, it goes somewhere else. It doesn't go away. It just goes somewhere else. When it goes to Canada, it is not bad because Canada is a stable country with good laws and good environmental rules and regulations. We in some ways benefit when it goes to Canada—not only as a nation but as a world—because Canada is a developed, progressive, and friendly country. But that is about it.

It might go to Mexico and to South and Central America. Mexico is a friend. Our relations are warming. They are an ally, but I would not say that Mexico or Central America or Latin America have the strongest environmental policies. I think they have fairly transparent business operations. I am not so sure they have the highest level of ethics in terms of their business, at least compared to the United States.

When we drive production off the shores of the greatest country in the world, which has the best regulations, the best laws, the most transparent system, and an assurance that drilling is done in the right way, we drive it to places in the world where environmental destruction is inevitable because they do not have the technology. They do not have the laws. They do not have the organized environmental groups.

In our great righteousness of trying to clean up the United States of America, we are messing up the rest of the world. It doesn't make sense from an environmental perspective. It doesn't make sense from a security perspective. Children, young people, spouses, and parents are dying today over this issue.

Why can't we help Israel anymore? Because we are so dependent on Arab countries to supply us with oil, and so we don't have to drill anywhere in the United States for oil. We see in the paper every day that another 60 people have died in Israel, and we say we are sorry.

This Senator is going to do everything in her power to help change this view in the United States.

When a person runs for President in this country, they have to go to California to get a lot of votes. They have to go to Florida to get a lot of votes. They have to go to other big States to get a lot of votes. There are some interest groups there that I think have captured and held hostage some of the general public in those States and convinced them that they can just continue to consume. They don't have to produce anything. They do not have to produce it by coal. They don't have to produce it by nuclear. They don't have to produce it by hydro. They don't have to produce it by gas. They don't have to produce it. They can just consume.

Again, the States in red on this chart are importers of electricity. They consume sometimes 3, 5, 10, and 15 percent more than they produce. The States in purple produce more than they consume. They are net exporters.

The amendment that I am going to lay down later today is a message amendment. I think this message is compelling. I think this is a message worth giving. I hope somebody will listen to it. States are to submit a plan to the Secretary of Energy within 1 year. In that plan, every State has to show how they are going to become energy independent within 10 years. If they do not submit a plan, they are not allowed to get one penny from this energy bill for any projects because then they go on their own.

The country was founded on the principle of those who work eat, and those who do not work don't eat.

Let me say something about by State. This isn't just about Louisiana. I am proud of what my State does. We are trying to do a better job of protecting our environment. We are making a lot of strides. Our universities are doing great, and our businesses are trying. We acknowledge that we have made some mistakes. I am very proud of my State. We produce a lot, and we consume a great amount.

I will show you on this chart, but you can understand that our consumption is not just for ourselves. We have a lot of industry that makes a lot of products that go everywhere in the country and in the world. Not only do we produce everything that the 4.5 million of us need every day for our lives, but we also produce enough to run this great industrial complex. Even then, we send another half of what we produce out to everybody else. We do it because we are very blessed to have oil and gas. We thank God for it. We didn't make it. It was there where our State was founded. But we are wise enough to try to recover it and use it for the great growth of the Nation.

In addition, we sit on the greatest river system that drains the entire Nation, that produces fish, and we have levy systems, at some sacrifice to our environment. Who in America would say we don't need the Mississippi River? I don't know what we would do without it. I do not know what our farmers in the Midwest would do without the mighty Mississippi and its tributaries.

The people in Louisiana have done more than their fair share. It is not just about Louisiana. It is about the principles that we need to get straight.

This chart is an illustration of how much natural gas comes from offshore.

This is the big trunk—Louisiana and Mississippi. This represents where our gas comes from that is firing our economy and meeting new environmental clean air standards. Why? Because natural gas is a clean way to produce energy. It helps keep our air clean. That is the benefit when you have a pro-production attitude.

Just imagine if we had a pro-production attitude in other places in this Nation. Instead of one tree trunk, we could have 10 tree trunks. So in the event that some terrorists tried to shut down one of these tree trunks, we might have several others. Or in the event of some natural catastrophe, such as a major hurricane, or some other event that might shut down some of the infrastructure here, we could be self-reliant. But we are not self-reliant because we have one big trunk, and it comes right off the Mississippi and Louisiana coast. Nowhere else.

It cannot come off anywhere here as shown on this portion of the chart because we have blocked everything else. We are just like sitting ducks. We have one tree trunk. If that tree trunk gets cut down, we are out of business.

Let me show you another chart. This shows you the other fallacy.

I am so tired of hearing people say: Senator, even if we opened up drilling everywhere, we could only get enough gas to last us for a year or 2 years or 3 years.

Let me just say something: Hogwash. Hogwash. It is not true. I say to anybody who says it, please come to this Chamber and let's debate the numbers because I am going to show you what I just learned this week, after being here several years. I was looking at these charts, and then something very significant dawned on me.

As seen on this chart of the United States, for those areas shown in the gold-orange color, we have said, either through law or through regulation, you cannot drill here. It was not always this way; we did not start the country this way—but in the last several years, a small group of people who think you can consume and not produce have convinced enough people of that mistruth, and successfully blocked production in these areas.

Here are the areas shown on the chart. You cannot drill anywhere up the east coast and the eastern part of the Gulf of Mexico. You cannot drill in California or any place such as Washington or Oregon.

But what these charts are not accurate about is this: Minerals Management Service, for instance, offers these estimates. MMS does a beautiful job. It isn't that they are trying to mislead, but I just learned how they calculate these numbers and they are not really accurate or show the right picture. They are calculating, if we open this area, we could maybe get 2.5 trillion cubic feet of gas. The United States needs 22 trillion cubic feet of gas a year.

So that would only be such a small percentage, you could ask yourself: Is it worth it? I would ask myself that. Is it worth it to open it up if you could only get a few months' worth of gas? Maybe that answer would be wrong. I will show you the reason these charts are very misleading.

On this chart, look at the Gulf of Mexico, where we have been drilling since about 1950. It is a very developed field. We know what is there because we have taken a lot out. Our industry is very knowledgeable about this area.

Look what this chart says: Gas, 105.52, which means this is 105 trillion cubic feet of gas in just one part of the gulf. But right over this line, between Alabama and Florida, the estimate drops to 12.31 trillion cubic feet of gas.

So I tell you again, that could not possibly be true because any geologist—and I am not a geologist—but any geologist can tell you that the formations do not stop at State boundaries. They do not stop at political boundaries. If these formations are true for the western part of the gulf, it has to be true for the eastern part.

So when we say no drilling anywhere in the eastern part of the gulf because there might be only a little bit of gas—so why go there? It is not just a little bit of gas. It is the difference between imports and freedom. It is the difference between being hostage to enemy countries and freedom. It is a big difference. And it is a big decision. And we mislead our people when we say: Why drill? There is just not a lot of gas there.

There is a lot of gas in the gulf. There is enough gas, just in my little place to keep the country going for 5 years—just in one part. Five years—just in my part. And we are willing to do it. But why should we try to keep it going for the next 20 years? Can't someone else contribute? For 5 years we could keep it going. And that is on one little part. And we have already taken half of our gas out.

So I am just going to make a rough estimate that if Florida would open up—not close to the shore because I do not want to put oil rigs off the coast of Florida. I have spent my life growing up off the Florida coast. I am used to seeing oil rigs. I understand people do not like them. I think they are pretty nice. I have been on them. But I understand that.

I am not talking about right off the coast. I am talking about 25 miles out. You cannot even see them. And with the directional drilling now, you could drill with a minimal footprint and provide this Nation with 10 years of freedom. You could tell Saudi Arabia, no. You could say: No, we are not sending our soldiers. But, no, we have people who think: Fine. Send the soldiers.

I don't want to send my son. He is only 9. I hope I can keep him home. That is what this debate is about. I do not want him to go when he is 18. If I have to come to this Chamber every day until he is 18 to fight on this point, it is worth it—for him, for my family, for everybody's family.

But I am not going to listen to ''because MMS says.'' I asked MMS this morning. I asked: How do you all come up with these numbers?

They said: Senator, since we have done no exploration there, we really don't know. We just low-ball it. These are just bare minimum numbers.

But I can use my brain and figure out what the truth is. Today I figured it out. There is a lot of gas. There is a lot of oil. There is enough in that little part in Alaska where Senator MURKOWSKI and Senator STEVENS want to drill. And it is not the last great place on Earth, which is something else I want to talk about. With all due respect to the environmental leaders who have done a good job in our country helping us to find a balance, we have, in this case, gone too far, in my opinion. It is not the last great place on Earth.

This Earth has a lot of great places left. There are a lot of wonderful oceans and rivers and streams and things that are getting cleaner and brighter every day. It is not the last great place. But they would drive drilling off the most sophisticated Nation on Earth into places that are worth preserving in this world. But they are not going to exist anymore because the environmental movement itself is going to destroy them. Because there are no regulations in other countries—not up to our standards—there is no oversight, there are no democracies, there is no free press to tell you when you have gone too far.

We have a free press in this country. And, believe me, that is a great thing because if the industry goes too far, the press will be right there, writing: You didn't abide by your permit. You went too far. You have polluted this stream, and you should not do it. Then we respond to it and we shut them down. That does not exist in places like Brazil or Honduras, and other places, to that great of an extent.

So I challenge the environmental community: Could you think about somebody else besides us for a change? Could we think about the world? We are not thinking about the world. We are leading the country in the wrong direction.

I challenge the leadership to tell the people the truth. Just tell them the truth. We are not telling them the truth. And, as a result, when they do not have the truth, they cannot then respond in a way that is right.

It is our job to say the truth, and I am going to say it every day in hopes that we will get energy independent in this Nation. We can do it. And we can do it by producing more in the right ways, and by—as Senator BINGAMAN has been so good at—focusing on new freedom technologies, such as fuel cells and hydrogen and new reactors that Senator DOMENICI has been leading us on for the nuclear industry. And soon it will be wonderful to live in a country where we are energy independent. Then we can set our goals and our principles

according to our values and according to the reason we fought and died in every war: The values for which this country stands.

I hope I see that day. I am young enough that hopefully I will see it. I have a lot of years left to fight.

Mr. President, I ask unanimous consent to have printed in the RECORD these numbers that show which States produce and which States do nothing but basically consume.

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

STATE ENERGY PRODUCTION AND CONSUMPTION

State	1999 Production Quadrillion Btus (Quads)							1999 Consumption		
	Total electricity	Primary electricity	Oil	NG	Coal	Total quads	MMBtu per capita	Quads total	MMBtu per capita	1999 Population
Alabama	0.413	0.148	0.065	0.608	0.414	1.234	282.4	2.005	458.8	4,369,862
Alaska	0.020	0.003	2.223	0.514	0.033	2.773	4476.1	0.695	1121.4	619,500
Arizona	0.286	0.138	0.000	0.001	0.250	0.389	81.5	1.220	255.3	4,778,332
Arkansas	0.162	0.061	0.041	0.000	0.000	0.103	40.4	1.204	471.8	2,551,373
California	0.630	0.328	1.584	0.425	0.000	2.336	70.5	8.375	252.7	33,145,121
Colorado	0.135	0.005	0.107	0.821	0.636	1.570	387.1	1.156	284.9	4,056,133
Connecticut	0.095	0.052	0.000	0.000	0.000	0.052	15.8	0.839	255.7	3,282,031
Delaware	0.023	0.000	0.000	0.000	0.000	0.000	0.0	0.279	370.0	753,538
Dist. Of Columbia	0.001	0.000	0.000	0.000	0.000	0.000	0.0	0.170	327.2	519,000
Florida	0.639	0.135	0.028	0.007	0.000	0.170	11.3	3.853	255.0	15,111,244
Georgia	0.408	0.134	0.000	0.000	0.000	0.134	17.1	2.798	359.3	7,788,240
Hawaii	0.035	0.003	0.000	0.000	0.000	0.003	2.8	0.241	203.6	1,185,497
Idaho	0.049	0.048	0.000	0.000	0.000	0.048	38.3	0.518	414.1	1,251,700
Illinois	0.557	0.282	0.070	0.000	0.858	1.210	99.7	3.883	320.1	12,128,370
Indiana	0.416	0.002	0.011	0.000	0.722	0.735	123.7	2.736	460.3	5,942,901
Iowa	0.130	0.016	0.000	0.000	0.000	0.016	5.6	1.122	390.9	2,869,413
Kansas	0.144	0.031	0.168	0.615	0.009	0.823	310.2	1.050	395.6	2,654,052
Kentucky	0.316	0.009	0.016	0.000	2.963	2.988	754.5	1.830	462.1	3,960,825
Louisiana	0.305	0.062	0.696	5.904	0.063	6.725	1538.1	3.615	826.9	4,372,035
Maine	0.041	0.023	0.000	0.000	0.000	0.023	18.1	0.529	421.9	1,253,040
Maryland	0.178	0.054	0.000	0.000	0.081	0.135	26.2	1.378	266.5	5,171,634
Massachusetts	0.135	0.024	0.000	0.000	0.000	0.024	3.9	1.569	254.1	6,175,169
Michigan	0.354	0.062	0.045	0.308	0.000	0.415	42.1	3.240	328.4	9,863,775
Minnesota	0.168	0.056	0.000	0.000	0.000	0.056	11.8	1.675	350.8	4,775,508
Mississippi	0.120	0.035	0.104	0.123	0.000	0.263	95.1	1.209	436.5	2,768,619
Missouri	0.252	0.035	0.001	0.000	0.008	0.044	8.1	1.768	323.3	5,468,338
Montana	0.100	0.040	0.087	0.068	0.872	1.067	1208.8	0.412	467.2	882,779
Nebraska	0.107	0.040	0.015	0.000	0.000	0.056	33.5	0.602	361.3	1,666,028
Nevada	0.105	0.015	0.004	0.000	0.000	0.019	10.4	0.615	340.1	1,809,253
New Hampshire	0.056	0.039	0.000	0.000	0.000	0.039	32.3	0.335	279.2	1,201,134
New Jersey	0.194	0.103	0.000	0.000	0.000	0.103	12.6	2.589	317.9	8,143,412
New Mexico	0.111	0.001	0.373	1.679	0.619	2.672	1536.1	0.635	365.0	1,739,844
New York	0.495	0.210	0.001	0.000	0.000	0.211	11.6	4.283	235.4	18,196,60
North Carolina	0.402	0.147	0.000	0.000	0.000	0.147	19.2	2.447	319.8	7,650,789
North Dakota	0.107	0.009	0.191	0.059	0.661	0.919	1450.6	0.366	577.1	633,666
Ohio	0.486	0.060	0.035	0.000	0.477	0.572	50.8	4.323	384.1	11,256,654
Oklahoma	0.187	0.011	0.409	1.745	0.035	2.201	655.5	1.378	410.2	3,358,044
Oregon	0.193	0.157	0.000	0.001	0.000	0.159	47.9	1.109	334.5	3,316,154
Pennsylvania	0.664	0.257	0.009	0.000	1.621	1.887	157.3	3.716	309.8	11,994,016
Rhode Island	0.023	0.000	0.000	0.000	0.000	0.000	0.4	0.261	263.5	990,819
South Carolina	0.306	0.179	0.000	0.000	0.000	0.179	46.0	1.493	384.2	3,885,736
South Dakota	0.036	0.023	0.006	0.000	0.000	0.029	39.8	0.239	326.0	733,133
Tennessee	0.319	0.120	0.002	0.000	0.064	0.187	34.0	2.071	377.6	5,483,535
Texas	1.220	0.137	2.606	6.797	1.126	10.666	532.1	11.501	573.8	20,044,141
Utah	0.125	0.005	0.094	0.292	0.560	0.951	446.3	0.694	325.8	2,129,836
Vermont	0.019	0.019	0.000	0.000	0.000	0.019	32.0	0.165	277.9	593,740
Virginia	0.255	0.106	0.000	0.000	0.685	0.791	115.1	2.227	324.1	6,872,912
Washington	0.397	0.355	0.000	0.000	0.087	0.443	76.9	2.241	389.3	5,756,361
West Virginia	0.323	0.003	0.009	0.000	3.353	3.365	1862.0	0.735	407.0	1,806,928
Wisconsin	0.202	0.052	0.000	0.000	0.000	0.052	9.9	1.811	344.8	5,250,446
Wyoming	0.149	0.004	0.355	0.914	7.155	8.428	17573.6	0.422	879.5	479,602
Other States				0.889		0.889				
Other						0.000		0.0577		
Federal Offshore			3.096							
U.S. Total	12.594	3.839	12.451	21.771	23.356	61.416	225.2	95.683	350.9	272,690,813

Ms. LANDRIEU. Then I am going to submit other things for the RECORD and lay down the amendment when the Senator from Alaska suggests we lay it down.

I yield whatever time I have remaining.

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

Mr. MURKOWSKI. Mr. President, I have listened to the Senator from Louisiana. I look forward to being a cosponsor of her amendment.

For far too long, we have not identified the issue of equity which the Senator from Louisiana has certainly shown with her chart. I have a slightly bigger chart which basically shows the same thing.

I will take a few moments, if I may. I ask the Senator from Louisiana to look at this chart. As she displayed on her own chart, the areas that are off limits for oil and gas exploration are clearly the entire east coast of the United States, from Maine to Florida. This is the entire area in gray. Then we have the area of lease sale 181 that was addressed by the Senators from the States of jurisdiction. I respect the attitude prevailing within those States relative to what happens off their shores.

The entire west coast of the United States is off limits, from Washington to California. The Senator from Louisiana did not show what happened in the overthrust belt, where we have the producing States of Colorado, Wyoming, Montana, Utah, northern parts of New Mexico; they have been taken basically off limits by the roadless policy, as has a lot of public land.

As we begin to look at this country, we recognize who produces the energy: Texas; Louisiana; Mississippi; Alabama, to a degree; California is still a major producer; Montana; my State of Alaska. But the inconsistency, as the Senator from Louisiana pointed out, is that we have an inequity. And it is ironic that Senators who do not want energy production from Federal lands of their States are very much opposed to supporting the States that want to have the development. Whether we talk about CAFE or some reasonable form of revenue back to the States that bear the impact associated with offshore activity, such as Louisiana or others, we get into a fight over equity there. Clearly, Louisiana has to provide the infrastructure to support an offshore activity, but they don't receive necessarily any Federal consideration on revenue sharing that is any more significant than another State that doesn't have that impact.

Ms. LANDRIEU. Mr. President, will the Senator yield?

Mr. MURKOWSKI. I am happy to yield.

Ms. LANDRIEU. The Senator is aware that there is a great injustice on which I hope we can make some headway before this bill leaves the Senate. The injustice is that Federal law allows interior States—and I think rightfully so, and I most certainly support it and would even argue it should be increased—but in the interior States,

when they do any kind of mining or resource recovery on Federal land, the State that hosts that Federal land and the surrounding communities share 50 percent to compensate for impacts because there are roads that have to be built.

There are other impacts where if the Federal Government is going to benefit from drilling within your State, even on State land, we think the State should share the benefit.

But the tragedy is that for coastal States, such as Louisiana, Texas, Mississippi, Alabama, and, to some degree, Alaska, you must drill within 3 miles of your coast to get any compensation. So we are sending $4 and $5 billion in royalties and revenues to the Federal Treasury. In addition to sending the oil, in addition to sending the gas, we are also sending huge amounts of money to the Federal Treasury, and our States get nothing, nothing in direct aid.

My next amendment is going to be about changing that. I have an amendment that is going to ask for a portion. I hope everyone will support that. I can't imagine why anyone wouldn't, considering what I have just shown. I thank the Senator for raising this issue.

Mr. MURKOWSKI. I thank the Senator from Louisiana. I will comment on a couple of other points she made. One is that States such as Louisiana and other energy-producing States contribute extraordinarily to the standard of living we all enjoy. We enjoy it without having the impact of resource development in some States.

I would appreciate it if they would leave that one chart up that showed the electricity because that in itself—even though I am not over there, I hope the camera can pick it up—does represent a significant reality that the purple States are contributing for the production of electric energy so that the other States can share a standard of living that is equal to the States that are generating the electric production. That means somebody is burning coal in a purple State, and a red State enjoys theoretically the potential of not the impact of air emissions but the generation of prosperity through inexpensive electricity because of various efficiencies we have in the system.

For a producing State not to get any other consideration seems kind of inequitable when we look at technology and issues of where are we going to generate the power we consume.

That chart specifically is limited to electricity, but it is a very interesting one because it shows a harsh reality. I encourage my colleagues to feel a little guilty if they are a red State. If they are a red State, they are depending on a purple State to support the quality and standard of living they enjoy.

I appreciated the Senator's comment relative to her young son and the reality that we have fought a war over energy oil specifically—before. The paper this morning showed a very dismal picture relative to what is happening in the Mideast, the threat from Iraq. I am always reminded of Senator Mark Hatfield, who was a respected Member of this body from the State of Oregon, who said time and time again: I would rather vote for opening up ANWR than send another American man or woman to fight a war on foreign soil over oil. That is what the Senator is talking about with regard to her own son.

As we look at our vote yesterday, really that vote was over safety. It was families; it was children. We sacrificed to some extent a CAFE for that assurance and that reality. I think we have to look similarly to the merits of our dependence on greater sources of imported oil from overseas and the price we are going to have to pay for it, not just in dollars but American lives. There is a parallel.

Ms. LANDRIEU. Will the Senator yield for one moment? I would ask him if he could imagine if we put some kind of chart up like this where there were some States that said: We want to produce food. And then other States said: No, we are not going to produce any food. We want you to produce the food, and we don't want to produce the food. Not only do we not want to produce the food, but we want to have a moratorium on food production. Not only are we going to have a moratorium on food production in our State, we are going to tell you, the purple States, what kind of food you can grow and how you can grow it, and that is just the way it is going to be.

I realize this might be stretching this analogy, but we have to break through to the American people in some way and explain that there are certain things we all need. We all have to be able to produce them. Food is one. Energy is one.

Then some people will come down here and argue: Senator, this is not right, because some States produce food, some States produce energy, some States produce this, some States produce that, and that is what a union is all about. I have thought about that. But there will not be a moratorium on food. Nobody is saying don't grow food in my State. But, about energy, they are saying we don't want to produce energy in our State. We don't want the gas plants, don't want the oil; we don't want to produce it through nuclear or through coal. Some States are even going so far as to say: We don't want the electricity lines. They are not nice to look at. We don't want merchant powerplants.

How in the heck do they think, when you walk into a building, these lights go on? There is some electricity line, or a powerplant, or there is some man or woman in a coalfield working for power production. We have done a great disservice to our country by not making this connection. It is very dangerous. I thank the Senator from Alaska.

Mr. MURKOWSKI. I thank the Senator from Louisiana. I look forward to seeing her amendment, which I intend to cosponsor and support.

As we reflect on this debate, make no mistake about it, yesterday's vote was a vote where we were willing to give up CAFE for the safety of our children. I think that is pretty basic. We are going to have the same opportunity to address the parallel when we get to the issue specifically of trying to reduce our dependence on imported oil—whether we want to trade off domestic production here at home, the opening of ANWR, or, indeed, recognize the threat we have to young men and women fighting a war overseas on foreign soil over oil.

I will take a few moments to remind our colleagues that our President had some very strong words today for Saddam Hussein. Yesterday, during his press conference, he shared them with many of our colleagues. I want to quote from that press conference. I ask that Members who haven't looked at the front page of the Washington Post to recognize the potential threat we have with regard to our relationship with Iraq. Yesterday he said:

> I am deeply concerned about Iraq. . . . This is a nation run by a man who is willing to kill his own people by using chemical weapons, a man who won't let the inspectors into the country, a man who's obviously got something to hide.

Further, the President states:

> And he is a problem, and we're going to deal with him . . . we've got all options on the table. . . . One thing I will not allow is a nation such as Iraq to threaten our very future by developing weapons of mass destruction.

We know that Saddam Hussein has been up to no good. We have not had inspectors there for over 2½ years, and we have reason to believe he has a missile development capability. He has already shown it in the Persian Gulf war and with the missiles that were fired at Israel. We have every reason to believe he has a biological, and perhaps a nuclear, capability. We know he has been developing weapons of mass destruction.

Now, the President said:

> We've got all the options on the table.

I don't need to remind my colleagues what Saddam Hussein means to the world in which we live. He is much more than just one of the world's greatest threats to peace and stability. He is more than just an enemy with whom we went to war. Unfortunately, he is a partner at the same time. He is a partner we rely on to power our economy. What is going to happen to the roughly million barrels a day we import each day when and if President Bush's words turn into deeds? Are we still going to be able to count on Saddam Hussein for a million barrels a day? How are we going to replace that oil?

I want colleagues to understand an important reality of one of our efforts on the energy bill. By an overwhelming

majority, 62 to 38, yesterday's vote on CAFE was a victory for common sense, for the American family, and the American worker. As I indicated earlier, it was a very basic vote where we gave up CAFE for the safety of our citizens and our children. By insisting that sound science decides where we should set our fuel standards, we protected America's ability to choose the automobiles that meet their needs and the American workers who build them.

But in so doing, those who objected to this more reasonable approach to CAFE standards for reducing our dependence on foreign oil—that was basically rejected as an alternative. Keep in mind that one of the treaties of that particular concept was that we don't need to develop more oil here at home. We don't need to develop ANWR. We can do it through CAFE savings.

Well, perhaps that might have been possible, but that was simply addressed in real terms by a rejection of that thought. So that alternative of CAFE savings—picking up what we would otherwise have to perhaps depend on in ANWR, opening up domestic oil and gas reserves—was rejected.

Between the CAFE victory and the President's words on Iraq, I think it is clear we have to act to fill the energy voids. If we are not going to do it through CAFE, how are we going to do it? If we are going to terminate our relationship with Iraq under some set of circumstances, that is certainly going to affect our ability to import oil. Where will we get the difference?

The Senator from Louisiana said it right. Charity begins at home. We have to develop those areas where we have possible oil and gas potential to lessen our dependence on foreign oil.

I think her theory of holding each State accountable is a good one. We have technology and ingenuity within our States. Some States may be able to generate energy from solar, or wind, or nuclear. Let's get on with it here at home.

We have a lot of coal in this country, and we have gas offshore, and we have oil potential in certain areas. Let's commit ourselves to becoming more energy independent. We can do that if we concentrate on it.

Isn't that a good thing for the American economy? If we made this kind of a commitment, you would see the OPEC cartel come to an emergency meeting where they would say, just a minute, maybe we should lower the price of oil, maybe we should make a little more available—instead of what they are doing now.

So I think the Senator from Louisiana brought up some interesting ideas, and we should concentrate a little bit more on getting our act together. You have heard it time and again, but one of the major sources is the promise of ANWR. ANWR has more oil in it than Texas currently shows in reserves. It offers us an opportunity to potentially eliminate Iraqi dependence for more than a century or 30 years from Saudi Arabia. With American technology, we can reach oil safely and we can create thousands of jobs.

It is interesting to note that today we are going to have James Hoffa, the Teamster president, for a press conference and one of the things we will be discussing is how to reduce our dependence on foreign oil. One of the items is opening ANWR. That debate lies ahead of us. Keep in mind the realities of the choices we make when we choose from where our oil comes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CARPER. The Presiding Officer and I, before we were hired on as Senators, used to earn our keep by serving as Governors of Indiana and Delaware. As Governors, we were mindful of the prerogatives of the States and our roles and responsibilities as chief executives of our States. We worked through our national and regional organizations to make sure the concerns of our region and the Governors and the States in general were respected.

Whenever a group of Governors today raises a concern about an issue that is before the Congress, I listen. In this case, we have heard from a number of Governors from the western part of the United States raising concerns with respect to the electric reliability provisions that are in the underlying bill before us.

We have had a chance to try to better understand what the concerns of the Governors are, and we have had an opportunity to try to understand how their concerns, if adopted as proposed, would affect the rest of us who do not happen to be from those 14 or so Western States that have banded together to present their message to us.

That having been said, I nonetheless must feel compelled to rise in support of the electric reliability provisions that are in the underlying amendment. Senator BINGAMAN has sent out a Dear Colleague letter to all of us dated yesterday, March 13, on this issue. I urge our colleagues to take a few minutes to read it as we approach the vote at 2 p.m.

The underlying language that is in the bill Chairman BINGAMAN has developed represents what I believe is a simplified approach that places appropriate authority for liability within the Federal Energy Regulatory Commission, which we call FERC. FERC is the proper body to address electric reliability issues. FERC has the expertise to harmonize reliability and to commercialize issues that States and utilities face.

Under Senator BINGAMAN's proposal, FERC can objectively defer to regional and State solutions if FERC does not think they have the expertise and that the expertise lies elsewhere. They have the flexibility to look elsewhere for those solutions.

I believe what Senator BINGAMAN has provided for us is a thoughtful compromise. It is based on the premise that a reliability structure should be both simple and dependable. The language in the underlying bill requires FERC to implement a system that applies to all regions in what I believe is a fair manner. It also includes a flexibility to defer, as I said earlier, where appropriate, to regional entities and to States. I believe this is a good solution to the important issue of ensuring the reliability of our electric grid. The electric grid is a national infrastructure, and the oversight of its reliability should be national in scope as well.

This morning Senator BINGAMAN introduced into the RECORD a letter from PJM. PJM is the entity which coordinates the electric grid in Delaware and in five other States in the mid-Atlantic region. PJM is recognized, we believe, as the best in the country in ensuring the reliability of our grid. They said they support Senator BINGAMAN's efforts as well. So do I.

I would be surprised if our colleagues, especially those from the mid-Atlantic or from the Northeast, voted for the amendment that is being offered by the Senator from Wyoming later today, particularly if they will take the time to listen to the input, as I have, from their PJM in their part of the country, and especially if they will take the time to read this letter. It is a Dear Colleague letter from Senator BINGAMAN.

As Governors, we always tried to find solutions that were simple and dependable: The old ''kiss'' principle, keep it simple stupid. I often find that would underlie what we attempted to do. We would often seek, as Governors, to make sure what we tried to do for one region of the country did not somehow inconvenience or undermine the interests of another part of the country.

My concern about what our friends from the West have proposed is it is not simple and it would undermine and put the rest of us at a disadvantage.

I urge my colleagues to support Senator BINGAMAN's position in the underlying bill and oppose the amendment of Senator THOMAS.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MILLER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I say to my friend from Oregon, when the time arrives that he has his amendment in hand, I will be happy to yield the floor to him.

In the meantime, I note that after the 2 o'clock vote Senator BINGAMAN will lay down an amendment. The purpose of the amendment, as I understand it, is to change the renewable portfolio in the underlying bill. The underlying bill says in effect that 10 percent of the electricity in this country must be renewables by a certain time. Senator BINGAMAN's amendment changes that to 8½ percent, lowering it. Senator JEFFORDS will offer an amendment to raise that amount to 20 percent—double the amount in the underlying bill. Following that, Senator KYL of Arizona will offer an amendment to delete all renewables from the bill.

Senators will have an opportunity to vote for a lowering of the amount from 10 to 8½ percent, sponsored by Senator BINGAMAN and others; they will have an opportunity to vote for raising that standard to 20 percent; or eliminating them altogether. We will complete those votes this afternoon sometime.

Although the amendment has not been laid down, I will speak in support of the Jeffords amendment. Why would I do that? The State of Nevada would benefit significantly from renewable energy because the Nevada Test Site—where we for 50 years have set off nuclear weapons and are still performing testing—could produce enough electricity for the whole United States, every need in the United States for electricity, by putting solar panels that cover the Nevada Test Site. There is that much sun. We are not going to do that, but we could.

Also, the State of Nevada is the most mountainous State in the Union. We have more mountains than any State in the Union, except Alaska. We have 340 separate mountain ranges. We have 32 mountains over 11,000 feet high. As a result of that, we have wind all over the State of Nevada. Nevada, other than Alaska, is the most dangerous State in which to fly. Why? Because of the mountains. We have weather changing very quickly because of the mountains. People do not realize Nevada is the most mountainous State except for Alaska.

People think of Nevada as being desert, like Las Vegas. That is not the case. We have, in addition, the ability to produce large amounts of energy with sun. We have the ability to produce large amounts of energy with wind. However, it does not stop there. Nature gave Nevada also the greatest geothermal resource in the United States.

I remember when I first went to Reno. I traveled from Reno to Carson City, about 25 miles. Driving along that road on the side is steam coming from the ground. I had never seen anything like that before. The steam is from the heat of the Earth. What we have been able to do is tap that heat. Now we are producing electricity in Nevada, the geothermal energy. That is why I am so in favor of the Jeffords proposal.

Senator MURKOWSKI, my friend from Alaska, wants to produce more energy as a result of this bill. He wants to produce energy in the ANWR wilderness. That is not going to happen.

On the other side, people want to cut down the consumption of fuel. That was debated all day yesterday with CAFE standards. That is not going to happen.

On one side, we have Members who want more production out of Alaska and are not going to get it; and those who want to cut down the consumption of fuel on automobiles will not get it.

Where does that leave us? It leaves us with the opportunity to demand that we do more with renewables. We can do that. There is no question we can do that. We are not as well advanced in technology as we should be, but we could be. The link between environment and energy must be forged and tempered in this century. I know everyone understands the importance of developing renewable energy resources in homes and businesses without compromising our air or water quality. Senator JEFFORDS, in his position as chairman of the Environment and Public Works Committee, is in a very good position to proceed on this. That is what he is going to do. He will offer a second-degree amendment to increase the supply of renewables. He will offer that at a later time.

Congress needs to step up to the plate and diversify this Nation's energy supply by stimulating the growth of renewable energy, America's abundant and untapped renewable energy, and fuel our journey to a more prosperous tomorrow. We should harness the brilliance of the Sun, the strength of the wind, and the heat of the Earth to provide clean, renewable energy for our Nation.

Other nations are developing renewable energy sources at a faster rate than we are in the United States. Ten years ago, America produced 90 percent of the world's wind power; today, 25 percent of the world's wind power. Germany has the lead in wind energy, and Japan in solar energy. They are using technology that we developed, but we are not moving forward on it. They have surpassed us because their governments have provided support for renewable energy production and use.

In the United States today, we get less than 3 percent of our electricity from renewable energy sources such as wind, solar, and geothermal. But the potential from a State such as Nevada is unbelievably large. To meet the goals for 2013, for example, Nevada has, through their State legislature, indicated they must produce more electricity. I am proud of the State of Nevada for doing that. They have set goals. If they set goals, there is no reason we as a Federal Government cannot set goals.

In Saudi Arabia—we refer to them as the energy source of the world—they literally can punch a hole on top of the ground and oil comes out. We do not do that in the United States; it is hard to get our oil. However, Nevada is referred to as a Saudi Arabia of geothermal. My State can use geothermal to meet a third of its electricity needs. Today, this source of energy produces only a little over 2 percent of our electricity needs. We must reestablish America's leadership in renewable energy.

How can Congress help? Clearly, the two most important legislative means are a renewable portfolio standard and a production tax credit. The renewable portfolio standard provides a strategic framework for renewable energy development while the production tax credit acts as a market force. They are both essential. We need a permanent production tax credit to encourage businesses to invest in wind farms, geothermal plants, and solar arrays.

Within the stimulus bill we passed, and the President signed last week, there is a tax credit for wind. We had that before. It is so important. All over America we have companies wanting to go forward with wind farms. They could not do it because they did not have the tax credit. Now, within a short period of time, they are off and running again.

When the wind energy tax credit first came into being, it took a little over 22 cents to produce a kilowatt of electricity by wind. At the same time, coal and natural gas was 2 cents to 3 cents. Wind was way behind these other two sources. But today, because of the tax credit, wind is the same price as coal and natural gas. That is why we need to make sure we have a production tax credit. It would cause people to invest in wind farms. We also need it, though, Mr. President—we do not have the same tax credit for Sun, solar. We do not have it for geothermal. We do not have it for biomass—and we need to get that. That is why I am looking forward with great interest to the Finance Committee Chairman's work, Senator BAUCUS, to offer something on this bill to allow us to do that.

A permanent tax credit would provide business certainty and ensure the growth of renewable energy development. It would signal America's long-term commitment to renewable energy. As I have already said, I look forward to Senator BAUCUS's bill.

I hope to have more to say about the production tax credit when we begin debate on the tax provisions of the energy bill. For the time being, let me focus my remarks on the need for a national renewable portfolio standard.

I see the chairman of the Environment and Public Works Committee is in the Chamber. I say to my friend, I have been indicating you are going to offer a second-degree amendment at a subsequent time to the Bingaman amendment, which has not yet been laid down.

I have been laying on the Senate all the reasons you are so visionary in offering this amendment.

We have to do this. I said earlier to those here in the Chamber that this energy bill has turned into an interesting

bill. On the one hand, people want to produce more by drilling in ANWR. That is not going to happen. We also wanted to increase the fuel efficiency of cars. That is not going to happen. I think all we have left to point to for progress with energy policy in this country is your amendment.

I really do believe we need to do more with wind, Sun, geothermal, and biomass. So I commend and certainly applaud my friend from Vermont for his work in this area.

As I indicated, there is no question that the amendment of Senator JEFFORDS, which I understand will call, in 2020, for a 20-percent renewable portfolio standard—starting at 5 percent in 2005. A 20-percent goal is achievable.

I am proud that Nevada has adopted the most aggressive renewable portfolio standard in the Nation, requiring that 5 percent of the State's electricity needs be met by renewable energy resources in 2003—that is next year—and then climbing to 15 percent by the year 2013.

If Nevada can meet its renewable energy goal of 15 percent by 2013, then the Nation certainly should be able to meet its goal, 20 percent, in the Jeffords amendment.

To meet the goals of 2013, Nevada will develop 400 megawatts of wind, 400 megawatts of geothermal, and will do other things such as solar and biomass facilities. But it can be done. If it can be done in Nevada, it certainly can be done in the rest of our Nation. Fourteen States have already adopted a renewable portfolio standard. Why? Because they believe it works. We need a renewable portfolio standard, national standard, to ensure the energy security of this Nation and diversify our energy supply; to reduce the price volatility in energy markets; to set clear, reachable goals for the growth of renewable energy resources; to establish a system of tradable credits that allow a utility flexibility to meet these goals and reduce the cost of renewable energy technologies to create a national market.

I was listening to public radio one morning last week. I was stunned to hear a report of an article in the Journal of the American Medical Association that linked, clearly, lung cancer to soot particles from powerplants and motor vehicles. This study was exhaustive—500,000 people in 16 American cities whose lives and health have been tracked since 1982, for 20 years. Experts gave the study high marks.

The conclusions are obvious. We need to improve the quality of our air for the health and well-being of the American people.

These adverse health effects cost us billions in medical care, and their cost in human suffering cannot be measured.

My good friend, Senator JEFFORDS, knows better than anyone that America needs to build its energy future on an environmental foundation that doesn't compromise air and water quality.

If we begin to factor in environment and health effects, the real cost of energy becomes more apparent. At the Nevada Test Site, I have indicated to the Senate what could happen there with solar power production. But a new wind farm there—it has already received permission from the DOE to be built—will provide 260 megawatts to meet the needs of 260,000 Nevadans. The energy cost for this wind farm will be 3 cents to 4.5 cents per kilowatt hour with the benefit of production tax credits. There are concerns about migratory birds, but basically that is the only environmental impact—some birds may hit the windmills. We will work on that, but that is the only environmental impact. There are no adverse health impacts to humans.

Taking health and environmental effects into account, wind still costs, as I have indicated, about 3 cents per kilowatt hour. Compare that to coal.

About half the electricity in the United States is generated by coal. It is going to be that way for a while. But in Nevada, it is an even higher percentage. That is why development of clean coal technology is vital. I supported Senator BYRD in all his efforts for clean coal technology. We have a northern Nevada clean coal plant. Energy costs for new coal plants are about the same as wind. But coal mine dust killed 2,000 U.S. miners a year. Since 1973, the Federal black lung disease benefits program has cost $35 billion. Coal emissions cause pollution and adverse health effects. Taking health and environmental effects into account, using coal actually costs us, some say, up to 8.3 cents per kilowatt hour.

So a national renewable energy portfolio standard by 2020 will not only protect the environment and the health of our citizens, it would create nearly $80 billion in new capital investments, and $5 billion a year in property tax revenues to communities.

Renewable technologies are highly capital intensive. As a result, we typically pay much more in income taxes per megawatt produced than conventional fossil fuel plants. A recent analysis by the National Renewable Energy Laboratory points out that Federal royalties and income taxes generated by geothermal plants are 3 to 4 times that of electricity produced from new natural gas combined-cycle powerplants.

So replacing conventional powerplants with renewable powerplants mean more tax revenue to the Treasury, even with the production tax credit in place.

In places such as Nevada, expanding renewable energy production will provide jobs in rural areas, areas that have been largely left out of America's recent economic growth.

I say to my friend from Vermont, I appreciate the information in your legislation that says rural electrics will not be bound by this. So people do not have to worry about these local areas having to meet this 20-percent margin. Renewable energy, as an alternative to traditional energy sources, is a commonsense way to make sure American people have a reliable source of power at an affordable price.

The World Energy Council estimates that global investment in renewable technologies over the next 10 years will total up to $400 billion. With a renewable portfolio standard in place, American companies will be ready to lead the way in the 21st century by tapping the Nation's vast potential of clean renewable energy. Congress should pass energy legislation with a vision that looks to the future and assures the Nation of continued prosperity and a cleaner environment.

This Congress, this Senate, must commit ourselves to renewable energy for the security of the United States, for the protection of our environment, and for the health and welfare of our people.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 3014 TO AMENDMENT NO. 2917

Mr. WYDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself and Mrs. FEINSTEIN, proposes an amendment numbered 3014.

Mr. WYDEN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish within the Department of Justice the Office of Consumer Advocacy)

On page 57, between lines 17 and 18, insert the following:

SEC. 253. OFFICE OF CONSUMER ADVOCACY.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) ENERGY CUSTOMER.—The term ''energy customer'' means a residential customer or a small commercial customer that receives products or services from a public utility or natural gas company under the jurisdiction of the Commission.

(3) NATURAL GAS COMPANY.—The term ''natural gas company'' has the meaning given the term in section 2 of the Natural Gas Act (15 U.S.C. 717a), as modified by section 601(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

(4) OFFICE.—The term ''Office'' means the Office of Consumer Advocacy established by subsection (b)(1).

(5) PUBLIC UTILITY.—The term ''public utility'' has the meaning given the term in section 201(e) of the Federal Power Act (16 U.S.C. 824(e)).

(6) SMALL COMMERCIAL CUSTOMER.—The term ''small commercial customer'' means a commercial customer that has a peak demand of not more than 1,000 kilowatts per hour.

(b) OFFICE.—

(1) ESTABLISHMENT.—There is established within the Department of Justice the Office of Consumer Advocacy.

(2) DIRECTOR.—The Office shall be headed by a Director to be appointed by the President, by and with the advice and consent of the Senate.

(3) DUTIES.—The Office may represent the interests of energy customers on matters concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission—

(A) at hearings of the Commission;

(B) in judicial proceedings in the courts of the United States; and

(C) at hearings or proceedings of other Federal regulatory agencies and commissions.

Mr. WYDEN. Mr. President, I commend the Senator from Nevada for the excellent statement on the importance of renewable energy. He and Senator JEFFORDS have really made the case.

I want it understood that I very much share Senator REID's views with respect to renewable energy. He and Senator JEFFORDS have really been our leaders.

This amendment has been cleared on both sides of the aisle.

As I begin my remarks, I would especially like to express my appreciation to Senators BINGAMAN, MURKOWSKI, LEAHY, and HATCH. All of them have been very gracious in terms of working with me on this issue.

This amendment would establish within the Department of Justice the Office of Consumer Advocacy. This is especially important right now because our Nation's electric power system is undergoing dramatic changes. New sources of power are produced by State-regulated utility companies. Unregulated power marketers are providing an increasing share of new power generation in this country.

At the State level, many States—in fact, the majority of the States—have put in place consumer advocates whose job it is to stand up for the energy ratepayer. The fact is that across this country, in the last year, America's energy consumers—particularly senior citizens and small businesses—have many millions of dollars taken from their pockets. The fact is that the Federal Government really is not in a position to deal with many of the rate hikes, nor are the State governments, because much of this activity relates to energy trading and energy activity that is interstate in nature.

We have the States across the country trying to stand up for the ratepayer. Many of the legislatures have created these consumer advocates that monitor energy prices to make sure the State-regulated utilities are charging fair rates. But when power is being traded like pork bellies and so much of the energy business has moved interstate, the State advocates have no way to investigate or address the wholesale power prices that eventually raise retail consumer rates and that are spawned by interstate activity.

What I am proposing in this legislation—which is a part of what my colleagues, Senators BINGAMAN, MURKOWSKI, HATCH, and LEAHY, have already made clear—is that we will continue to refine this bill as we go through the legislative process, and we will create a Federal advocate for the energy consumer. That advocate at the Department of Justice will have the authority to address the interstate trading of wholesale power and to spotlight unfair wholesale price hikes before they get to the State-regulated utilities and their retail ratepayers.

My view is that consumer advocates provide an independent watchdog over a variety of important issues that come before the Federal Energy Regulatory Commission and a number of agencies that affect energy policy and the American consumer.

Power, of course, used to be produced and sold by State-regulated utilities. Those advocates were able to watchdog the entire process. But today, with State advocates being forced to rubberstamp a lot of these electric rate increases caused by spikes in interstate wholesale prices, consumers are more vulnerable than ever before. The purpose of this amendment is to close the gap which is leaving consumers unprotected from wholesale wheeling and dealing.

When prices spike in the wholesale energy market, the fact is that our States and public utility commissions really do not have the authority to challenge these rate increases due to increased wholesale prices. But the Federal consumer advocate could ask for protection of consumer interests. If the increases weren't just and reasonable, the advocates could represent the consumer in a complaint before the Federal Energy Regulatory Commission, challenging those prices.

Some may say as they consider this issue that there really isn't a need for a Federal advocate, that utilities and other buyers of energy can bring cases on their own at the Federal Energy Regulatory Commission if someone is manipulating the market. But that approach won't work when the buyer of energy is the utility owned by an energy marketer. The utility isn't going to bring a case at the Federal Energy Regulatory Commission against its parent company.

In cases where a utility engages in transactions with the parent company, the consumer advocate can independently investigate to make sure the utility ratepayers are not harmed by deals which enrich the parent company at the expense of the utility and its ratepayers.

A number of organizations support this legislation. I want to take a minute to particularly commend the American Association of Retired Persons. I have worked with them on these issues, going back to my days when I was codirector of the Oregon Gray Panthers and ran a voluntary legal aid program for the elderly. They have pulled together a grassroots juggernaut on behalf of this effort involving the public interest—research organizations, State associations of advocates for ratepayers, and the ones that I think do a very good job given the limited tools they have today.

I ask unanimous consent that a set of letters endorsing this amendment be printed in the RECORD.

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

WASHINGTON DC,
February 28, 2002.

DEAR SENATOR: As the Senate begins consideration of S. 517, the comprehensive energy bill, we urge you to support several amendments that would protect consumers, especially as electricity markets continue to be deregulated.

First, Senator Wyden will likely be introducing an amendment to create an Office of Consumer Advocacy to handle energy issues within the Department of Justice (DOJ). This new office will represent the interests of consumers within the Federal Energy Regulatory Commission (FERC), before the courts and in front of Congress. Having an independent energy ombudsman within DOJ will provide important protections for consumers as FERC continues to deregulate the electricity market. Nothing demonstrates the need for this office more than the price spikes and blackouts in the western electricity market in 2000–2001. Moreover, the office will serve to protect consumers as FERC performs its general day-to-day energy sector oversight functions, which will become ever more crucial as the growing Enron scandal unfolds and efforts are made to provide greater oversight of energy trading markets.

With regard to the energy trading markets, Senator Feinstein is planning to address regulatory shortcomings made evident by Enron's collapse through an amendment that would provide for regulatory oversight by the Commodity Futures Trading Commission (CFTC) of derivative transactions on energy commodities. This would ensure that energy traders cannot operate without appropriate federal oversight that makes market transactions transparent. Given that it was the CFTC that initially allowed these types of transactions to escape scrutiny, it is important that Congress be explicitly clear in this legislation regarding what it expects of the CFTC in closing this loophole. In addition, we believe that it would be appropriate for FERC to have a greater role in this area as its primary concern should be the stability of the nation's energy markets, while the CFTC is set up to protect investors.

To further address the market problems that have become clear in the wake of the western electricity crisis, Senator Cantwell is planing to offer an amendment that would direct FERC to define precisely what a competitive market is and establish rules for when market-based rates will be permitted. In addition, the amendment would put in place market monitoring procedures so that FERC can better detect problems, before they lead to a complete breakdown in the market, and give FERC more authority to take action to protect consumers when the market is failing. This change is necessary to ensure that electricity suppliers do not continue to manipulate the market to the detriment of consumers, as was seen in the western market in 2000–2001.

S. 517 would simply repeal the Public Utility Holding Company Act (PUHCA) in its entirety, including consumer protections that have been in place for decades. Now, more than ever, it is clear that these protections are absolutely necessary. We believe that regulators could have used their authority under PUHCA to prevent some of the abuses that have come to light in the Enron debacle. If there are going to be amendments to PUHCA to make it more relevant to today's situation, then Congress must take affirmative steps to ensure that PUHCA's consumer

protection provisions remain in force, and where necessary are strengthened. For example, Senator Wyden will likely offer an amendment, which we support, to require that transactions between utilities and their affiliates be transparent, and to shield consumers from the costs and risks of interaffiliate transactions. The amendment would provide for: Streamlined FERC review of utility diversification efforts to ensure that there is appropriate regulatory oversight so that consumers are not the victims of abusive affiliate transactions; and structural limits on affiliate transactions to protect not only consumers, but unaffiliated competitors as well.

Finally, Senators Dayton and Conrad are planning to offer an amendment that would ensure that mergers in the energy sector ''promote the public interest,'' based on objective criteria that would be evaluated by FERC. Under current law, all that is necessary for merger approval is a determination that the merger is ''consistent with the public interest.'' Given the wave of mergers sweeping through the electric industry, and the collapse of meaningful competition in California and other states, we believe that a more protective standard than the current one is necessary to adequately protect consumers from abuse. FERC must hold the public interest paramount in evaluating any potential energy company mergers. The Dayton/Conrad amendment would: Establish criteria for FERC to consider in order to determine that a merger would ''promote the public interest,'' including efficiency gains, impact on competition, and its ability to effectively regulate the industry; clarify that these provisions would apply to all potential financial arrangements (not just stock acquisitions) which could lead to exertion of control over the entity, including partnerships; and clarify that FERC review applies to all electric and gas combinations.

We would also like to reiterate our organizations' support for Senator Jeffords' efforts to include a national renewable portfolio standard in the legislation, which would help diversify our energy mix and avoid future energy shortages and price spikes. We also support the Kerry/Hollings provision in the legislation to raise the national corporate average fuel economy (CAFE) standards, which will likewise help to provide energy security and protect the environment. In addition, we urge you to oppose efforts that will damage a pristine Alaskan ecosystem, supposedly in the name of energy security—the supply is too limited, the environment too fragile, and the costs too high.

Thank you for considering the needs and concerns of consumers while moving forward with this legislation. Please do not hesitate to contact us if you have any questions or need any information regarding how this comprehensive energy package will affect consumers.

Sincerely,

ADAM J. GOLDBERG,
Policy Analyst, Consumers Union.
MARK N. COOPER,
Director of Research, Consumer Federation of America.
ANNA AURELIO,
Legislative Director, U.S. PIRG.

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,
Silver Spring, MD, March 5, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I am writing to express the National Association of State Utility Consumer Advocates strong support for an amendment we expect to be offered by Senator Wyden establishing an Office of Consumer Advocacy in the Department of Justice.

Restructuring experiences in the states have consistently shown that the road to competition is a rocky one. In many instances, consumers have faced higher prices and limited, if any, choices. State consumer advocate offices have worked diligently to protect consumers during this difficult transition.

However, they have found their limited resources (half of our members' budgets are $1 million or less with less than 10 employees) stretched to the limit, particularly as wholesale prices set by FERC in Washington increasingly determine what consumers ultimately pay back home. Most consumer advocate offices simply do not have the resources to fight in both venues.

An Office of Consumer Advocacy would give residential consumers much needed representation in Washington and a fighting chance to benefit from legislation passed by Congress. We urge you to support this critical amendment.

Thank you for your leadership to enact comprehensive energy legislation.

Sincerely,

CHARLES A. ACQUARD,
Executive Director.

Mr. WYDEN. Mr. President, as I indicated earlier, my colleagues—particularly Senators BINGAMAN, MURKOWSKI, LEAHY, and HATCH—have been very gracious in working with me on this position. We are going to continue to work with them as this legislation is considered in the Senate and when this bill gets to conference.

As we go forward with this today, I hope we will ensure that there is a strong Federal presence to advocate for the consumer. I think these advocates at the State level do a good job given their limited resources.

Given the fact that so much of the energy business has moved interstate, and those interstate transactions can result in higher bills to small businesses in Georgia, Oregon, and across this country for senior citizens and others of modest means, I think we need to now have a Federal advocate.

I am pleased we have been able to assemble a bipartisan group that is going to help pass this today and continue to work to refine it as it is considered through the evolution of this legislation in the Senate and in conference.

I ask the Senate to approve the amendment at this time.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BINGAMAN. Mr. President, this is a good amendment. I congratulate the Senator from Oregon for his leadership in bringing this amendment to the Senate and for us to consider it as part of this bill. It has been cleared on both sides. I am authorized by the Republican manager as well to indicate that.

There is a lot already in the bill that protects consumers. Obviously, a main theme of this bill is to empower and protect consumers. This will add to that and further strengthen the bill.

We very much appreciate the cooperation of the other side in having this amendment added.

I urge all colleagues to support the amendment.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3014) was agreed to.

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I am going to address, in a few moments, the pending issue involving the energy bill, particularly when it comes to the renewable portfolio standard for energy. Before I do that, though, I ask the indulgence of the Senate for a few moments to address an unrelated issue which I think is of critical importance to our Nation.

(The remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise to speak to the pending matter being debated concerning the renewable portfolio standard.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, if I may propound a unanimous consent request before my colleague from Illinois continues with his comments, I ask unanimous consent, since we have a vote at 2 o'clock on the Thomas amendment, that at 1:50 we reserve 10 minutes equally divided between Senator THOMAS and myself where he can explain his amendment, and I can explain the arguments against it.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, I will try to make my presentation briefer so they have more time if needed. I thank the Senator from New Mexico for his leadership on this issue.

This is supposed to be an energy bill which is going to give America more energy security, make us more independent of foreign oil sources, clean up our environment, and provide for the energy needs of the growing American economy in the 21st century. That is a tall order for any single piece of legislation.

What happened on the floor of the Senate yesterday calls into question whether or not we are facing this challenge responsibly. If we cannot pass a fuel economy standard, a fuel efficiency standard for cars and trucks in America, then we have given a great victory not only to the special interests who are fighting it but a great victory to OPEC. Yesterday was a wonderful day of victory for OPEC and all of

the foreign oil producers who have America hooked on foreign sources of oil.

We came to the Senate floor and, by a vote of 67 to 32, better than a 2-to-1 margin, we rejected the notion that we would establish new fuel efficiency standards for cars and trucks in America. We haven't had such a standard since 1985. So for 17 years, no progress has been made. And by its decision, 67 to 32 yesterday, this Senate said: And we are not interested in changing it in the future.

The Senate gave authority to NHTSA, the National Highway Transportation Safety Administration, to take a look at it, consider it, view it, wrestle with it, to get back to us when they want to. That is totally unacceptable. It is an abdication of our responsibility to future generations. It is a decision which will come back to haunt us as we continue to be dependent on foreign energy sources.

This is going to drag us into political tight fixes and situations around the world where American lives will be at stake because the Senate does not have the courage to stand up and say to the American people: we need to give real leadership; to say to the Big Three in Detroit: you can do a better job, you can make better cars and trucks, and we challenge you to do it over a period of time; and to say to the American people: yes, you may not be able to buy the fattest, biggest SUV that can come out of your dream sequence, but we believe you can have a vehicle that is safe and fuel efficient for you and your family and your business.

We were unwilling to do that yesterday—too much to ask of the American people to consider that possibility. I looked at some of the comments that were written and said on the floor yesterday suggesting that the American people are just too self-centered to be prepared to make any sacrifices for the good of this country. How could anybody start with that premise after what we have seen since September 11?

This country is prepared to roll up its sleeves and fight the war on terrorism. This country is prepared to sacrifice if necessary to make us more secure. The families and businesses across this country are waiting for leadership from this Congress to make this a better, safer, and stronger Nation.

Yesterday, colleagues in opposition to fuel efficiency said: We wouldn't dare ask Americans to consider making that kind of sacrifice.

I am sorry. We missed a golden opportunity. I am afraid today we are about to do the same thing. It is bad enough that we can't have fuel efficiency standards. Now we are talking about what is known as a renewable portfolio which means looking at alternative forms of energy that do not threaten the environment and give us energy independence.

I applaud Senator JEFFORDS of Vermont. I was happy to cosponsor his amendment. He says America should move to the point where in the year 2020, about 18 years from now, 20 percent of our electricity is generated from renewable sources. Today it is about 4 percent. The underlying bill sets a goal of about 10 percent.

Why is this important? Because as we find other sources for electricity, we lessen our dependence on foreign sources, and we also have a cleaner environment. We create a new industry to promote and produce this technology which is going to make us less and less dependent on our current sources for the generation of electricity. Those sources would obviously be, in most instances, coal; in some instances it would be gas, natural gas; oil; or it could be nuclear.

I come from a State that produces coal. I would like to see us return to the day when coal becomes an environmentally responsible alternative to other sources of energy. I have voted, for 20 years, and I will continue to do so, for research to find ways to use that coal in an environmentally sensible way so that we can promote energy sources in the United States not at the expense of America's public health. We need to do that.

At the same time, we need to look to other sources that are benign, sources that can produce electricity without damaging the environment in any way. One of those that is clearly obvious is wind power. This is a new concept for a lot of people. They have not seen the wind generating stations across the United States, but they are popping up all over the place. Senator GRASSLEY from Iowa is in the Chamber. The State of Iowa is seeing more and more of the wind-generated turbines that are, frankly, generating electricity for small and large uses. That makes a lot of sense, and it is part of the renewable portfolio.

It is important for us to keep an eye on these elements that can give us energy independence and a cleaner environment.

Wind power is used for electricity. It lights our homes, our office buildings, and powers our industries. It is very misleading for people to say we don't need to worry about wind power; we are going to go and drill for oil and gas in the Arctic; we are going to go to the ANWR area, the National Wildlife Refuge. That seems to be the only answer from the other side of the aisle when you talk about America's future energy needs. I think that is a false choice and a bad choice. There are many other concepts of conservation and fuel efficiency and making certain that we have alternative fuels that are going to be encouraged.

Can this be done? Can we really move to a 20-percent standard by the year 2020? We would have to work hard at it. We would have to have leadership in Washington. Take a look at some of the other countries around the world that have said they are going to do the same thing. Denmark, Spain, and Germany are already near 20 percent in their electricity production just from wind turbines alone. The European Union has a goal of reaching 22-percent renewable energy in electricity by the year 2010. The State of Nevada has a 15-percent RPS by 2013. Connecticut and Massachusetts are looking for similar goals. The State of California is currently at 12 or 13 percent in their renewable portfolio. The city of Chicago, under the leadership of Mayor Daley, has said they will move toward more wind power as a source of electricity.

In individual settings around the country and around the world, leaders are stepping up and saying: We accept the challenge. We believe we can do this. Whether we are going to use wind power, solar energy, geothermal or biomass, there are ways to do it that can be attained and attained successfully.

There will be critics who will come to the floor and say this is an idea that is also flawed, much like fuel efficiency in vehicles. They will toss out this opportunity for us to look ahead with vision and determination to become a nation that is more energy secure, more energy independent, and using sources of energy that are more environmentally acceptable.

I say to my colleagues: I hope we don't gut this provision when it comes to the renewable portfolio. Senator JEFFORDS has a valuable suggestion. I hope it is offered and that it passes. Please, let's not go any further down the chain lower than the 10 percent that is being called for by the underlying bill. If this is truly going to be an energy bill to meet our Nation's energy needs, we have to address the real issues of fuel efficiency, of conserving energy in this country, and of finding alternative sources that are environmentally acceptable.

At this point, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Mr. President, under the unanimous consent agreement entered into, we reserved 10 minutes—5 for myself, 5 for Senator THOMAS—and I think the protocol is that since Senator THOMAS has the amendment, he would want his 5 minutes last. I will go ahead with my statement at this point and urge people not to support the Thomas amendment.

Let me, once again, make the large points that need to be made. I will put up the map of the country again. These are the electricity regions that are all over the country. This largest one, by far, of course, is in the western part of the country and contains 14 States. The amendment before us, which Senator THOMAS offered, is an amendment

that the Western Governors' Association has put together, which, as I see it, does several things.

First, it dramatically complicates the process by which we try to ensure that the system for transmitting power around this country is reliable. Let me put up another chart that tries to make that point. I will not go through every detail of it. I will try to make the point that if a complaint is filed and it is indicated that some utility is not abiding by the standards that need to be abided by in order to ensure the reliability of the system, and it is not doing what is required, then under Senator THOMAS'S amendment you have a very complex procedure that could, in fact, take place, where the electric reliability organization that is called for in his amendment decides it wants to take action, and before it can, it is required to give notice, have a hearing. If it decides to take action, all it is permitted to do is impose a penalty. It cannot compel compliance or issue an order compelling compliance, as FERC can.

This electric reliability organization is also required to approve regional entities and delegate enforcement authority to them; and there are presumptions written into this that say, just in the western part of the country, just in this area here in the pink, there are rebuttable presumptions that anything they do is right—that FERC has one set of standards that apply to the rest of the country, but in this area there are rebuttable presumptions that what is done is accurate.

In my view, this complicates matters. It is an inconsistent set of rules. It is not an appropriate set of national rules. It is not fair, quite frankly, to the rest of the country. I come from a State that is in this area, so perhaps I should be on the other side of this issue. But this is not good national policy. In my view, it is not fair to a lot of the other States. We have letters I have put into the RECORD already to indicate that various of the regional transmission organizations are upset about this inconsistent treatment.

Quite frankly, the complexity of this amendment undercuts any meaningful accountability in the system. We have been trying to ensure that someone can be held accountable when the lights go out, when the electricity quits flowing. You have to know whom to call to say they have fallen down on the job: it was your responsibility to do this, and you have fallen down on the job.

Under this amendment, it is going to be really tough to tell whom you ought to call because the electric reliability organization might be the right one, or the regional entity might be, or FERC might have some authority. Quite frankly, we can see the time down the road when we can wind up with a hearing in the Energy Committee, the lights will have gone out somewhere in the country, power will have failed, and we will call in the FERC Commissioners and say: What is the problem? Why were you not doing your job? They will say: We were doing our job. Under the statute you passed, you told us to presume these people knew what they were doing. It was a rebuttable presumption. We took you at your word. It turns out they didn't know what they were doing.

I think the proposal we have in the underlying bill is far preferable, much simpler. It puts accountability right at FERC and gives FERC flexibility to continue to defer to the industry organization, continue to defer to regional organizations, as they determine appropriate. I urge people to oppose the Thomas amendment on those grounds.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, we have gone over this pretty thoroughly. We have pretty much explained the direction we are taking.

I might say this to the Senator from New Mexico regarding his last comment that FERC would have the authority to make these decisions. Now we have local input and different kinds of things, but FERC has the authority. To make the suggestion that FERC would somehow say we could not do it simply is not accurate.

So we are trying to ensure transmission grids and delivery of electricity that will be safe and reliable. Consumers need that. The lights will go on, and they must stay on.

The amendment I am offering establishes a nationwide organization that has the authority to establish and enforce reliability standards. The new reliability organization would be run by participants and be overseen by FERC. The idea that somehow there is no authority here is simply not true. The reliability organization would be made up of representatives of everybody affected—residential, commercial, industrial, State, independent power producers, electric utilities, and others, as opposed to only FERC.

There is no question but that we need a new system. The question is—we can do it in different ways—how will we do it? It gives all the responsibility to FERC and sets the standards. We agree that we need protection. It is not whether we need it, but it is how we get it. I think the Daschle bill takes the wrong approach; hence our amendment. We know there are great differences in geography, market designs, and economics over the different parts of the country. So we want to have those people in those areas having input into how to resolve it in that particular area. FERC is not necessarily sensitive to those particular changes and differences that are there. So we believe very strongly we need to do that.

There is a very important question to the Northwest, particularly, and that is standards applicable for transmission from Mexico and Canada. The Canadian import of power is particularly important, of course, and we don't want to let that happen. So this amendment addresses these concerns. It converts the existing NERC voluntary reliability system into a mandatory reliability system.

The new reliability organization will have enforcement powers with real teeth to ensure reliability. The amendment provides mandatory reliability rules that will apply to all uses of the transmission grid. No loopholes, nobody is exempted. It is the kind of thing, certainly, that most of us believe is the direction we ought to take in government; that is, to empower local people who are experts in what they are doing.

FERC has been working for a very long time. When we look at the California situation of last summer, we see that reliability was the issue that was least important. Reliability was there. So we ought to use that experience rather than trying to build a new bureaucracy in FERC which doesn't have the authority or the capability of doing these kinds of things.

I urge that you vote for this amendment.

If I might, I ask unanimous consent that Senator SHELBY be added as a cosponsor to the amendment.

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

The Senator from Idaho.

Mr. CRAIG. I strongly support what the Senator from Wyoming has brought to the floor. As we have moved to restructure the electrical systems of our country, the Senator from New Mexico sweepingly turns it into a Federal single authority without the kind of flexibility we have sought.

The Senator from Wyoming is absolutely correct. What we have had has stood the test of time. Western Governors believe in that. If you want to take the authority away from the States and put it with the bureaucracy in Washington, DC, then you would oppose the Senator from Wyoming. I believe that is exactly the opposite direction in which we are heading. Therefore, I hope my colleagues will support the amendment dealing with the reliability issue of this important title.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I move to waive the pertinent section of the Budget Act, and I ask for the yeas and nays.

I also have to add, we did not even know about this until 10 minutes ago. We have not even had time to look at what they are talking about. The Budget Committee is not able to tell us. I guess if my colleagues want to play this game, we can do it on the whole bill.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

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

The yeas and nays resulted—yeas 60, nays 40, as follows:

[Rollcall Vote No. 49 Leg.]

YEAS—60

Allard	Enzi	McConnell
Allen	Feinstein	Miller
Baucus	Frist	Murkowski
Bennett	Gramm	Murray
Bond	Grassley	Nelson (NE)
Boxer	Gregg	Nickles
Brownback	Hagel	Roberts
Bunning	Hatch	Santorum
Burns	Helms	Sessions
Campbell	Hollings	Shelby
Cantwell	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Conrad	Jeffords	Stevens
Craig	Johnson	Thomas
Crapo	Kohl	Thompson
DeWine	Kyl	Thurmond
Domenici	Lincoln	Voinovich
Dorgan	Lott	Warner
Ensign	McCain	Wyden

NAYS—40

Akaka	Dodd	Lugar
Bayh	Durbin	Mikulski
Biden	Edwards	Nelson (FL)
Bingaman	Feingold	Reed
Breaux	Fitzgerald	Reid
Byrd	Graham	Rockefeller
Carnahan	Harkin	Sarbanes
Carper	Inouye	Schumer
Chafee	Kennedy	Specter
Cleland	Kerry	Stabenow
Clinton	Landrieu	Torricelli
Corzine	Leahy	Wellstone
Daschle	Levin	
Dayton	Lieberman	

The PRESIDING OFFICER (Mrs. CARNAHAN). On this vote the yeas are 60 and the nays are 40. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order fails.

If there is no further debate, the question is on agreeing to the amendment No. 3012 of the Senator from Wyoming.

The amendment (No. 3012) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Madam President, I will comment for a couple of minutes regarding what we went through in the last 20 minutes. I note the presence of the majority whip on the floor, for whom I have the greatest respect and total trust in terms of fair treatment.

Regarding the point of order raised on this amendment, which no one knew about until it was raised, from what I can tell, on our side of the aisle—it would have been a good and fair thing had it been called to the attention of the proponent of the amendment. I assure Members, had the opponents of the amendment prevailed on the point of order, on this particular amendment, all one had to do was change it. Instead of directed spending, it would be subject to an appropriation and it would no longer be subject to a point of order, from what I have been informed in my conversations with the Parliamentarian.

So that means we would just go through two votes because somebody thought making a point of order on the Budget Act would have gotten rid of that amendment. It would not have. Had that vote been 59 instead of 60, we would fix the amendment, re-offer it, and do what I just said by way of altering it.

That could have all been understood between enlightened staffers and Senators who would like to do that. I don't think the Senators were aware of it. I just raise it because it shocked me that this very important amendment, which I worked on and participated in, was subject to a point of order. I didn't know it or I would have advised them to fix it.

I yield the floor.

I say to Senator BINGAMAN, no aspersions on you whatsoever on that.

Mr. BINGAMAN. Madam President, just to make clear for the information of my colleague, I did advise the sponsor of the amendment about a half hour before the vote that I had been informed that a Budget Act point of order could be raised, and I would intend to raise it. I understand from him now that was not adequate time for him to get the advice he needed in this connection. Perhaps we should have delayed the vote for a longer period. That was not even considered by me or him.

At this point, unless there are other Members seeking recognition, I will offer another amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, I thank my colleague from New Mexico. I encourage Members to have our staffs try to work a little more closely so we can avoid duplication.

Clearly, I personally had not been notified, although I was off the floor. I was across the street with some of the folks who were putting on a press conference. As a consequence, I had staff going back and forth.

Rather than belabor that point, I think the recognition that clearly we had an alternative, as the senior Senator from New Mexico indicated, under a budget provision, suggests that in the future we could work a little more closely to ensure we move along because there may be other points of order on other amendments that will be coming up.

I encourage Senator BINGAMAN to proceed with his proposed amendment, and we will move on with this process. We look forward to participating.

AMENDMENT NO. 3016 TO AMENDMENT NO. 2917

Mr. BINGAMAN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3016 to amendment No. 2917.

Mr. BINGAMAN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the provisions relating to the Renewable Portfolio Standard)

On page 67, strike line 6 and all that follows through page 76, line 11, and insert the following:

Title VI of the Public Utility Regulatory Policies Act of 1978 is amended by adding at the end the following:

"SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.

''(a) MINIMUM RENEWABLE GENERATION REQUIREMENT.—For each calendar year beginning in calendar year 2005, each retail electric supplier shall submit to the Secretary, not later than April 1 of the following calendar year, renewable energy credits in an amount equal to the required annual percentage specified in subsection (b).

''(b) REQUIRED ANNUAL PERCENTAGE.—

''(1) For calendar years 2005 through 2020, the required annual percentage of the retail electric supplier's base amount that shall be generated from renewable energy resources shall be the percentage specified in the following table:

"Calendar Years	Required annual percentage
2005 through 2006	1.0
2007 through 2008	2.2
2009 through 2010	3.4
2011 through 2012	4.6
2013 through 2014	5.8
2015 through 2016	7.0
2017 through 2018	8.5
2019 through 2020	10.0

''(2) Not later than January 1, 2015, the Secretary may, by rule, establish required annual percentages in amounts not less than 10.0 for calendar years 2020 through 2030.

''(c) SUBMISSION OF CREDITS.—(1) A retail electric supplier may satisfy the requirements of subsection (a) through the submission of renewable energy credits—

''(A) issued to the retail electric supplier under subsection (d);

''(B) obtained by purchase or exchange under subsection (e); or

''(C) borrowed under subsection (f).

''(2) A credit may be counted toward compliance with subsection (a) only once.

''(d) ISSUANCE OF CREDITS.—(1) The Secretary shall establish, not later than one year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track renewable energy credits.

''(2) Under the program, an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits. The application shall indicate—

''(A) the type of renewable energy resource used to produce the electricity,

''(B) the location where the electric energy was produced, and

''(C) any other information the Secretary determines appropriate.

''(3)(A) Except as provided in paragraphs (B), (C), and (D), the Secretary shall issue to an entity one renewable energy credit for each kilowatt-hour of electric energy the entity generates from the date of enactment of this section and in each subsequent calendar year through the use of a renewable energy resource at an eligible facility.

''(B) For incremental hydropower the credits shall be calculated based on the expected increase in average annual generation resulting from the efficiency improvements or

capacity additions. The number of credits shall be calculated using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission. The calculation of the credits for incremental hydropower shall not be based on any operational changes at the hydroelectric facility not directly associated with the efficiency improvements or capacity additions.

''(C) The Secretary shall issue two renewable energy credits for each kilowatt-hour of electric energy generated and supplied to the grid in that calendar year through the use of a renewable energy resource at an eligible facility located on Indian land. For purposes of this paragraph, renewable energy generated by biomass cofired with other fuels is eligible for two credits only if the biomass was grown on the land eligible under this paragraph.

''(D) For renewable energy resources produced from a generation offset, the Secretary shall issue two renewable energy credits for each kilowatt-hour generated.

''(E) To be eligible for a renewable energy credit, the unit of electric energy generated through the use of a renewable energy resource may be sold or may be used by the generator. If both a renewable energy resource and a non-renewable energy resource are used to generate the electric energy, the Secretary shall issue credits based on the proportion of the renewable energy resource used. The Secretary shall identify renewable energy credits by type and date of generation.

''(5) When a generator sells electric energy generated through the use of a renewable energy resource to a retail electric supplier under a contract subject to section 210 of this Act, the retail electric supplier is treated as the generator of the electric energy for the purposes of this section for the duration of the contract.

''(6) The Secretary may issue credits for existing facility offsets to be applied against a retail electric suppliers own required annual percentage. The credits are not tradeable and may only be used in the calendar year generation actually occurs.

''(e) CREDIT TRADING.—A renewable energy credit may be sold or exchanged by the entity to whom issued or by any other entity who acquires the credit. A renewable energy credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may be carried forward for use within the next four years.

''(f) CREDIT BORROWING.—At any time before the end of calendar year 2005, a retail electric supplier that has reason to believe it will not have sufficient renewable energy credits to comply with subsection (a) may—

''(1) submit a plan to the Secretary demonstrating that the retail electric supplier will earn sufficient credits within the next 3 calendar years which, when taken into account, will enable the retail electric suppliers to meet the requirements of subsection (a) for calendar year 2005 and the subsequent calendar years involved; and

''(2) upon the approval of the plan by the Secretary, apply credits that the plan demonstrates will be earned within the next 3 calendar years to meet the requirements of subsection (a) for each calendar year involved.

''(g) CREDIT COST CAP.—The Secretary shall offer renewable energy credits for sale at the lesser of 3 cents per kilowatt-hour or 200 percent of the average market value of credits for the applicable compliance period. On January 1 of each year following calendar year 2005, the Secretary shall adjust for inflation the price charged per credit for such calendar year, based on the Gross Domestic Product Implicit Price Deflator.

''(h) ENFORCEMENT.—The Secretary may bring an action in the appropriate United States district court to impose a civil penalty on a retail electric supplier that does not comply with subsection (a), unless the retail electric supplier was unable to comply with subsection (a) for reasons outside of the supplier's reasonable control (including weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority. A retail electric supplier who does not submit the required number of renewable energy credits under subsection (a) shall be subject to a civil penalty of not more than the greater of 3 cents or 200 percent of the average market value of credits for the compliance period for each renewable energy credit not submitted.

''(i) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

''(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section,

''(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary, and

''(3) the quantity of electricity sales of all retail electric suppliers.

''(j) ENVIRONMENTAL SAVINGS CLAUSE.—Incremental hydropower shall be subject to all applicable environmental laws and licensing and regulatory requirements.

''(k) STATE SAVINGS CLAUSE.—This section does not preclude a State from requiring additional renewable energy generation in that State, or from specifying technology mix.

''(l) DEFINITIONS.—For purposes of this section—

''(1) BIOMASS.—

''(A) Except with respect to material removed from National Forest System lands, the term 'biomass' means any organic material that is available on a renewable or recurring basis, including dedicated energy crops, trees grown for energy production, wood waste and wood residues, plants (including aquatic plants, grasses, and agricultural crops), residues, fibers, animal wastes and other organic waste materials, and fats and oil.

''(B) With respect to material removed from National Forest System lands, the term 'biomass' means fuel and biomass accumulation from precommercial thinnings, slash, and brush.

''(2) ELIGIBLE FACILITY.—The term 'eligible facility' means—

''(A) a facility for the generation of electric energy from a renewable energy resource that is placed in service on or after the date of enactment of this section; or

''(B) a repowering or cofiring increment that is placed in service on or after the date of enactment of this section at a facility for the generation of electric energy from a renewable energy resource that was placed in service before that date.

''(3) ELIGIBLE RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (excluding solid waste and paper that is commonly recycled), landfill gas, a generation offset, or incremental hydropower.

''(4) GENERATION OFFSET.—The term 'generation offset' means reduced electricity usage metered at a site where a customer consumes energy from a renewable energy technology.

''(5) EXISTING FACILITY OFFSET.—The term 'existing facility offset' means renewable energy generated from an existing facility, not classified as an eligible facility, that is owned or under contract to a retail electric supplier on the date of enactment of this section.

''(6) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional generation that is achieved from increased efficiency or additions of capacity after the date of enactment of this section at a hydroelectric dam that was placed in service before that date.

''(7) INDIAN LAND.—The term 'Indian land' means—

''(A) any land within the limits of any Indian reservation, pueblo or rancheria,

''(B) any land not within the limits of any Indian reservation, pueblo or rancheria title to which was on the date of enactment of this paragraph either held by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation,

''(C) any dependent Indian community, and

''(D) any land conveyed to any Alaska Native corporation under the Alaska Native Claims Settlement Act.

''(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(9) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated by a renewable energy resource.

''(10) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (including municipal solid waste), landfill gas, a generation offset, or incremental hydropower.

''(11) REPOWERING OF COFIRING ENFORCEMENT.—The term 'repowering or cofiring enforcement' means the additional generation from a modification that is placed in service on or after the date of enactment of this section to expand electricity production at a facility used to generate electric energy from a renewable energy resource or to cofire biomass that was placed in service before the date of enactment of this section.

''(12) RETAIL ELECTRIC SUPPLIER.—The term 'retail electric supplier' means a person, that sells electric energy to electric consumers and sold not less than 1,000,000 megawatt-hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year; except that such term does not include the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or a rural electric cooperative.

''(13) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier to electric customers during the most recent calendar year for which information is available, excluding electric energy generated by—

''(A) an eligible renewable energy resource;

''(B) municipal solid waste; or

''(C) a hydroelectric facility.

''(m) SUNSET.—This section expires December 31, 2030.''.

Mr. BINGAMAN. Madam President, this amendment I am offering is a substitute amendment for the provision that is in the bill at the current time related to renewable portfolio standards. I am offering it today to ensure

we establish a clear policy statement of our need as a nation to diversify our power generation sector.

This amendment establishes a renewable portfolio standard for the electricity sector. This is the corollary, as I see it, to the renewable fuel standard that we have heard so many laudatory statements about yesterday. This amendment will ensure that all retail sellers of electricity have a portion of their generation—produce a portion of their generation from renewable resources.

The amendment is modeled after the very successful Texas program that President Bush implemented when he was Governor of Texas. The basic outline is as follows.

All retail sellers with annual sales greater than a million megawatt hours will be required to contract for and secure a certain amount of generation annually from eligible renewable resources. Most co-ops and municipals would be exempt.

Beginning January 2005, 2 years after the date of enactment, retail suppliers will be required to include a minimum of 1 percent of renewables in their electricity sales. The percentage would increase annually by .6 percent until 2020.

There are several adjustments to the calculation based on existing renewables. A retailer can subtract from its sales base all existing generation from renewable generation resources, including hydro. The renewable resources include solar, wind, ocean, biomass, landfill gas, geothermal, generation offsets from renewables that are ''net metered'' at a customer's facility, and generation from incremental hydropower improvements and incremental generation from repowering or cofiring.

For new renewables placed in service after the date of enactment, the retailer will get one credit per kilowatt hour generated; 2 credits for net metered offsets; and 2 credits for grid-connected renewables on Indian land. Retailers can apply the credits to their own obligations, or they can sell the credits.

Existing nonhydro renewables, including municipal solid waste, can be used to offset a retail provider's own annual obligation, but they could not be used for credit trading.

To facilitate the ramp-up of the program, retailers can start to accrue credits from the date of enactment, which they can bank to use within the next 5 years.

The first year of the program, the retailer may borrow against expected generation to be installed within the next 3 years. The price cap of the lesser of 3 cents per kilowatt hour or 200 percent of the average market value of credits for the previous year is contained in the bill.

This is not a guarantee for any renewable generator. This is not a new version of PURPA. Every renewable developer will have to compete in the marketplace. There will be no bureaucrats dictating prices.

I think this would be a major step forward in ensuring that we do develop a diverse set of sources from which we can generate power in this country. I commend to my colleagues the reports on the experience they have had in Texas, in particular, since we have modeled this proposal closely after what was approved in Texas.

I think it is an excellent proposal. I hope very much at the conclusion of our deliberations on this renewable portfolio issue, this amendment can be adopted.

I understand my colleague from Vermont is here and has a second-degree amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, I ask for the yeas and nays on the Bingaman amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MURKOWSKI. Madam President, I believe Senator BINGAMAN and I can just indicate amendments that we have. I will certainly defer to you on Senator JEFFORDS. We have a couple of Collins amendments, I believe, on our side, and a Kyl amendment that we know about at this time.

Mr. BINGAMAN. Madam President, for the information of my colleague, I am not familiar with the Collins amendments. But I do know of Senator JEFFORDS' intent to offer an amendment, and I did know of Senator KYL's intent to offer an amendment. I will be glad to consult with my colleague about any additional amendments that would be offered.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I direct a question to the Senator from Alaska through the Chair: The Collins amendment applies to the same subject matter?

Mr. MURKOWSKI. In response to the Senator from Nevada, it is my understanding that they do. One is, I believe, on existing renewables, that they would count. I am not sure that I have information on the other one at this time, but I will be happy to provide it.

Mr. REID. I say to my friend from Alaska, it would be good if today we can finish this renewable part of the amendment package. We do know, as has been talked about here, the amendment of the Senator from New Mexico decreases what is in the bill 8.5 percent.

The Jeffords amendment increases it to 20 percent, and the Kyl amendment would wipe out all of them.

We will be happy to work procedurally any way possible to have a fair vote and have this issue resolved. Maybe we could do all these votes later this evening.

Mr. MURKOWSKI. I would be happy to encourage Senators on our side to come over with their amendments.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 3017 TO AMENDMENT NO. 3016

Mr. JEFFORDS. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS] proposes an amendment numbered 3017 to amendment No. 3016.

Mr. JEFFORDS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD under ''Amendments Submitted.'')

Mr. JEFFORDS. Madam President, I rise to offer an amendment which would do more to encourage development of renewable energy in this country than any other provision in the legislation currently before us.

My amendment will gradually increase the amount of electricity generated by renewable energy in this country to 20 percent by 2020.

I am deeply convinced that it is not only possible to achieve this goal, it is the best policy for this country, and for our energy future.

For over 20 years I have pushed clean, renewable energy in this Congress.

In fact, 25 years ago when I came into this body, we were in another energy crisis. That was brought about by the oil cartel that was holding up oil coming from the Middle East. We suffered greatly with long lines of cars. I have been involved with this kind of a problem ever since then. In fact, during that period of time where we had problems created by the OPEC cartel, I was able to offer very significant amendments, working with my partners at the time.

For instance, at that time, we introduced an amendment to make sure we had a photovoltaic effort going on which would help increase the utilization of renewable energy by looking to the Sun for the answer. That was a time when a number of us had come to Congress and were freshmen, but we knew the kind of chaos we had.

The amendment was to the appropriations bill. It was an $18 million amendment. I remember it very well. When I went to offer it, the chairman of the subcommittee, Tom Bevill of Alabama, came up to me and wrapped his arm around me. He said: Son, you don't offer amendments to appropriations bills until you have checked with me. I said: Gee, I am sorry, but I can't wait for that. He said: Well, why not? I said: Because I have 80 cosponsors. He said: 80 cosponsors? I said: Yes, 80 cosponsors. He said: Well, I guess we will have to go ahead.

We went ahead. It passed. We created a photovoltaic industry in this Nation at that time which brought forward a considerable amount of energy relief.

In addition, at the same time, three of us—Congressman Mineta, Congressman Blanchard, and myself—introduced one to create development for

wind energy. At that time, we did not know who was going to get the credit, so we all kind of flipped coins. The winner was Congressman Blanchard from Michigan who went on to be Governor. Of course, Norm Mineta is now Secretary of Transportation. And I am still here.

But those really were the only two significant renewable energy provisions that passed. They are still there. They were important contributions. But it is time for us to put further emphasis and create further opportunities with respect to the renewable energy field.

It is hard not to, when you see the lakes and forests in my State dying from acid rain.

We have to clean up our act.

It is hard to read the health statistics from air pollution, particularly for the very young and elderly, and not worry about the emissions that continue to pour from this country's smokestacks.

It is difficult not to care about renewable energy when the northern maple trees are disappearing and our ocean temperatures are rising.

We all should care. I am disappointed that this White House and many in this Congress do not care quite enough.

It is unconscionable to continue to shackle ourselves to fuels that dirty our air and water, and that compromise our national security, when clean, abundant, and affordable domestic alternatives exist.

We owe something better to our children, to our environment and to our future.

The amendment that I am offering this morning would gradually increase the amount of electricity produced from renewable energy nationwide, reaching 20 percent by the year 2020.

States are already out in the forefront on this issue, with 12 States having already enacted renewable energy standards and almost a dozen others actively considering one.

Governor Bush signed one into law in Texas in 1999. Nevada law currently requires that 15 percent of state electricity come from renewable energy by 2013, and California is on the verge of passing a state requirement of 20 percent renewables by 2010. This is twice as aggressive as the standard in my amendment.

The technology to produce renewables is clearly sufficient to meet these standards.

During the more than 20 years that I have been in this Congress, the costs of generating wind and solar energy have decreased by 80 percent. Throughout the world, wind is the fastest growing source of electricity generation, and in this country wind-generated electricity is generally competitive with traditional fossil and other fuels.

In 2001, the U.S. wind industry installed $1.7 billion worth of new generating equipment. As this chart illustrates, current installed wind capacity almost doubled between 2000 and 2001, bringing total wind capacity in the United States to 4,258 megawatts, representing billions of dollars in jobs and investments.

These two very different windmill projects, one from the 1800s and a modern Texas wind farm, illustrate how wind has moved from the past, and into our future.

This Hawaii power plant is operating on geothermal energy, which is also found abundantly throughout the American West.

This office complex in Louisville, KY, is heated and cooled by geothermal heat pumps.

Vast sources of biomass, such as the wood pulp that fires this California power plant, are found throughout the United States. Biomass currently generates more electricity than any other U.S. renewable resource.

As for solar, the Sacramento Municipal Utility District estimates that if every home built in California subdivisions each year had photovoltaic energy roofs similar to the one in this picture, they would produce the energy equivalent of a major 400 to 500 megawatt power plant every year.

So the technology to produce renewable energy is clearly here. The resources also are here. Vast quantities of wind power are found along the East Coast, the West Coast, across large parts of the American West and across the Appalachian Mountain Chain. North Dakota also has consistent wind energy sufficient to supply 36 percent of the electricity needed in the lower 48 states.

The United States has the technical capacity to generate 4.5 times its current electricity needs from a combination of wind, bioenergy, and other renewable resources.

As to affordability, Federal studies have consistently shown that a Federal renewables standard of 20 percent will have little or no impact on overall consumer energy costs. The most recent study by the Department of Energy's Energy Information Administration has found that consumer prices for electricity under a 20 percent standard would be largely the same as without one, resulting in an increase of only 3 percent by 2020.

Further, as indicated on the chart—with purple indicating ''business as usual,'' and green representing a 20 percent RPS by 2020—EIA studies have shown that by 2020, a 20 percent Federal RPS would have no measurable impact on overall consumer energy bills, which would include electricity bills along with home heating and cooling bills, and commercial and industrial energy costs. So the technology is there, the resource is there, and the costs to consumers are minimal.

Despite this, the contribution of renewables to the U.S. electricity market is still well under 3 percent. We must help promote these industries, the same way this Federal Government of our has assisted traditional fuels such as coal, oil and gas, nuclear and hydropower throughout their histories. We must level the playing field for the renewables industry and facilitate market entry of these valuable resources.

Why focus so much on these resources? Renewable energy is good for the environment, provides jobs and investment, and increases our energy security.

The U.S. Department of Energy has found that, as the demand for energy grows, without changes to Federal law, U.S. carbon emissions will increase 47 percent above the 1990 level by the year 2020. However, as this chart shows—with green representing carbon emissions with a 10 percent RPS by 2020, purple representing a 20 percent RPS by 2020 and pink showing the improvements that can be made by additional energy efficiency provisions—with a 20 percent renewables standard, U.S. carbon dioxide emissions will decrease by more than 18 percent by the year 2020.

Adding renewables to our energy mix will also reduce emissions of mercury, sulfur dioxide, and nitrogen dioxide, which contribute to the problems of smog, acid rain, respiratory illness, and water contamination.

A Federal 20 percent renewable energy standard will create thousands of new, high-quality jobs and bring a significant new investment to rural communities. It will create an estimated $80 million in new capital investment, and more than $5 billion in new property tax revenues.

It will bring greater diversity to our energy sector, creating greater market stability, and reducing our vulnerability to terrorist attacks to our energy infrastructure.

For all these reasons, I strongly support a requirement that would achieve the maximum amount of renewable energy production in this country.

Claims that a 20 percent renewable portfolio standard by 2020 is impossible to achieve, would cost the American consumer billions, and would place an undue burden on industry are simply not supported by the facts. Clearly, renewable standards below this 20 percent are easily achievable, and should be strongly supported by this body.

I urge my colleagues to support inclusion of a strong renewables standard in this bill. Without such a standard, I think we all must question whether this bill is in fact going in the right direction to ensure a clean, secure America.

My amendment creates a renewable energy standard under which utilities would be required to gradually increase the amount of electricity produced from renewable energy resources, starting at 5 percent in 2005 and leveling out at 20 percent in 2020. That is plenty of time to adjust, plenty of time to make sure we can get to that goal without really creating any problems

This level allows a long ramp-up time before utilities must begin to comply, and also gives them the flexibility of adjusting their renewable energy generation within 5 year increments rather than every year.

My amendment places a cap on the cost of renewable energy credits by allowing retailers to purchase credits directly from the Secretary of Energy at 3 cents per credit, thereby ensuring price predictability for retail suppliers.

The amendment recognizes the special economics of small entities, and excludes small retailers which sell 500,000 megawatt hours or less of electric energy from the requirements of the bill.

However, my amendment recognizes that not only do we want to encourage renewable energy production and purchase by these small entities, they comprise a large part of the market for larger retailers. The amendment therefore directs the Secretary of Energy to apply money generated by the purchase of renewable energy credits to a program to maximize generation and purchase of renewable energy by these small retailers.

My amendment will also allow utilities credit for existing renewable energy production, thereby increasing the potential for additional renewable production from existing facilities and rewarding those who have taken the initiative to develop green energy.

Madam President, how much time do I have?

The PRESIDING OFFICER. There is no time limit.

Mr. JEFFORDS. Madam President, I yield the floor.

Mr. BINGAMAN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JEFFORDS. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. JEFFORDS. Madam President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. JEFFORDS. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Madam President, is there a quorum call in progress?

The PRESIDING OFFICER. There is not.

Mr. HELMS. I understood there to be one.

Madam President, I ask unanimous consent that it be in order for me to make my brief remarks seated at my desk.

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

Mr. HELMS. I thank the Chair.

(The remarks of Mr. HELMS are printed in today's RECORD under ''Morning Business.'')

Mr. HELMS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Madam President, I rise to enlighten my colleagues about renewables because we are going to be spending a good deal of time on the issue of renewables. Senator JEFFORDS has called for an increase to the underlying bill.

I want to make sure everybody knows that we didn't suddenly find renewables. Renewables have been around for a long time. Some Members aren't too sure of where we have been on renewables. Some are of the opinion that we haven't spent much money, time, or attention. Let me try and turn that around because we have spent $6.4 billion on renewables in the past 5 years. That money has been well spent. We are going to continue to spend money on renewables.

We spent $1.5 billion in direct research and development for renewables; $500 million for solar; $330 million for biomass; $150 million for wind; $100 million for hydrogen; and nearly $5 billion in tax incentives; $2.6 billion in reduced excise taxes for alcohol fuels, ethanol. So it is not that we have been asleep in this process.

The problem we have is that nonhydro renewables make up less than 4 percent of our total energy needs and less than 2 percent of our electric consumption. I am sorry Senator JEFFORDS is not present. But it isn't that we don't support renewables; the question is, At what price?

As I indicated, we spent $6.5 billion in the last 5 years, and we have about 4 percent of our total energy needs in nonhydro renewables, and less than 2 percent of our electric consumption. We can throw enough money at this. The question is, How much do taxpayers and consumers want to pay?

We have some charts. Before I show these charts, I want to show other charts that show a little bit about the footprint of renewables. There is a misunderstanding on what kind of footprint is involved in the consideration of renewables and the application of that footprint.

If you want to talk about solar, it certainly has an application in certain areas. In my State of Alaska in the wintertime, it doesn't work very well. Go up to Barrow where there are probably 4 months of darkness; solar panels aren't going to work very well. Go down to the Southern States; clearly they have an application. But they also have a footprint. The same is true with windmills. They have a significant footprint. I will show you some of those charts as soon as the staff brings them to the Chamber.

The point I want to make is, we haven't walked into the discovery that renewables are important. They are important. They are so important we have spent $6.5 billion in the last 5 years. They are so important that while we have concentrated on them, they still only address 4 percent of our total energy needs and less than 2 percent of electric consumption.

Let me show you a little bit about renewables. They are worthy of consideration and further examination. Wind power is real as long as the wind blows, but sometimes the wind doesn't blow. Around here, we can usually generate enough hot air to keep a little draft going. Sometimes it doesn't blow. This is the San Jacinto wind farm located outside of Banning, CA. If you have driven from Los Angeles to Palm Springs, you have driven through it. I guess we all have our views of the beautiful mountains and what lies between the vision. That is a lot of windmills. They are probably in this picture, 150 windmills in the background. Some of them work; some don't.

Sometimes the transmissions are torn up because the wind doesn't always blow at the same velocity. Sometimes there are problems. Engineering advancements have come along, and it is a significant contributor to energy. What about the footprint? This particular wind farm, which is one of the largest in the United States, takes about 1,500 acres, and the energy production is 800 million kilowatts of electricity. What does that equate to? That is about 1,360 barrels of oil. So here we have an equation, 1,500 acres of footprint producing 1,360 barrels of oil.

I hate to be rhetorical, but in comparison, what does 2,000 acres of ANWR produce? One million barrels of oil.

Some people suggest that these windmills are Cuisinarts for the birds. The birds do have a bit of a time getting through there if they are flying low. The point is, there is a footprint to renewables.

There are a couple other renewables we think highly of and want to promote. This is one: Solar panels. Solar panels produce the energy equivalent of 4,400 barrels of oil a day. That is 2,000 acres; 2,000 acres of solar panels is a lot of acreage. Two thousand acres of ANWR produce 1 million barrels of oil a day. So, again, we are simply talking about comparisons. It would take two-thirds of the State of Rhode Island to equate to 448,000 acres which would produce as much energy as 2,000 acres of oil in ANWR. So we virtually cover two-thirds of Rhode Island with solid solar panels.

We have another significant contribution to energy, and that is ethanol. Ethanol is made from corn. There is a comparison here because if you took 2,000 acres of ethanol from the farm, 2,000 acres, and produced the energy equivalent of that, it would produce 25 barrels of oil a day.

Mr. President, 2,000 acres of ANWR will produce a million barrels a day. So you are talking about an awful lot of acreage to produce an equivalent. All I am talking about is a footprint. It

would take 80 million acres of farmland, or all of the land of New Mexico and Connecticut, to produce as much energy as we can get out of 2,000 acres of ANWR.

I think I have made my point, Mr. President. There is a footprint. Renewables are important. They do cost money. The question is, How much does the American taxpayer want to pay?

I rise in opposition to the renewable portfolio mandate. I oppose the Federal renewable mandate in the underlying Daschle bill. I oppose the Federal renewable mandate proposed by Senator BINGAMAN's amendment, and I also oppose the Federal renewable mandate proposed by Senator JEFFORDS. The reason is all three are the same theme: Federal command and control of the market.

Now, all three propose that the Federal Government—Congress, as a matter of fact—decides what kind of energy we like and don't like and, as a consequence, force the markets to comply with our views of political correctness. Let me say that again. Congress decides what kind of energy we like and what kind we don't like. Do we want Congress to pick the energy ''flavor of the month,'' so to speak, pick the winners and the losers based on regional or local politics? It is one thing to support technologies on resource development by tax incentives or grants or other direct programs. We do that with conservation, renewables, and our basic fuels. We encourage exploration and development in the ultra deepwaters of the Gulf of Mexico, as we should. That is one thing, but arbitrary dictates on what you must buy, well, that is another issue.

I oppose Federal command and control of the market. We have a free market in this country. If there is anything that we should have learned from the past 200 years in this Nation's existence, it is that free markets work and Government command and control, as a rule, doesn't work. I think the proof is out there.

For example, in the 1960s and 1970s, we tried to micromanage the natural gas business. What did we get? We got shortages and price spikes. When we deregulated natural gas, we got an abundant gas supply and lower prices.

Even more fundamental, the U.S. exists today and the Soviet Union does not exist. Our economy is the envy of the world. Their economy collapsed. I have no doubt that this Nation, and our industry, can meet any demand we put upon them. There is no question that it can. If we put a man on the Moon, we can certainly build all the windmills we want.

So the question isn't, Can it be done? The question is, Should it be done? Should we dictate the market—have Congress tell consumers what is good energy and what is bad energy; what they should buy or should not buy?

Mr. President, the consumers are better able to decide what is in their own best interest than is Congress. If consumers want to pay extra for ''green power,'' then they should be able to do it. A number of States have created programs to allow them to do that. In Colorado, for example, there is a very robust market for green energy.

But I ask: Why should Congress tell consumers to purchase something they don't want and that might not even be available? In my opinion, the mandate is not honest. Those States with portfolio mandates have considered the costs and the fuel mix that is available and made a decision.

This amendment decides that customers in Maine—which already has a locally established 30-percent mandate based on local decisions—must buy wind and solar renewables.

On its face, the amendment admits that there are utilities that will not have access to the particular mix of fuels that the sponsors support. Their customers will be forced to pay for credits and to pay for power that they may never receive—power that is uneconomical and not available in their particular area.

Why is there this fascination with Federal preemption of State decisions? If the Northwest wants to develop clean, emission-free hydro, why must they buy credits to support solar in from the Southwest? The argument will be made that we need to foster renewables in order to lessen our dependence on foreign energy. That is a good argument—as far as it goes. But if they are really serious about lessening our foreign dependence, we need to do much more: Nuclear power—there is no cleaner form of power, zero emissions—oil from Alaska and other regions, such as the gulf, that have been shut down; coal—we have all kinds of coal in this country; we are the Saudi Arabia of coal; hydroelectric generation—zero emissions. It amazes me that some people consider hydro nonrenewable.

Let me focus for a moment on the Federal renewable dictate in the underlying Daschle bill, which is very similar to the Bingaman amendment. The Daschle renewable dictate would require a 600-percent increase in renewables by the year 2020. Let me repeat that—a 600-percent increase in renewables by 2020.

As I indicated in my earlier statement on renewables and what our percentage was, clearly, it is a cost. We have expended $6.4 billion in the last 5 years, and it still constitutes less than 4 percent of our total energy needs and less than 2 percent of our electric consumption.

So the question is, If we are going to follow the Daschle renewable dictate, we would require a 600-percent increase in renewables by 2020, at what cost? Well, I don't think this is achievable. It might be, but it would drive costs simply through the roof. After 20-plus years of PURPA, and billions of dollars of renewable tax credits and other Federal subsidies, renewables today provide a very small percentage of U.S. electric power—approximately 2 percent.

The 10-percent additional renewable dictate, by 2020, would require 6 times the amount of renewables we are currently generating. Is a 10-percent dictate achievable? Well, anything is achievable, but at what cost?

We have a chart that shows what the Energy Information Administration of the Department of Energy has done. It is an analysis of the proposed 10-percent renewable portfolio mandate. The EIA estimates that the cost of renewable portfolio mandate will grow to $12 billion per year by 2020.

Let me refer to the chart. This chart is perhaps a little difficult to comprehend, but what we have are credits moving up in the blue to the very top, where we are comparing, if you will, the penalty payments and the credit purchases. The credit purchases are in the light blue and the penalty is in the dark red.

As we start from 2005 with the credits, you can see they are roughly at $2 billion, and they go up in the year 2017 to approximately $10 billion. And they go up more with the advent of the penalty payments.

So this attempts to show simply the escalating costs associated with trying to achieve this 10-percent renewable portfolio mandate. There is a corresponding reference as well. The theory is, as the renewables go up, the gas consumption comes down, and when the renewables go up, the price of gas goes down, and the price of renewables comes down. So you have a bit of a tradeoff there, and we can debate that.

The fact remains this kind of an increase to 10 percent from our current 4 percent—actually 2 percent, less than 2 percent electric consumption, 4 percent of total energy—comes at a significant cost.

Who is going to pay that, Mr. President? The consumers are going to pay it. There is nobody else out there. The companies are not going to be able to offset that cost out of their capital.

It is estimated that over a 15-year period, between 2005 and 2020, the renewable portfolio dictate will cost a total of about $30 billion. Wilbur Mills once said: A billion here, a billion there; after a while, it all adds up to real money. To an average family of four struggling to pay their grocery bill and put kids through college, this is a lot of money.

As is pointed out by the Energy Information Administration analysis of the renewable portfolio mandate:

> In simple terms, a renewable portfolio standard is a way of subsidizing . . . renewables . . . through a fee on . . .

What?

> coal, gas, nuclear, and oil facilities.

It has to come from somewhere. It does not come from thin air. It is at the expense of our more traditional energy sources. In other words, it is one thing. It is a Btu tax. Remember that: Btu tax. Where have you heard it? It was one of the first efforts of the Clinton administration when they came

into office. They tried to put on a Btu—British thermal unit—tax on energy. They failed, coming in the back door.

EIA says consumers will not see most of this cost in terms of higher retail rates. Instead, it will be paid for by other segments of the power industry. I am not that optimistic about EIA's assessment of cost or impact to consumers. EIA's numbers are based on a set of assumptions about technology—sending, transmission capacity—economics which may or may not pan out.

If there is anything more certain than death and taxes, it is that the utilities will pass on consumer costs. In other words, as I have said, anything more certain than death and taxes is the utilities will pass on to the consumers the costs.

The only exception to that was in California when California chose not to pass on the cost to the consumers because they capped retail rates and were not allowed to pass through the true cost of electricity. And what did we have? We had some of the major generating companies in the United States in chapter 11. We learned something from that, but hopefully we will not forget it so soon.

Those costs are going to show up in consumer electric bills one way or another, you can be sure of that. Do not be lulled to sleep by assertions that the renewable dictate is a free ride. If you believe that, I have a bridge to sell you in Ketchikan, and it has not even been built yet.

Let me point out some of the requirements of the renewable dictate. Under these circumstances, if the utility is not able to meet its renewable portfolio through generation, it is going to have to purchase the credits from someone else who is generating electricity or pays a Federal penalty. They have to do it one way or another. In other words, consumers in regions and States that do not have renewable opportunities will have to pay for electricity they do not even receive.

Let me repeat that. Consumers in regions or States that do not have renewable opportunities will have to pay for electricity they do not even receive. I do not know how many people you know, Mr. President, but I know a lot of people who would not want to do that.

How much is this going to cost the consumer in New York or Chicago? It is clear what is going on. It is a Btu tax—a British thermal unit tax—which will transfer massive amounts of money to one politically favored segment of the electric power industry. What is that? Renewable source. I find it unacceptable to require consumers to subsidize large renewable generators, such as—well, let's choose Enron as an example, to the tune of up to $12 billion per year.

I also wonder why this Federal mandate is necessary. These 14 States have already established a renewable portfolio mandate program. They, too, would be preempted.

I admire what these States have done. They have taken the initiative to establish a State renewable portfolio mandate. They did it themselves: Arizona, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Pennsylvania, Texas, Wisconsin.

This is the market working. People in those States are concerned. They want renewables and are ready to pay for them. They have set up a system, and it works.

This legislation would mandate it across the country. The renewable mandate would thus penalize those States that have already acted to establish a renewable program by requiring these States to replace their State program with a new Federal program. For Heaven's sake, if it works in these States, why not leave it alone? They are doing their job. People are happy. They would be increasing or rejecting. Other States have considered and rejected a renewable portfolio mandate as being unworkable or too expensive.

Senator JEFFORDS wants to raise the renewable dictate. What does he want to raise it to? He wants to raise it to 20 percent. I oppose that. I think it is impractical, unrealistic, and beyond reasonable costs.

Senator BINGAMAN's amendment differs from the underlying Daschle bill in a relatively minor aspect. It retains the 10-percent mandate from the underlying bill and gives double credits to renewables on Indian land, gives credit for not using energy, and it lengthens the program by 50 percent out to the year 2030.

I have a little problem with extending these programs out to 2010, 2020, 2030. My problem is, how many of us are going to be around here in 30 years or 28 years to be held accountable for what we are setting as a standard today? It lengthens the program by 50 percent by the year 2030.

We should hold ourselves accountable for realistic goals in the future and not put them out so far that other people are going to come along and look at it and say that was simply unattainable or the cost of it was beyond comprehension.

In a nutshell, the Bingaman amendment makes only minor changes to the Daschle bill. I oppose the Bingaman amendment as well, just as I oppose the Daschle renewable dictate.

I believe Federal command and control of the market leads to terrible distortions, economic waste, and inefficiency. It is bad for consumers and bad for our economy.

I will support Senator KYL when he offers his amendment to allow the States to set up their own renewable portfolio program. As I mentioned before, 14 States already have them. They seem very happy with them. They are working. Why do we always have to jump into something the States seem to be doing reasonably well with a Band-Aid as if this is a Federal project and we should take the initiative away from the States. The best government is the government closest to you.

As I mentioned before, 14 States already have it. Senator KYL's amendment will allow States to set up their own renewable portfolio program. The Kyl amendment requires each State utility commission and each nonregulated utility to consider offering consumers renewable energy if available, but it does not require them to do so—only consider doing it. If a State or nonregulated utility concludes that a renewable program is not in their consumers' best interest, then they should be free to not adopt it. That is exactly what the Kyl amendment does.

If a State adopts the program, then consumers will still be free to decide whether or not green power is worth the cost. Consumer choice has worked well in States such as Colorado where 2 percent of the customers have chosen to pay a modest premium to have their power generated by wind turbines, and I believe there is some of that in California as well. Allowing consumers to decide what is in their best interest is the essence of good public policy.

I have a letter signed by 32 trade associations in opposition to the renewable portfolio mandate in this bill.

I ask unanimous consent that this letter be printed in the RECORD.

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

MARCH 5, 2002.

Hon. THOMAS A. DASCHLE,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR DASCHLE: We are writing to express our deep concern over the economic impact of the renewable electricity portfolio mandates contained in the Substitute Amendment (the Energy Policy Act of 2002) to S. 517. This renewable portfolio standard would require that 10 percent of all electricity generated in 2020 must be generated by renewable facilities built after 2001. The renewable portfolio standard would become effective next year, and the amount of renewable generation required would increase every year between 2005 and 2020. While we believe that renewable source of generation should have an important, and growing, role in supplying our electricity needs, the provisions contained in the Substitute Amendment are not reasonable and cannot be achieved without causing dramatic electricity price increases. This in turn would have the unintended consequence of reducing the competitiveness of American businesses in the global economy and, thereby, reducing economic growth and employment.

Today, according to the Energy Information Administration, non-hydro renewables placed in service over past decades make up only about 2.16 percent of the total amount of electricity generated in the United States. However, even this modest existing renewable capacity will not count under the Substitute Amendment toward satisfying the renewable portfolio requirement. Generally, under that Amendment, renewable facilities that can be used to meet the 10 percent minimum must be placed in service in 2002 or thereafter. Therefore, compliance with the Substitute Amendment's 2.5 percent renewables mandate for 2005 would require doubling the amount of non-hydro renewables that we now have in just three years—even though it took us more than 20 years to get to where we are today.

In addition, because the Substitute Amendment requires that 10 percent of all electricity generation, not capacity, must come from renewables, vast numbers of renewable electricity-generating facilities will have to be built. Wind energy, perhaps the most promising non-hydro renewable technology, operates effectively only between 20 percent to 40 percent of the time. Solar is also intermittent. Therefore, the actual amount of newly installed capacity needed to generate enough electricity to meet the Daschle Amendment's requirements could well exceed 20,000 megawatts by 2005. To put this into context, according to the American Wind Energy Association, we currently have less than 5,000 megawatts of installed wind capacity in the United States.

Simply imposing an unreasonably large, federally mandated requirement to generate electricity from renewables will not guarantee that enough windmills and other renewable facilities can be built on schedule; that the wind (or sun or rain) will cooperate; or that the generating costs will be as low as would be the case from a more diverse, market-dictated portfolio of conventional, as well as renewable and alternative fuels. If retail suppliers do not comply with the mandate, they would face a 3 cent per kilowatt hour civil penalty. Some may suggest that this penalty would operate as a ''cap'' on the inevitable run up of electricity costs under the Amendment. Even if this penalty were effective at limiting skyrocketing electricity costs—and experience with similar ''penalties'' indicates that it will not—the penalty still would constitute an almost doubling of current wholesale electricity prices for renewable power. Clearly, electricity rates will substantially increase if the Substitute Amendment becomes law.

The Federal government's past record in choosing fuel ''winners and losers'' is dismal. The Powerplant and Industrial Fuel Use Act of 1978, which prohibited the use of natural gas in electric powerplants and discouraged its used in many industrial facilities, was essentially repealed less than a decade later when its underlying premises were conceded to be wrong. While holding back the use of natural gas, the Federal government spent billions of dollars attempting to commercialize ''synthetic fuels,'' including oil shale and tar sands, with little to show for its efforts.

While we believe that the Federal government has an important role to play in encouraging the development of renewable and other energy technologies, we are troubled when that role turns to mandates and market set-asides for one particular fuel or technology. Mandates and set-asides usually don't work, and create unintended consequences far more severe than the underlying problem being addressed.

For these reasons, we respectfully request that you support efforts to modify the language in section 265 of the Substitute Amendment to S. 517, in order to eliminate or mitigate the harmful economic consequences of the renewable fuels portfolio mandate.

Sincerely,

Adhesive and Sealant Council, Inc.
Alliance for Competitive Electricity
American Chemistry Council
American Iron and Steel Institute
American Lighting Association
American Paper Machinery Association
American Portland Cement Alliance
American Textile Manufacturers Institute
Association of American Railroads
Carpet and Rug Institute
Coalition for Affordable and Reliable Energy
Colorado Association of Commerce and Industry
Edison Electric Institute
Electricity Consumers Resource Council
Independent Petroleum Association of America
Industry Energy Consumers of America
International Association of Drilling Contractors
Interstate Natural Gas Association of America
National Association of Manufacturers
National Lime Association
National Mining Association
National Ocean Industries Association
North American Association of Food Equipment Manufacturers
Nuclear Energy Institute
Ohio Manufacturers' Association
Oklahoma State Chamber of Commerce & Industry
Pennsylvania Foundry Association
Pennsylvania Manufacturers' Association
Texas Association of Business and Chambers of Commerce
U.S. Chamber of Commerce
Utah Manufacturers Association
Westbranch Manufacturers Association.

Mr. MURKOWSKI. The signers represent a broad range of affected industries, including chemicals, metals, paper, textiles, cement, carpeting, petroleum, natural gas, mining, nuclear power, as well as the U.S. Chamber of Commerce.

A Federal renewable dictate is, in my opinion, bad energy policy, bad social policy, and bad economic policy.

I thank the Chair for persevering with me, and I yield to Senator BINGAMAN.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will say a few words about the various amendments we are considering this afternoon. I proposed an amendment to the underlying bill which does modify the provisions we had related to this issue of a renewable portfolio standard, and that is the pending first-degree amendment, and essentially that calls for us trying to increase the generation of electricity from renewable energy sources over the next 18 years, between now and the year 2020, up to 10 percent. That is what we have proposed in the amendment I sent to the desk.

Senator JEFFORDS has sent a second-degree amendment to the desk, and he has asked that we change that goal and requirement, and that instead of going to 10 percent of power having to be generated from renewable sources, it should be 20 percent. He has made his statement in support of that, and he has indicated a desire to come back and reiterate those points before we actually cast a vote on his amendment.

Then there is also, as I understand it, expected to be an amendment by Senator KYL from Arizona which will essentially eliminate any kind of a Federal program or requirement to increase the amount of renewable energy that utilities generate. So those are the three main issues before us.

Obviously my position, which is I think is clear to all my colleagues, is that the 10-percent goal we have in the bill and in the substitute I have sent to the desk is an appropriate goal. It is something we can achieve. It makes sense. It moves us, as a country, in the direction we ought to be going. It reduces our dependence on fossil fuels in very important ways.

There are some obvious reasons why I think it is important we act on this as part of a national energy bill. When one looks at a comprehensive energy bill, which we are now debating, there are various things that can be done. The supply can be increased, and we are trying to increase the supply of energy from our traditional sources, from oil and gas, from coal, from nuclear, from hydroelectric power. All of those are existing sources of energy upon which we believe we are going to remain dependent. They should continue to flourish. We support that and we have provisions in the bill that support them.

I firmly believe it is also important we put a particular emphasis on renewable power, renewable energy sources. It is important we do that to get a diverse set of sources. It is important we do that because the renewable energy sources do not produce emissions. They are extremely benign to the environment and there are substantial benefits in job creation, quite frankly, from putting a heavier emphasis here.

I will put up a couple of charts I referred to earlier in the debate so people can be reminded this is where we produce electricity today. This is ''Electricity Generation by Fuel.'' There seems to be a lot of information on this chart, but it is pretty clear what the big points are.

The first big point is, this is from the period 1970 to the year 2020. So over this 50-year period, it shows that by far the biggest contributor to electric generation today is coal. It has been all along. It continues to be, it is going to be in the future—that is a given—and we have provisions in this bill to encourage additional research to try to find ways to continue using coal in the most environmentally benign way possible.

Down beneath that we have nuclear. This is as of the year 2000 in this period. The next line is nuclear. Nuclear accounts for something in the range of 20 percent of the power we produce today in this country. It will continue to account for a substantial portion of the power we produce for the indefinite future, even if there are no nuclear powerplants built, and there may well be. I do not know the answer to that.

The other fuel, which is now third as far as the contributors to electrical generation, is natural gas. That is this green line. Although it is third now, we can see that it is growing dramatically as a contributor to electricity generation in this country. We are now in a situation where today 69 percent of the electricity we generate in this country comes from two fuels: coal and natural gas. That is going to change by the year 2020, unless we enact legislation in the nature of this renewable portfolio standard that I have proposed.

The way that is going to change is we are going to be much more dependent upon those two fuels, coal and natural gas, by the year 2020 than we are today. Instead of 69 percent, which is where it is today, it will be up to 80 percent. So we will be 80-percent dependent upon those two types of fuel.

Why is this a problem, some might ask. Who cares? It is a problem because price spikes, particularly in natural gas, can play havoc with people's electric bills, can play havoc with our ability to maintain a stable market for electricity in the country.

Eighteen months ago, it was $10 per million Btu of natural gas. Today it is more like two-fifty. There is a tremendous volatility in those prices, and that is what we are setting ourselves up for if we do not diversify the sources of fuel upon which we rely. We do have real concerns about the adequacy of our supply of natural gas as we go forward to the year 2020. We may well be buying a larger and larger percentage of our natural gas in the form of liquefied natural gas that is brought in by tanker from overseas. This is being brought in from the Middle East, from a lot of countries that we do not currently consider particularly stable suppliers.

Just as we are currently dependent upon foreign sources of oil, we can see the day, possibly in the future, when we will be substantially dependent upon foreign sources of natural gas. A lot of that dependence will be because we have not diversified the sources of power to generate electricity.

Also, of course, if one thinks climate change is a problem, which many people do, it is important we try to find some sources of energy that do not contribute to that problem, and that is exactly what we are trying to do with this renewable portfolio standard.

Another one of these charts I think makes the point we have a lot of opportunity to do better in this area. This chart is entitled ''The Commitment to Renewable Generation.'' This is the period 1990 to 1995. The point it makes is, over on the left-hand side, this is the percentage increase in nonhydro renewable generation during that 5-year period, 1990 to 1995. Spain increased their nonhydro renewable generation over 300 percent during those 5 years; Germany increased theirs something around 170, 180 percent; Denmark, nearly 150 percent; Netherlands, about 70 percent; France, something in the range of 30 percent; and then there is the United States. We can see from this chart there was hardly any increase during that 5-year period, in nonhydro renewable generation in the United States.

Frankly, we have a lot of opportunity to catch up with some of the European nations in producing more power from renewable sources.

In my State of New Mexico, I asked why we did not have wind power. I have seen the charts that say New Mexico is a natural source of wind power. We have a lot of wind, particularly this time of year. I found there was very little renewable power generated in my State. I asked if we had any U.S. manufacturers of wind turbines come and put up wind power, and I found out the major manufacturers of wind turbines are in Europe, not in this country. The main market for wind turbines is in Europe, not here.

We may want to do in New Mexico what the neighboring State of Texas has done. We have a love-hate relationship between New Mexico and Texas; it grates on me to say that Texas did something right, but the reality is they have done something right in this area.

Frankly, President Bush did something right in this area when he was Governor of Texas. He signed a law to put in place a renewable portfolio standard that was very much the same in its provisions as we propose as a national program. They have moved ahead very dramatically in adding generation capacity based on renewable energy. It is the kind of action I wish we had taken in New Mexico. I hope we do it in the near future.

I know our major utility in New Mexico is considering putting in a wind farm. They realize it is cost effective. It does make sense. They have seen the successes our neighboring State has had.

Let me show another chart entitled ''U.S. Renewable Electricity Consumption.'' This points out that today 3½ to 4 percent of the electricity that we consume is generated from renewable sources—nonhydro renewable sources. Under this bill, under the renewable portfolio standard we are proposing—not the one Senator JEFFORDS is proposing; that is more ambitious, but the one I am proposing—we would increase that between now and 2020 up to around 12 to 13 percent. That is the expectation under this bill.

The green area on the chart is what will be added as renewable generation if this bill is passed with the renewable portfolio standard in it. Absent the renewable portfolio, if the Kyl amendment succeeds and we eliminate any national renewable portfolio standard, the expectation is we would have this orange strip that we are now at, with 3½ percent of our generation coming from nonhydro renewables; that would be the same in 2020. We would still be producing about 3½ percent from nonhydro renewables.

I think there is a very strong case to be made that a forward-looking, comprehensive effort to diversify sources of energy, to deal with global climate change in a responsible way, to ensure we are diversifying our sources and producing all the power we need in the future, would lead us to conclude we ought to have this modest requirement. This is a modest requirement. This is not excessive. There are many people who advocate renewable generation and are critical of what I have proposed as a renewable portfolio standard because they think it is insufficient. They think we should be doing more. I would love to see more. I think this is a realistic proposal given the reality we face today.

My proposal is there for anyone to study and review. I think it would be very good public policy for the country.

I have some letters I call to my colleagues' attention. One is from the American Wind Energy Association, dated March 13.

> While we believe that all of America's renewable energy technologies—wind, solar, geothermal, biomass, and hydropower—are capable of contributing higher levels of electricity generation than would be required by the proposed RPS, the provision is a significant step forward in meeting America's growing energy needs.
>
> In 2001 alone the wind energy industry installed close to 1,700 megawatts of new generating capacity, enough to meet the needs of about 475,000 households. More than half of this new wind power development (915 megawatts) was produced in Texas—a state with the most effective renewable energy requirement law in the nation. In addition to producing electricity without emitting any pollutants, each megawatt of wind power creates at least $1 million in economic activity.

Obviously, I would like to see some of that economic activity in my State. I assume the Presiding Officer would like to see some in his. That would occur as part of the implementation of this.

I also refer to a letter from MidAmerican Energy Holdings Company, which is headquartered in Omaha, NE. The Presiding Officer is familiar with that company. This is a letter to me from David Sokol, chairman and chief executive officer.

> DEAR CHAIRMAN BINGAMAN: I am pleased to write in support of your efforts to include provisions to promote the development of renewable energy resources for electric generation in the Senate's comprehensive energy bill. MidAmerican Energy Holdings Company is one of the world's largest developers of renewable energy, including geothermal, wind, biomass and solar.
>
> MidAmerican has been a long-time proponent of both a production tax credit for electricity generated by renewables and a federal government purchase standard for renewable electricity. We strongly support these provisions in the comprehensive energy bill before the Senate, as well as recent modifications to the bill's renewable portfolio standard (RPS) section that will ensure that implementation of the RPS is achievable and affordable.
>
> Renewable electricity can play a critical role in diversifying the nation's fuel mix and providing emissions-free electricity for American consumers. By including both supply and demand side components in the comprehensive energy package, your legislation will benefit the environment and American energy security.
>
> Thank you again for your leadership in promoting renewable energy.

I have one other letter from the American Bioenergy Association. This group is headquartered in Washington. There are various members of the group who have signed the letter to me, dated March 13.

DEAR SENATOR BINGAMAN: We, the undersigned members of the American Bioenergy Association (ABA)—the leading industry group representing biofuels, biomass power, and bioproducts—are writing to thank you for your support to date and to encourage you to offer an amendment for a renewable portfolio standard that is both aggressive and realistic.

It is critical that we level the playing field for renewable energy generation. State RPS programs have met with enormous success. A federal RPS would allow clean energy developers and their customers to use biomass power in all regions of the country where it is technically feasible. The ABA believes that the biomass industry provide a significant contribution to the standard you will offer as a substitute amendment to the Daschle bill. This RPS uses the already oversubscribed Texas legislation as a model. The national policy you propose would allow all renewable energy resources to be developed where they are most applicable.

I have one other brief issued by the National Hydropower Association.

It says:

The National Hydropower Association writes to strongly urge you to support the Energy & Natural Resources Committee Chairman Jeff Bingaman and Majority Leader Tom Daschle's compromise amendment to S. 517 on the Renewable Portfolio Standard.

They go on to explain why they believe that is very much in the interests of the Nation.

Finally, there is a letter I have here from Michael Wilson, vice president of the Florida Power & Light. He says in a letter to me dated March 14:

Please consider this letter an endorsement of the compromise Renewable Portfolio Standard contained in S. 517, the Energy Policy Bill.

As you may know, FPL Group, comprised of the two major subsidiaries—

He lists what those are—

is one of America's cleanest, most progressive energy companies. Our commitment to the environment is manifested. . . .

He goes on and on and indicates they are intending to add 2000 megawatts of new wind generation over the next 2 years and that this renewable portfolio standard will allow wind generation to contribute to America's energy independence and security.

Mr. President, I ask unanimous consent the letters I referred to be printed in the RECORD.

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

AMERICAN WIND ENERGY ASSOCIATION,
Washington, DC, March 13, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I write on behalf of the Board of Directors and member companies of the American Wind Energy Association (AWEA) in support of the Renewables Portfolio Standard (RPS) contained in the proposed substitute to S. 517, the Energy Policy Act of 2002.

While we believe that all of America's renewable energy technologies—wind, solar, geothermal, biomass, and hydropower—are capable of contributing higher levels of electricity generation than would be required by the proposed RPS, the provision is a significant step forward in meeting America's growing energy needs.

In 2001 alone the wind energy industry installed close to 1,700 megawatts of new generating capacity, enough to meet the needs of about 475,000 households. More than half of this new wind power development (915 megawatts) was produced in Texas—a state with the most effective renewable energy requirement law in the nation. In addition to producing electricity without emitting any pollutants, each megawatt of wind power creates at least $1 million in economic activity.

The wind industry is proud to support the RPS contained in S. 517, aimed at diversifying America's energy production while also enhancing our efforts to secure cleaner air and a more sustainable energy future. Thank you.

Sincerely,

RANDALL SWISHER,
Executive Director.

MIDAMERICAN ENERGY HOLDINGS COMPANY,
Omaha, NE, March 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I am pleased to write in support of your efforts to include provisions to promote the development of renewable energy resources for electric generation in the Senate's comprehensive energy bill. MidAmerican Energy Holdings Company is one of the world's largest developers of renewable energy, including geothermal, wind, biomass and solar.

MidAmerican has been a long-time proponent of both a production tax credit for electricity generated by renewables and a federal government purchase standard for renewable electricity. We strongly support these provisions in the comprehensive energy bill before the Senate, as well as recent modifications to the bill's renewable portfolio standard (RPS) section that will ensure that implementation of the RPS is achievable and affordable.

Renewable electricity can play a critical role in diversifying the nation's fuel mix and providing emissions-free electricity for American consumers. By including both supply and demand side components in the comprehensive energy package, your legislation will benefit the environment and American energy security.

Thank you again for your leadership in promoting renewable energy.

Sincerely,

DAVID L. SOKOL,
Chairman and Chief Executive Officer.

AMERICAN BIOENERGY ASSOCIATION,
Washington, DC, March 13, 2002.

Re Renewable Portfolio Standard Amendment.

Hon. JEFF BINGAMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BINGAMAN: We, the undersigned members of the American Bioenergy Association (ABA)—the leading industry group representing biofuels, biomass power, and bioproducts—are writing to thank you for your support to date and to encourage you to offer an amendment for a renewable portfolio standard that is both aggressive and realistic.

It is critical that we level the playing field for renewable energy generation. State RPS programs have met with enormous success. A federal RPS would allow clean energy developers and their customers to use biomass power in all regions of the country where it is technically feasible. The ABA believes that the biomass industry provide a significant contribution to the standard you will offer as a substitute amendment to the Daschle bill. This RPS uses the already oversubscribed Texas legislation as a model. The national policy you propose would allow all renewable energy resources to be developed where they are most applicable.

In addition, we applaud your support of a renewable fuels standard, increased biomass research and development, and a production tax credit for biomass. ABA hopes that these policies, along with this strong renewable portfolio standard, will be accepted by the Senate.

Again, the ABA thanks you for your strong support for biomass. We truly believe that, by supporting energy and tax policies in clean, renewable biomass, we can begin to wean ourselves from foreign oil and clean up our air.

Sincerely,

KATHERINE HAMILTON and
MEGAN SMITH,
Co-Directors.

SUPPORTING MEMBERS OF AMERICAN BIOENERGY ASSOCIATION

Biofine, South Glen Falls, NY.
Cargill Dow, Minneapolis, MN.
Chariton Valley RC&D, Chariton Valley, IA.
FlexEnergy, Mission Viejo, CA.
Future Energy Resources Corporation, Norcross, GA.
Genencor International, Rochester, NY.
PureEnergy, Paramus, NJ.
Renewable Energy Corporation, Limited, Charlotte, NC.
Sealaska Corporation, Juneau, AK.
State University of New York (SUNY), Syracuse, NY.

ISSUE BRIEF, MARCH 13, 2002.

The National Hydropower Association (NHA) writes to strongly urge you to support Energy & Natural Resources Committee Chairman Jeff Bingaman and Majority Leader Tom Daschle's compromise amendment to S. 517 on the Renewable Portfolio Standard (RPS).

Senators Bingaman and Daschle's amendment to S. 517 resolves many of the issues associated with their original RPS proposal and clearly recognizes that hydropower, our nation's leading renewable resource, must play an important role in meeting future energy needs.

The amendment that will be offered by the Senators will exempt all existing hydropower from a retail electric supplier's base amount and include incremental hydropower—new hydropower generation at existing facilities through efficiency improvements and additions of new capacity—as a qualifying renewable resource. This policy validates a recent poll which showed that 93% of registered voters believe that hydropower should play an important role in meeting future energy needs. What's more 74 percent of America's registered voters support federal incentives for incremental hydropower.

With the inclusion of incremental hydropower in the Bingaman-Daschle RPS amendment, approximately 4,300 Megawatts (MWs) of new hydro generation could be developed without building a new dam or impoundment. This additional power will provide clean, renewable, domestic and reliable energy for America's energy consumers in an environmentally-responsible way. Senator Jeffords' amendment, however, has no such role for hydropower.

Once again, NHA strongly urges you to vote yes on the Bingaman-Daschle RPS amendment and to oppose the RPS amendment offered by Senator Jeffords.

If you have any questions, please contact Mark R. Stover, NHA's Director of Government Affairs, at 202–682–1700 x–104, or at mark@hydro.org.

FLORIDA POWER & LIGHT COMPANY,
Washington, DC, March 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: Please consider this letter an endorsement of the compromise Renewable Portfolio Standards (RPS) contained within S. 517, the Energy Security Policy Bill.

As you may know, FPL Group, comprised of its two major subsidiaries, Florida Power & Light (FPL) and FPL Energy (FPLE), is one of America's cleanest, most progressive energy companies. Our commitment to the environment is manifested by FPL's diverse generation mix and by FPLE's largely renewable energy portfolio. FPLE operates the two largest solar projects in the world, over 1,000 megawatts of hydroelectric power, a number of geothermal projects, and a number of biomass plants. And, significantly, with over 1,400 megawatts of net ownership in wind energy, FPLE is the nation's largest generator of wind power.

FPLE plans on adding up to 2,000 megawatts of new wind generation over the next two years. Due to the wind energy production tax credit (IRC Sec. 45(c)(3)) and the industry's success in reducing production costs, wind energy has become economically feasible. A long-term extension of the credit combined with your RPS will allow wind generation—and, hopefully, other renewable sources—to contribute to America's energy independence and security. Ultimately, such an aim should be the keystone of any American energy policy.

We appreciate your leadership on this important issue, and we strongly support your efforts to enact a fair and balanced RPS. Please do not hesitate to call on me should you require any assistance in your endeavor.

Sincerely,

MICHAEL M. WILSON,
Vice President.

Mr. BINGAMAN. I will have other comments to make later in the debate, but at this point I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BINGAMAN). Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I came to the Chamber in support of the amendment of Senator JEFFORDS. I am proud to join him on this amendment.

We are talking about a portfolio that has to do with renewable energy for production of electricity. The bill would require the amount of electricity produced from renewable to increase from 2.5 percent in 2005 to 10 percent in 2020. This is certainly an improvement in the right direction.

The amendment I am cosponsoring with Senator JEFFORDS argues that the Senate should go higher. We are talking about basically going up to 20 percent by the year 2020.

I wish to make three or four points.

First, I admit that I am speaking as a Senator from Minnesota. For Minnesota, this is a no-brainer. We are a cold-weather State. We are at the other end of the pipeline. When we import barrels of oil—although we are not talking about so much oil, because we also rely on natural gas and coal—we have the following consequences: First of all, we import the energy and we export the dollars—probably to the tune of about $11 billion a year.

The more we can produce of our own energy, the more capital we keep in our communities, and the better it is for our States.

On environmental grounds, I don't, frankly, know what we are doing with more reliance on coal.

In our State, we love our lakes. We are the ''land of 10,000 lakes.'' But if you look in different manuals, you will see the warnings: If you are a woman expecting a child, don't eat fish. We love walleye. Don't eat too many walleye a week; or, don't eat any; or, for small children, don't let them eat walleye. One way to get to the hearts of Minnesotans is to talk about walleye. Why? Because of airborne toxins, poison, PCBs, acid rain, and coal.

What in the world are we doing relying more on coal, relying more on fossil fuels, and relying more on utility industries that barrel us down a path which goes exactly in the wrong direction?

Minnesota is rich in wind. In rural Minnesota and farm country, we are talking about biomass electricity. We are talking about solar. We are talking about renewables. We are talking about safe energy. We are talking about clean technology. We are talking about small business opportunities. We are talking about job-intensive and job-creating industries that are respectful of the environment, that are respectful of our community, that lead tomorrow's economic development, and that make all the sense in the world.

When we are able to rely more on renewable energy policy—we have the technology—we are far less dependent not only on Mideastern oil but we are far less dependent on large energy companies that end up being the ones making decisions that affect all of our lives, not always so much for the good.

I am pleased to join Senator JEFFORDS. Frankly, I know the votes on this. I don't think we will get very many votes. As a matter of fact, maybe we will. I shouldn't say that on the floor of the Senate before the vote. But there are other amendments that want to go below 10 percent.

I must admit that the position I take in this debate doesn't get me a heck of a lot of support from the utility industry. That is true. I am not sure I had much in the beginning anyway. But, with all due respect, I do know what is best for my State. I don't think it is just for Minnesota. I think it is good for people in this country.

I will say this one more time. Our country is behind the curve. Clean technology is going to be a big growth industry. We can do so much better than we are doing right now. We can do that if we set a target, and we make it clear that we are committed to making sure that renewable energy is much more a part of the production of electricity.

Look again at what we do that is good. We do a so much better job for our environment. Coal, I mentioned. Nuclear power. I am not giving a speech today in this Chamber that says: Let's dismantle all the nuclear powerplants. As a matter of fact, that is not my position. But we do not know what to do with the waste. We are going to now build more plants which are incredibly capital intensive.

I think the Presiding Officer is one of the people here who knows the most about finances. I am not even sure it is a go from the point of view of cost-effectiveness.

But beyond that, can anybody tell me whether or not we should be going forward with more nuclear powerplants when we do not even know what to do with the waste right now? In case anybody has not noticed, our good friends from Nevada do not want it there. If all of us were Senators from Nevada, we would take the same position. And there are some legitimate questions that are being raised about Yucca Mountain.

Then others say: Well, maybe not. Then it should be above ground, in dry-cast storage. Then others will say: What about the transportation of it?

So we do not know what to do with the waste. Yet we are now talking about maybe we are going to rely more on nuclear power. We do not know what to do with the expense. By the way, most people do not want the plants near where they live. There are all sorts of public health concerns. I have already mentioned coal. What do we need? More acid rain? Why do we want to rely on these big utility companies to basically be in charge of our energy future? Have the consumers of the country maybe noticed they are not always so kind to us in terms of the bills that we pay?

We could make the decisionmaking much more back at the State level, much more back at the community level with renewable energy policy. Between the potential of wind and biomass electricity and solar, along with what we have been talking about with biodiesel and other clean alternative fuels, such as ethanol, we have a real opportunity. It is a perfect marriage. I will finish on this point and then take a question from my colleague. It is a marriage made in Heaven between being respectful of the environment and a huge growth industry, which is much more small business oriented, with the creation of more jobs and keeping capital in the community and having better economic development.

It could be done, and it should be done. If we took a poll, 80 percent of the American people would agree. The only problem is, these utility companies and this big energy industry have too much clout. They have too much money, they have too much power, and

they have too much influence. We should be reaching beyond 10 percent. I think Senator JEFFORDS and I are attempting to lay down a landmark because we want to be part of the debate and, at a very minimum, not turn the clock backward and even go below the 10-percent requirement. Frankly, we should be doing much better.

Mr. REID. Will the Senator yield for a question?

Mr. WELLSTONE. I am pleased to yield for a question.

Mr. REID. Does my friend agree that on this energy bill yesterday he and I were terribly disappointed because we had the opportunity to do something about consumption in this country, to cut the amount of fossil fuels we use, by making our automobiles more energy efficient, and we lost on that? Does the Senator agree that we lost on that?

Mr. WELLSTONE. That is correct.

Mr. REID. Also, there is an effort here where some think we can produce our way out of the energy crisis in which we find ourselves. Does the Senator acknowledge, out of the worldwide reserves of petroleum, the United States has 3 percent, including Alaska, and the rest of the world has 97 percent? Does the Senator acknowledge that as a fact?

Mr. WELLSTONE. That is correct.

Mr. REID. So I say to my friend, I do not personally know how we are going to produce our way out of this situation. We are not going to do it by drilling in ANWR. So when this legislation is ended, we are going to get nothing out of ANWR, and we are going to have no more fuel-efficient vehicles.

So I ask my friend, isn't the only thing left for the American consumer to look to with pride that we will have done on the energy bill is to do something with renewables? Isn't that right?

Mr. WELLSTONE. Mr. President, I thank my colleague from Nevada because that is why I said to Senator JEFFORDS earlier today that I would be out here joining him on this amendment.

Frankly, the rest of my time on this bill will be on this renewable portfolio because this is the only item left in the bill that is strongly proconsumer and also enables our country to reduce our energy consumption and presents some alternatives to barreling down exactly the wrong path. Absolutely.

The sad thing—I know this sounds a little arrogant; and I don't mean to sound arrogant; and I don't think I am being arrogant—I used to be on the Energy Committee. If we took a poll, about 80 percent of the people in this country would agree, saying: Absolutely, more renewables. We really like that idea. We like it because of the environment. We like it because we can keep the capital in our community. We like it because small businesses can develop. We like it because it is job intensive. We like it because it is good for our country's independence.

Remember, with electricity we are talking less about oil; we are talking about coal, nuclear, whatever.

I am not arguing conspiracy. And I am not arguing every Senator who votes the other way votes that way because of money. That is a horrible argument to make. We could all say that about each of us on every vote.

I will say this. Institutionally, from a sort of systemic point of view, the unfortunate thing is there are these huge energy conglomerates, these big utility companies. They do not want to budge from the monopoly they now have. They do not want to see this alternative future. But, boy, this is the direction in which we have to go. That is why I thank Senator JEFFORDS and am honored to be a part of this debate and do this amendment with him.

Am I making sense?

Mr. REID. Of course. That is why I came to the Chamber, because the Senator is making a lot of sense. I feel so desperate to get something that helps the American consumer when we finish this energy bill, which we have been talking about for so long.

Does the Senator realize that in 1990 the United States produced 90 percent of the electricity produced by wind? We produced 90 percent 10, 11 years ago. Today, we produce—not 90 percent—25 percent of the power. Germany—the relatively small area of Germany—produces more electricity by wind than we do.

Mr. WELLSTONE. Yes. I say to my colleague, first of all, again, wind is near and dear to my heart. You should see Buffalo Ridge in Minnesota. We produce much of the wind power in the country in Minnesota.

Brian Baenig, who does wonderful work here, points out that there have been two Department of Energy analyses, and they have found, under a 20-percent renewable portfolio standard, total consumer energy bills would be lower in 2020 than ''business as usual'' because this would also reduce the natural gas prices. This would be far better for our consumers. But also other countries—that is what I was saying earlier—are putting us to shame. The thing of it is, this isn't just an environmental issue. This is also, I say to both colleagues in the Chamber, a business issue.

Mark my words—let me shout it from the mountaintop of Senate today—clean technology will be a huge growth industry in this new century. We should be at the cutting edge of it, we should be nurturing it, and we should be promoting it. It is absolutely the right direction in which to go.

That is what is so important about this amendment.

Mr. REID. I say to my friend from Minnesota, I join with him in complimenting the Senator from Vermont, the chairman of the Environment Committee, for moving this issue forward. I think he has not done it in a tepid fashion. I say that because we should be able to do this. There are 14 States in the United States that have renewable portfolios. States do it. Why can't we, as a country, do it? The answer is there is no reason in the world we should not be able to do this.

I believe this so much that, in addition to this—I say to my friend from Minnesota, he talked about the cost. One of the costs that he cannot attribute to alternative energy is what it saves in lost lives, what it saves in added health care costs for this country.

The three of us in this Senate Chamber are not kids. We have all lived a long time and are very fortunate in that regard. But we can all remember, even the State of Vermont, as pristine as the State of Vermont is, how the air quality has changed over our lifetimes.

Mr. WELLSTONE. I say to the Senator, on the whole issue of air quality, I am out here with a little bit of a sense of urgency. I want to hold on to this standard, and I want to increase it because it is the best thing for my State.

It is for all the reasons I just mentioned, but also having to do with what we love the most. We love our lakes and rivers and streams. In fact, I don't know how it came to be. It is as though people in the country have lost their sense of indignation. Their expectations are so lowered about the environment. I am surprised that people are not furious. I think they are, but they don't know what to do.

As to a lot of our beautiful lakes, people are being told with regard to lake after lake after lake in Minnesota, if you are expecting a child, don't eat the fish. If you have little children, don't let them eat the fish because of the air toxins. This is acid rain. This is coal. This is mercury poisoning.

I want to put a stop to it. That is in part what the amendment is about, much less all the good economic and energy efficiency arguments I could make.

I yield the floor and thank both of my colleagues. I am proud to join them in this effort.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I commend my good friend. He has articulately outlined and put the issues in focus as to what we are discussing. Coming from Vermont, one of the States that has the most desire, perhaps, to take advantage of the situation, going to my own personal history back to 1939, I was just a kid, but we had the first commercial windmill in the United States. It was working fine until a hurricane blew it away. It was an example to us of what the potential is.

Now we have windmills going over the State, up and down the State. Hopefully, there will be more and more. We have them located in nice places that do not spoil the view. What a great source of energy to take advantage of, especially in a State that is really being hard hit by all of the acid

rain and other stuff that floats to us from places known and unknown. But I want to share with everyone the experiences we have had.

Going back again, 29 years ago, the wind energy program started. It has come quite a ways, but now is the time to really maximize its utility and to keep this Nation going in the direction which will lead us away from the huge problems we have with being so dependent upon foreign oil and all those matters.

Perhaps my good friend, the leader, can tell us what we are going to do next, but at this point I will save the floor and then come back.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. In response to the Senator from Vermont, Senator KYL is tied up in the Judiciary Committee. They are on a very important judicial nomination now dealing with an appellate court judge to be or not to be. Therefore, he is unable to come and offer his amendment at this time. There have been a number of things we have talked about doing. One would be to vote soon on the Jeffords amendment, then debate the Kyl amendment as soon as he gets here, and vote on that tonight or tomorrow. That is where we are.

The Senator has arrived. I say to my friend—because I know he has been so tied up in the Judiciary Committee; I listened to his statement on television—the Bingaman amendment has been laid down. That calls for 10 percent, but the growth on renewables is ramped up more slowly and gives credit to hydropower and existing renewables. The Jeffords amendment is a second-degree amendment. That calls for raising the renewables to 20 percent. It is my understanding the Senator from Arizona wishes to offer an amendment to eliminate the renewables in this bill.

Maybe we could have a brief quorum call to explain to the Senator what procedurally we would like to do.

Mr. KYL. Might I inquire, my understanding is the pending second-degree amendment would have to be disposed of before I could offer my second-degree amendment. It would have to be defeated. I guess it could prevail either way. Then I would offer a second-degree amendment.

Mr. REID. We would be happy to work that out with the Senator however he wishes. We have talked about it for a couple days, this being the case. The only question is when we vote on his amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, the pending business is the Jeffords amendment. I am going to speak briefly to that. I am also going to assume we are going to be disposing of that amendment sometime around 5 o'clock. If the vote on that amendment is in the negative, then I will offer an amendment in the nature of a second degree to the underlying Bingaman amendment. I will discuss that. In order to conserve time, I will discuss some elements of that right now, while there is no other business pending. I will have to go back to the Judiciary Committee and vote on the Pickering nomination as soon as that rollcall starts. I can at least take some of the time necessary to respond to my colleague from Vermont and also describe the amendment I intend to offer.

I am going to show the nature of the cost of the Jeffords amendment and the underlying Bingaman amendment in a moment on the charts behind me. I will describe the issue before us and what my approach is, as opposed to the approach that has been presented so far by the Senators from New Mexico and Vermont.

The underlying bill has a premise, which is that it is a good thing for the U.S. Government to foster the increased production of electricity through so-called renewable energy sources. Now, current law does that through a series of incentives—some tax breaks—to entities that develop windmill farms or solar energy production or other kinds of so-called renewable electrical energy production. That costs quite a bit of money—about a billion dollars a year. But the idea is that we need to foster the development of these renewable sources because they are good energy; whereas, existing nuclear and oil-fired, coal-fired, or gas-fired are not the preferred sources of energy production.

Today there is something in the neighborhood of 2 percent of our energy being supplied by so-called renewables. The definition of renewable, by any logic, would also include hydropower. That, as I understand it, accounts for about another 7 percent of the electrical generation in the country. So the total of renewables would be about 9 percent. But, of that, only 2 percent is the nonhydro kind of energy. The idea is to get that to a much higher percentage.

In fact, I have to put a footnote here. One of the problems is that the Bingaman amendment has been very much in flux. It has changed at least three times since last night at 11 o'clock—that I am aware of—in terms of the amount of coverage. I am not sure right now whether it mandates that 8.5 percent of the electricity be generated by renewables and what the definition is or whether it is 10 percent. It has gone back and forth yesterday and today.

The underlying bill has a philosophy that the U.S. Government must now go beyond the mere incentives for renewable energy electricity production and move toward a mandate, and that the U.S. Government now has the responsibility to tell utilities all over the United States of America that they must, under penalty of law—severe penalties, which I will get to in a moment—produce a certain percentage of their electricity through the use of these so-called renewable energy sources, such as solar, wind power, biomass, and the like—10 percent, as I understand it. Again, I think the underlying Bingaman amendment may be 8.5 percent now, but it is not clear to me at this time.

That is a mandate not just on the States but one that will directly impact all electric customers throughout the United States because, obviously, most utilities are not just going to say, thank you, we will be happy to pay for that. It costs a lot more than production through nuclear, coal, or gas. I think they are going to pass those costs on to the consumers. That is what they are entitled to do and probably will do.

We are talking about basically a Btu tax on the electric customers of the United States of America. I say a Btu tax because the reality is that the cost is going to be shifting to the people who buy their power that is produced by coal or nuclear or gas from those who produce it from these so-called renewable sources of energy production.

The way the U.S. Government will do this is through a Federal law, which we are debating right now, on a mandate to the State that the utilities in the State must achieve this level of production within a timeframe. Essentially, the timeframe goes for the next 15 years—roughly, from 2005, when it begins, to 2020, a 15-year period. We have the cost calculations for that. I will get though that in a moment.

There is an alterative way to do this. Senator JEFFORDS said, ''10 percent isn't good enough; I propose we go to 20 percent.''

I hope my colleagues will agree that is not a good idea, that we do not want to mandate that kind of percentage on the States. In fact, we should not mandate anything. That goes to my alternative, which is to say the States must consider all of these alternatives, including a mandate of a percentage of renewable energy production, even consideration of a program, a so-called green program whereby customers within a State would be entitled to buy renewable energy as long as they were willing to pay the cost of it, and the producers there must produce that energy so that under the law, all of the States would have to consider all of these different options, but they would be required to implement no particular option.

It is the difference, on the one hand, between those of us in the Senate and the House of Representatives knowing what is best for the entire country: We know that 10 percent or 20 percent or 8.5 percent is exactly the right number; that we should mandate production through renewable energy sources regardless of what the cost of that may

be, versus my proposal which says: We can suggest to the States that they consider different forms of incentives or even mandates if they want to do that, but we should leave it up to the States to decide what they want to implement.

There are three or four different reasons that I think this is a better approach. First, obviously, is I do not think the source of all wisdom in the United States resides in 100 U.S. Senators. I think there are a lot smarter people in the States with respect to the particular needs of their States.

I point out to the distinguished Presiding Officer, for example, that on the east coast, the opportunities for solar and wind power are not great. So the net result of the passage of the Bingaman amendment or the underlying bill or the Jeffords amendment is going to be a huge transfer of wealth from New Jersey, New York, Massachusetts, and other States, to States such as mine, Arizona, which has lots of sunshine and can produce lots of solar energy, and California that has lots of solar energy opportunities and windmills to produce wind energy.

There will be a huge transfer of wealth. Why? Because the law will say: If you do not produce electricity through these renewable sources, then you have to pay a penalty, you basically have to buy credits from those States that do, and that is going to cost you money. Do you get electricity from it? No. You just pay money, and that keeps you out of trouble. You do not get any electricity for what you are paying. But the cost of the penalties or the cost of doing this either way is going to be passed on to your electric customers.

I say to any of my friends from the States that are not blessed, shall we say, with a lot of wind or sun: Get ready, you are going to be sending a lot of money to States in the Southwest, States such as Arizona that I represent.

Let me give an idea of the cost. Let's look at how much it is going to cost to develop this renewable production capability. It is represented by the blue. It starts in the year 2005 on the far left-hand side where the arrow is pointing. That is about $2 billion a year cost to produce this much power with renewable sources. This is gross cost.

The far line on the chart is the year 2020. The blue line goes up to about $10 billion a year to produce the power, but under the law, as the bill is currently written, there would be little incentive to continue to build the facility since it sunsets. My understanding is the amendment may remove the sunset, but the total cost is the same either way.

The red represents the penalties that will have to be paid because you cannot build the generating capability to meet the requirement called for under the law. That would total just about $12 billion a year in the year 2020.

Whether it is the actual construction of the facilities or the payment of the penalties, we are talking just under $12 billion a year. Much of that, as I said, is going to be paid by States that do not develop the generation but have to buy the credits and send them to the States that do provide the generation and excess amount of that generation. The total amount of that is $88 billion over the 15-year period. That is $88 billion gross cost.

To show what the pending Jeffords amendment will do, it is even worse.

The Jeffords amendment: Starting in the year 2005, $20 billion a year, which goes up to, in the year 2020, more than $22 billion a year; again, the production capacity lining out at about $13 billion a year and the remainder in penalty, but there is a total gross cost of about $23 billion, and the total cost over the 15 years is about $181 billion.

Have we done a cost-benefit analysis to understand what we are going to be getting with $181 billion? These charts are produced by the U.S. Department of Energy. They have done the numbers, but nobody has done a cost-benefit analysis of what we are going to get out of this.

Some say: Maybe this will replace some of the fuels that are currently being used, such as coal or oil, and therefore there will be less demand for those particular fuels, so the cost of those fuels will go down, so energy produced by coal or gas will go down—you get the idea.

That may happen, but obviously we are still talking about a huge cost to implement this law. Let's just take a wild presumption and say that all of this generation replaced the generation from natural gas and it drove the gas prices down to such an extent that we ended up with a wash, which is not the case even according to the Department of Energy, but even if we did that, what would that represent? It represents a Btu tax, as I said, on nuclear, coal, oil, and gas production, and even hydro production, as a matter of fact, and a big wealth transfer from States that would have to buy the credits to States that generate the electricity from the preferred fuels, these so-called renewable sources.

I think that is bad public policy. It is arrogant on the part of the Federal Government to mandate something such as this, to presume we would know the right mix of fuels to use in producing electricity in this country, to require that some States would get hurt by it more than other States, to not have ever done any kind of cost-benefit analysis, notwithstanding the huge costs involved.

I am assuming, by the way, that this is possible, that we can do this, even though 2 percent of the generation today is through the so-called renewable sources. This is why President Bush supports our approach, which is a voluntary approach by the States where the States can determine themselves what mandate to impose.

By the way, 14 States already have a mandate. My State has a 2-percent mandate. The State of Maine has a 30-percent mandate. Texas has a mandate. What the President believes is each State should be able to decide for itself, based on its unique circumstances, what is possible in that State. It may be in my State it is possible to do a lot of wind and solar generation. It may not be so possible in New Jersey or New York. That is why each State ought to determine for itself what the mix should be, of course, based upon what it is willing to impose upon the retail and wholesale customers in the respective States.

I spoke with the Secretary of Energy today, who assured me I could represent to all of my colleagues that he supports the Kyl amendment, that he opposes the underlying Bingaman amendment and the underlying bill and, of course, the Jeffords amendment, which would all impose by Federal mandate a standard for renewable portfolio.

Let me address this cost in another way. As I said, this is a mandate. The Federal Government already provides an incentive, and the cost of that incentive right now is about $2 billion over a 2-year period. This is the production tax credit which will be renewed, extended, and expanded in terms of its scope. That is what came out of the Finance Committee, on which I sit.

We are going to be providing for expanded and extended tax credits for the production of electricity through these renewable fuels. It is not necessary for the U.S. Government to mandate it as long as we can achieve that result through the use of the tax incentives which we will be, as I say, dealing with here a little bit later on, but that is what came out of the committee.

I want now to address briefly this question of discrimination. It is apparent to me that the effort being made is to round up votes by picking and choosing between the politically correct fuels and those that are not politically correct and making some other changes in the amendments so some areas are impacted and other areas are not. Let me give an illustration.

We know this underlying amendment of Senator BINGAMAN and the amendment of Senator JEFFORDS that is pending would both impose significant unfunded mandates on the States and localities. Part of this is due to the fact that States would have to buy credits. Part of it is due to the fact there are a lot of municipal power producers in almost every State.

It is my understanding—and I would love to be corrected by the Senator from New Mexico if I am wrong on this—that as a result of the fact that a point of order would lie against his amendment because of this unfunded mandate, the provision with respect to municipal generation or public subdivision generation, Federal or State or local, has been removed from the bill. I will assume, unless I am corrected, that is the case. I am seeing a nod, so that is good.

I do not think we should impose this mandate on our political subdivisions. So that would remove the point of order with respect to the generation.

I am not sure with respect to the purchase of credits, and I would have to analyze that. But at least what we have done is to say that 10 percent of the power, more or less, that is produced in the country by the municipal generators would not be subject to this mandate.

In my State I have a fairly large public power producer and a bunch of little co-ops and a couple of very large investor-owned utilities. So I ask: Is it fair for the Senate to impose upon one group a mandate that 10 percent or 20 percent or even 8½ percent of power be generated by renewables, whereas it would not apply to the political subdivisions?

I am happy for the political subdivisions. I am glad they do not have the mandate applied to them, although they do in the case of Arizona because the State applies a mandate, but that is the determination of the State. I do not think it is fair. I think it is discriminatory.

I also understand hydro is treated a little differently; that hydro is only considered a renewable resource. Now if water is not renewable, I do not know what is. Water over the dam has always been considered a renewable, the best of the renewable resources, but it is not politically correct by certain environmental groups and so it is not included, except to the extent there are incremental economic improvements or efficiency improvements in the electrical generation facility, the dam through which the water passes. You rewind the turbines and that gives a greater efficiency, and apparently you get some credit for doing that. But otherwise you get no credit for hydrogeneration.

I understand Senator COLLINS will have an amendment to say, wait a minute, in Maine we do a lot of hydrogeneration and we should get some credit for that. I understand that may be accepted. I do not know whether or not it will be, but clearly there is discrimination going on when one kind of clearly renewable resource counts but another kind does not count. Why would we have a double credit for solar energy or energy produced on Indian lands versus biomass or hydro, for that matter, or wind? Why is that? Perhaps the authors of the bill could explain that to us.

In other words, my point about discrimination is we have done some picking and choosing, some winners and losers. It, again, is the arrogance of Federal power that we decide what is best. Based upon science? Based upon the merits? No, based upon what it is going to take to get the amendment passed. That is what is happening.

Let us get real specific about it. What we are doing is trying to construct something that can pass, and what I am saying is that the fairest and most nondiscriminatory way of all is to say, let each State decide for itself. That is really fair. So if New Mexico decides to do solar generation, it can do that. If my State of Arizona says, wait a minute, you mean we are going to have to put acres and acres of shiny mirrors in our pristine desert that we love to look at because it is so beautiful—that is the way we could generate that power in Arizona is through solar—that is how we would have to do it? We are going to be required to degrade our environment by putting—I do not know how many hundreds of acres of mirrors it would take to generate this solar power; that is how we would do it, I guess——

I think the State of Arizona would say that is environmentally unacceptable; we are not going to do that. We are not going to spoil the beauty of our State, not to mention what would happen to the flora and fauna that could be affected in an adverse way by such a massive amount of solar in the State of Arizona. I think we would like to make that decision ourselves. If it is possible to produce, let us say, 3 percent of power through solar generation in Arizona, and our people in the State decide that can be done and it can be done in an environmentally sensitive way, and that is a good thing, then let the State of Arizona decide that.

I do not think representatives from the State of Florida, which also has a lot of good sun, or the State of Vermont, which may not have quite as much sun, should be dictating that to the State of Arizona.

I have one more point, and then I will make the rest of my points later.

The procedure—and I will close very quickly—as I understand it, is we have the underlying bill, that pending to that is a Bingaman amendment that would reduce the Federal mandate to 8½ percent, but it still would be a Federal mandate—and correct me if I am wrong on that, but it would exclude the municipal providers and it has a phase-in period different from the underlying bill; those are some of the essential differences between that and the underlying bill—that the pending second-degree amendment is a Jeffords amendment that would mandate 20 percent and does not exclude the municipal generators, and if that is defeated, then we would be back to the point I could offer my second-degree amendment, which very simply provides that the States must consider the alternative of renewable fuels generation, as well as consumer choice, so the consumers could require that they be provided renewable fuel electricity if they are willing to pay for it but it would be up to each individual State as to what to order.

What I would hope is we would defeat the Jeffords amendment, that we could then approve the Kyl amendment which would be a substitute for the underlying Bingaman amendment, and there may be later some clarifying amendment by Senator COLLINS that we would consider at that point. That would deal with the subject of renewable fuels, and I think it would do so in a fair way, in a nondiscriminatory way, in a way that would not necessarily cost as much, although each State could decide to impose those costs on themselves if they chose to do so in a way that would be consistent with the President's energy plan and a way that I suggest to my colleagues would be much more likely to be successful with our House colleagues in a conference on this bill.

So I hope when we get to the point, after I have offered my amendment, we will be able to support that which will have the effect of defeating the underlying Bingaman amendment.

Excuse me. I stand corrected. I am advised the Bingaman amendment is still at 10 percent, but it pushes out to the year 2019. So it is still a 10-percent mandate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. During the debate today, the Bingaman amendment was changed, it was modified, and a substitute maintaining the 10 percent of the bill made it a different way of getting there. I made the same mistake the Senator of Arizona did today.

Prior to the Senator from Arizona leaving, I wanted to make a unanimous consent request. I ask unanimous consent that the time until 5:35 p.m. today be for debate with reference to the Jeffords second-degree amendment No. 3017, with the time equally divided and controlled in the usual form; that at 5:35 p.m., the Senate vote on or in relation to the Jeffords amendment; that upon disposition of amendment No. 3017, Senator KYL be recognized to offer a second-degree amendment to the Bingaman amendment No. 3016; that no intervening amendment be in order prior to disposition of either amendment, nor any language which may be stricken.

I further ask that Senator CRAIG be recognized for 25 minutes; and that Senator NELSON be recognized for 5 minutes—Senator CRAIG has no objection to Senator NELSON going first—and that Senator JEFFORDS have the final 5 minutes prior to the vote that would occur at 5:35.

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

The Senator from Florida.

Mr. NELSON of Florida. Hearing this debate, it reminds me a little bit about the debate on miles per gallon, whether or not that would be etched into law that would have to be met.

If we do not set such a standard, we will never get to it. If we do not set a percentage of years that are required in the energy production, we are not going to have that standard to meet.

I support the amendment of the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I believe under the unanimous consent agreement I have 25 minutes.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are discussing a very important amendment to a very complicated bill that will once again require a Federal mandate to meet a specific goal; or should we allow our States, through the incentive of the marketplace, to meet the goals relating to certain levels of energy production being of a given type.

The reason I mention this is that, for the past couple of weeks, we have witnessed an unprecedented attempt to write very complex legislation on the floor of the Senate—an electricity title of an energy bill.

Three years ago, Senator MURKOWSKI, then serving as chairman of the Energy and Natural Resources Committee, on which I am privileged to serve, laid out three criteria for action as we move toward the development of a comprehensive energy policy.

Deregulate where possible; streamline when deregulation is not possible; and the third, respect the prerogatives of the States.

While that was not a mandate of the committee, it was certainly something to which all Members largely agreed.

To that, I add a fourth elementary principle that I think is pertinent in crafting the legislation: Know what we are doing when we legislate and when we grant new authority or change our delegation of authority to a regulatory agency. In other words, look at the whole and not just each of the pieces now scurrying to the Chamber to be attached to this Title of the Bill.

Title 2 fails all four tests.

The approach we are taking to create this Title is simply too dangerous for me: Trying to write complex legislation without understanding it, without allowing our staffs in a bipartisan way to collectively make sure all the pieces fit together. Somehow politics leads us to this very precarious endeavor.

A few general observations before I go into the provisions of this title that the Senator from Vermont is amending. We have this month received a landmark Supreme Court decision on the authority of the Federal Energy Regulatory Commission to order transmission restructuring that has significant implications on the balance of Federal-State responsibility and authority for regulation of public utilities.

The majority opinion requires careful analysis in light of the statements, on the one hand, that the Federal Commission could not assume jurisdiction over retail transmission without possibly running afoul of the Federal Power Act that gave jurisdiction to States over retail sales, and, on the other hand, that the Commission could take control if it makes certain factual findings.

Mr. President, what have I just said? Has anyone really, here, understood the intricacy of what I have just said. Are we, today, measuring our actions against what the Supreme Court laid down recently?

We must know how far the Commission can go now and how far we want it to go before we enact this law. Yet there is fundamentally no effort to make that happen. The Commission has pursued a restructuring program to establish regional transmission organizations, a virtual stand-alone transmission business, as the Commission called it in 1999.

Before we enact a law, we need to carefully study that new reality. How does the Supreme Court's decision in New York v. FERC affect those regional transmission organizations or RTOs? I note also that in all these hundreds of pages of comprehensive energy bill, not one word addresses the issue of regional transmission organizations.

How can we enact a title on electricity without taking RTOs into account, now that the Supreme Court has ruled? Yet we are not doing that. If we are to call the electric title ''comprehensive,'' then we have just taken a big chunk out of it, letting what the Court has said stand without explanation in the context of the current policies of the Federal Energy Regulatory Commission.

Even if we choose to remain silent on this important topic of the day, our choice should be a conscious one, clearly expressed and based on a complete record and, at a minimum, after hearings in the committee of jurisdiction, not the lapse of haphazardly working out numerous specifics on the floor of the Senate.

We are now in a scurry with amendments, one that has just been offered and one that is about to be offered. Staff are over speaking with the Budget committee right now, seeing if amendments violate the Budget Act. Why? Because they were never tested, discussed, or reviewed in jurisdictional committees. So we are literally at this moment doing something that to my knowledge rarely occurs on the floor of the Senate.

Many experts and the administration's ''National Energy Policy Report'' note that this country needs more investment in transmission. Better returns bring investment. The Commission, in its RTO rule in 1999, provided for certain kinds of price reforms to make investment more attractive. This title has not one word on the reform of transmission rates or prices.

Even if we conclude that it is not necessary to address the issue in a statute because we support the course that the Commission is on, our conclusion should come from conscious choice after hearings in the appropriate committee—not, as I have already said, the lapse of haphazardly legislating on the floor.

If you read these provisions, and I have, you will notice that, except for repeal of the Public Utility Holding Company Act of 1935 and the Public Utility Regulatory Policy Act of 1978—two obsolete statutes, I think most recognize, whose repeal I support—not one word in the title takes authority away from the Federal Government.

So as was our intent in 1992 to move electrical production in this country away from a structured environment, we now have an amendment on the floor that takes us back to Federal mandates and Federal controls under the Federal Energy Regulatory Commission.

I would like to spend a few minutes now, before my time runs out, on some of the other provisions within this electrical title. Mr. President, let me assure you. At the end of the day, this is what I plan to do.

I have filed at the desk an amendment, an amendment that would strike the electric title as it is proposed and amended by the actions of the Senate. In striking it, my amendment would replace the reliability language that was just put in this afternoon, and would include the current language in the bill repealing PURPA and PUHCA. It would also include consumer protection language that is currently in the bill covering information disclosure, consumer privacy, and involuntary slamming and cramming.

These provisions address issues that have been debated in Committee and considered for quite some time. The provisions offered fall within a general consensus that has evolved over the several years. These provisions will do no harm, and will advance important solutions to problems that have hobbled efforts to assure that our electricity system remains the most reliable in the world as well as ensure that consumers of electricity are protected. Leaving the Title as is does not advance deregulation, or a reform, but reregulation and a move towards the centralizing of Federal authority at the Federal Energy Regulatory Commission.

Let me go to a provision in the bill, if I can: electricity mergers. The provision raises the floor on merger review to $10 million from $50,000. How many transactions does it affect? I doubt that anyone has any idea. There have been no hearings, no analysis of the market to determine the impact of this proposal. More importantly, section (a)(1)(D) gives the Federal Government jurisdiction over acquisitions of generating plants, unless they are used exclusively in retail. Utilities sell at wholesale and retail, largely from the same plants. They don't create separate generating facilities for those kinds of purposes. This section blurs the distinction between regulation of retail suppliers of electricity, traditionally the province of the States, with the regulation of wholesale supply of electricity.

Why? Have States not been vigilant? Have they been too restrictive? Will the Federal Commission now preempt State procedures for assuring adequate supply? Will the Commission now use generation acquisitions as a club to force restructuring, as it did with mergers previously?

No one knows the answer to what I believe is a significant question that I

have just asked. Yet if we had done our homework in committee, those answers would already be on the table. You or I may agree or disagree on them, but at least we would not be on the floor asking what is going on and what are we doing. On the floor we cannot swear in witnesses and ask questions. We cannot deliberate and write a committee report.

Finally, on mergers, paragraph (5) says:

> The Commission shall, by rule, adopt procedures for the expeditious consideration of applications . . ..

I like that.

It goes on to say:

> Such rules shall identify classes of transactions or specify the criteria for transactions that normally meet the standards established in paragraph (4).

What does ''normally'' mean? If you have ever watched these kinds of transactions or determinations, then you better understand what the word means because there is a long history of meaning as determined by Courts of law.

In the vacuum of the floor deliberations, we don't know nor will FERC understand our intent because they will have to thumb through pages and pages of CONGRESSIONAL RECORD instead of a full committee report.

Going further, if the Commission does not act within 90 days on these transactions, such application shall be deemed granted.

Maybe that is fine. Now comes the hook:

Unless the Commission finds that further consideration is required to decide the issues and the Commission issues one or more orders tolling the time for acting on the application for an additional 90 days.

What am I saying? How complicated is that? Is there a clear understanding of what is intended here?

The provision appears to permit the Commission to recoil from the very speed the proposal is attempting to introduce.

As I said, I am generally for speed in decision-making, within reason, so that it isn't dragged out month after month and hundreds of thousands, if not millions, of dollars are lost and ultimately recouped from the ratepayers.

Under this provision, as I read it, the Commission could take away with one hand what we have required with the other.

What standard do we set here to make sure FERC doesn't toll away the 90 days into long delay? How does FERC intend to use this loophole? What has FERC done in the past? We cannot know because in the Chamber we cannot hold a hearing to get an interpretation from the Commission itself or legal and consumer groups as to what they believe the intent would be and how they would choose to carry it out.

That is the reality.

Let me touch on one other subject, market-based rates.

This section in the legislation on the floor would tell the Commission it can do what it wants because this section says it shall consider ''such factors as the Commission may deem relevant.'' That is a phenomenal grant of authority.

The Federal Commission can use this as a club for forcing restructuring, as it has in the past forced, and it can again force utilities to buy and sell electricity against their will, subordinate capital retail consumers, reveal proprietary information, and join regional transmission organizations. Each of these goals appears very much to be in the Commission's sights as we speak.

The section lists possible factors: ''the nature of the market and its response mechanisms.'' What does ''the nature'' of the market mean? Response mechanisms? What kind? And to what? To me, the best response mechanism we have is the law of supply and demand. But that is not necessarily the response mechanism at which the Federal Energy Regulatory Commission would be looking.

My colleagues may argue that the Commission knows what it means. Maybe so. But we need to know what this means before we give the Commission such vast authority.

Revocation of market-based rates in section (f) says FERC shall set the just and reasonable rates by order. Under what terms? From the time it does so forward, or can FERC subject utilities to open-ended retroactive refunds, as it is trying to do now?

Of course, in all of those situations we have seen the frustration that has been brought about by the attempt of FERC to do this recently. We don't know because we are legislating on the fly again without committee deliberations.

How about a refund effective date?

This section changes the date from which the Commission can order refunds of existing rates. Current law makes it, at the earliest, 60 days from the complaint or FERC investigation. This gives utilities time to digest the complaint to know the extent of their jeopardy. Sixty days also gives companies time to secure financial hedges and, most importantly, in this era of post-Enron disclosure, to make timely disclosure to the investors, the shareholders, and security regulators.

Perhaps other considerations of consumer protection outweigh these harms. But can anyone tell me what they are? Has the current law harmed anyone? Will this fix any harm? This would not have appeased my colleagues from California two summers ago, I can tell you that. We cannot know when we legislate from the floor.

I could go on. My time is running out. I will speak more about this possibly tomorrow and on Monday because I want to walk my colleagues through the substance of this title and to justify why I think it is necessary to strike this Title and replace consensus provisions. We must do no harm and we do no harm by establishing not only reliability but by repealing obsolete law—PURPA and PUHCA and by putting in the kind of consumer protections that all of us, or most of us, have agreed are fitting and proper.

That is what we ought to do in the Senate. But there is a rush to judgment today in a time when the committee has had no opportunity to hold this fine print up to the light of day and to have our staff in a bipartisan way—our professional staff who have dealt with this law and the Federal Energy Regulatory Commission for years—to examine it and at least give us the reasonable interpretation of what all of this might mean.

If I have confused anyone today, I hope I have because this is phenomenally complicated law. My guess is that most of my colleagues have not read the bill. If they had, they could not understand it. That is in no way to impugn the chairman of the committee. It is his bill. My guess is he is ready, and certainly his staff is. But when it deals with the kind of complications that I bring out and the simple interpretation that can turn a utility on its head, destroy hundreds of millions of dollars of investment, or redirect it in another manner, it is time we understand what ''normal'' means in the eyes of the Federal Energy Regulatory Commission, and a lot of other words that are now injected into what could become new utility law for this country.

I will conclude my remarks for the day. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, if I may, I would like to respond to some of the statements that have been made by my colleagues.

First of all, my friend from Alaska quoted a figure of $6.4 billion having being spent in the last 5 years on renewable energy. That sounds like a lot. The Congressional Joint Committee on Taxation estimates that between 1999 and 2003 the oil and gas industry received $11 billion in direct tax breaks—over three times what was given, in that sense, to renewables.

If you want to take a look at where your money ought to go, it ought to go where you can get the best buck. It is certainly not with coal.

These kinds of subsidies have been there for decades and decades—in some years greater than others. For example, in a typical year, $21 billion in Federal subsidies go to fossil fuels, $11 billion to nuclear, and $1 billion to renewables.

Again, when you look at energy costs with those kinds of subsidies, renewables are obviously the best way to go. But you have to have the sources to be able to provide the electricity.

As to the cost of the Federal 20 percent RPS, I note that the U.S. Department of Energy has consistently found that it will not raise the average overall energy sector costs at all.

My friend says that whatever costs are incurred are passed on to the consumer. That is true. Consumers also

pay the massive cost from powerplant emissions, both environmental and health related.

For instance, recent studies have shown that emissions from coal-fired plants lead to a massive 12-percent increase in lung cancer. Obviously, if you are using wind, you do not have any ramifications.

The Senator from Alaska, who just came back to the Chamber, points to a large ''footprint'' from wind turbines. Let me show you this picture, which shows how wind turbines are indeed ''multiple use'' in the best sense, with farmers able to raise crops and graze livestock beneath them.

The wind energy alone from a 20-percent renewable standard will provide $1.2 billion in new income for farmers, ranchers, and rural landowners. That is $1.2 billion in income to our farmers.

My amendment of a 20-percent standard by 2020 is achievable, good for the economy, good for consumers, and good for the environment.

I urge all Members to please support my amendment. We have to make progress. It has been some 30 years that we have been working on renewables. The successes are growing, and they are spreading throughout world. But we are not maximizing it. In this Nation, we are not taking anywhere near the advantage we should in renewables.

So I urge my colleagues to vote for my amendment. Hopefully, this will lead to a much more prosperous future for not only the energy users but for those who produce the energy, such as those on our farms.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. How much time is remaining prior to the vote?

The PRESIDING OFFICER. There are 4 minutes 12 seconds under the control of Senator CRAIG.

Mr. MURKOWSKI. I thank the Chair.

My colleague was referring to millions rather than billions. I think he used the term ''billions of dollars saved.'' I think on the chart it shows ''millions.'' But nevertheless, I——

Mr. JEFFORDS. The total was $1.2 billion.

Mr. MURKOWSKI. So $1.2 billion. The chart said $125 million.

Mr. JEFFORDS. That was only for that farm.

Mr. MURKOWSKI. Just that farm?

Mr. JEFFORDS. Yes.

Mr. MURKOWSKI. I thank the Senator.

I want to make a point on renewables because renewables certainly have a value. But this isn't the first time we have come to find the contribution of renewables.

We have expended $6.4 billion on renewables in the past 5 years. We are going to continue to do that at a relatively high rate.

We have had $1.5 billion for R&D, $500 million for solar, $330 million for biomass, $150 million for wind; and $100 million for hydrogen; almost $5 billion in tax benefits, and $2.6 billion in reduced excise taxes for alcohol fuels.

I support renewables, as does virtually every Member of this body. But the question in my mind, of increasing to the point that the Senator has suggested—an aggressive 10 percent to 20 percent—will cost an extraordinary amount of money when you consider that nonhydro renewables make up less than 4 percent of our total energy needs and less than 2 percent of our electricity consumption.

So we need a realistic national energy strategy that includes renewables as part of a balanced energy portfolio. But let's not fool the public into thinking that renewable energy can replace coal, oil, natural gas, and nuclear anytime soon.

Even if we adopt an aggressive 10- to 20-percent RPS, where will the other 80 to 90 percent of our electric needs come from? Fossil and nuclear, clearly.

Even with 3 to 5 percent renewable fuels, the other 95 to 97 percent would still come from oil. Let's move it. Let's recognize the world moves on oil.

As a consequence, Mr. President, I encourage Members to reject the proposed doubling of renewables simply because the cost-benefit ratio is so far out of line with what is technically achievable.

I think the National Research Council that reviewed the Department of Energy's renewable energy programs would substantiate that substantial improvements in performance and reductions in the costs of renewable energy technologies certainly have been made. But deployment goals for renewable technologies are based on unreasonable expectations and on unrealistic promises, and to mandate this would put an extraordinary cost on the consumer. And I assure you, that is where the costs would have to be passed.

So I encourage Members to reject the proposal.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the Jeffords amendment No. 3017. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

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

The result was announced—yeas 29, nays 70, as follows:

[Rollcall Vote No. 50 Leg.]

YEAS—29

Baucus	Feingold	Murray
Boxer	Feinstein	Reed
Cantwell	Fitzgerald	Reid
Chafee	Harkin	Sarbanes
Clinton	Jeffords	Schumer
Collins	Kennedy	Snowe
Corzine	Kerry	Specter
Daschle	Leahy	Wellstone
Dodd	Lieberman	Wyden
Durbin	Mikulski	

NAYS—70

Akaka	Dorgan	Lugar
Allard	Edwards	McCain
Allen	Ensign	McConnell
Bayh	Enzi	Miller
Bennett	Frist	Murkowski
Biden	Graham	Nelson (FL)
Bingaman	Gramm	Nelson (NE)
Bond	Grassley	Nickles
Breaux	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Hatch	Santorum
Burns	Helms	Sessions
Byrd	Hollings	Shelby
Campbell	Hutchinson	Smith (NH)
Carnahan	Hutchison	Smith (OR)
Carper	Inhofe	Stabenow
Cleland	Inouye	Stevens
Cochran	Johnson	Thomas
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Voinovich
Dayton	Levin	Warner
DeWine	Lincoln	
Domenici	Lott	

NOT VOTING—1

Torricelli

The amendment (No. 3017) was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WELLSTONE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. DASCHLE. Mr. President, there will be no more votes tonight.

In consultation with the Republican leader and the managers of the bill, and Senator REID, I do not believe we are in a position to come to any further conclusions on amendments tonight. So I do not expect there will be any additional rollcalls.

There will be a rollcall vote on one of the two judicial nominations pending on the calendar tomorrow morning at 9:15. Then there will be an additional vote on the second judicial nomination on Monday at 6 o'clock. So Senators should be made aware that tomorrow morning we will have a vote on a judicial nomination. It appears that may be the only vote we will have scheduled tomorrow, unfortunately. Then, on Monday, we will have a second vote which may or may not be the only vote. We are not sure at this time.

UNANIMOUS CONSENT AGREEMENT—H.R. 2356

Mr. DASCHLE. Mr. President, we have been working with colleagues on both sides of the aisle with regard to the campaign finance reform bill. I am now in a position to announce that we are able to reach a unanimous consent agreement on the motion to proceed to the campaign finance reform bill.

So I ask unanimous consent that, at 3 p.m., Monday, March 18, the Senate proceed to the consideration of Calendar No. 318, H.R. 2356, the campaign finance reform legislation, and that the cloture vote on the motion to proceed be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, we will continue to take this matter one step at a time. We are encouraging Senators to express themselves on campaign finance reform tomorrow, or on energy tomorrow. My hope is that the Senator from Arizona, Mr. KYL, and other Senators who wish to be heard on their amendments, will offer them tomorrow, will debate them tomorrow, will make sure that we use the day we have available to us tomorrow to move the legislative process along. That is also true on Monday. We will come in at 3. We encourage Senators to offer amendments on the campaign finance reform bill on Monday. We will have further discussions, of course, with our colleagues with regard to the campaign finance reform bill. I will say, if there are amendments to be offered, we will have debate and further consideration of those amendments on Monday and Tuesday.

It would be my expectation to file cloture on the bill for a cloture vote on Wednesday, as we currently expect it. That would then require the vote, as I have said on many occasions, no later than Friday, which would accommodate our schedule for the balance of next week.

I have said, and will repeat, if there is a way we can resolve whatever other outstanding procedural questions between now and Monday, or between now and Wednesday, I am certainly more than ready to do so. But I appreciate at least this progress. We will have more to say beginning Monday.

I yield the floor.

Mr. MURKOWSKI. Will the majority leader yield for a question?

Mr. DASCHLE. I will be happy to yield.

Mr. MURKOWSKI. Assuming, Mr. President, the schedule of campaign finance being resolved Wednesday, is it the majority leader's intention, then, to go back to energy?

Mr. DASCHLE. Mr. President, the Senator is correct. My hope is we can finish this bill sometime soon. It would be my desire to continue to work on it until we do so, with the exception, of course, of the campaign finance reform bill.

Mr. MURKOWSKI. And, Mr. President, recognizing that may be extended, I gather the agreement is still under consideration, but if it is prolonged, do you intend to proceed and conclude campaign finance and then ultimately go back to energy?

Mr. DASCHLE. The Senator is correct.

Mr. MURKOWSKI. I thank the Chair. I thank the leader.

Mr. DASCHLE. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. LOTT. Mr. President, let me inquire about the parliamentary situation. Is the energy bill still pending, and is there an amendment pending at this time?

The PRESIDING OFFICER. The energy bill is pending, and the Bingaman plan to the energy bill is pending.

NOMINATION OF CHARLES PICKERING

Mr. LOTT. Mr. President, notwithstanding that, and after a discussion with Senator DASCHLE, I will take leader time to make some remarks about the vote just taken in the Judiciary Committee. I yield myself leader time.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Mr. President, this is my 14th year in the Senate. There have been a lot of high moments and low moments in that tenure. I certainly worked very hard, and in my position as majority leader, I learned a lot of lessons. As you go along, sometimes you do things that Senators agree with, and sometimes they do not—on both sides of the aisle. I understand that.

But I must say that I feel about as bad about the Senate right now as I have in the years that I have been watching the Senate and that I have been in the Senate. I think the Senate Judiciary Committee just participated in a miscarriage of justice. I am very much concerned about the effect it is going to have on the Senate, and on our relationship on both sides of the aisle.

The Senate Judiciary Committee just voted against the nomination of Judge Charles Pickering from Mississippi to move from the Southern District Court of Mississippi to the Fifth Circuit Court of Appeals. They voted against, as I understand, reporting out his nomination unfavorably, and they voted against reporting out his nomination without recommendation. That was not exactly the sequence, or exactly the motion. The fact is they have voted against the nomination of this very fine man.

I think for the Judiciary Committee to take the action as they did is very unfortunate and very unfair to a man I have known directly and personally for about 40 years.

I know him as an individual. I know his family. I have been in his home. I have been to football games with him. I have been to campground rallies with him, and I know him very well. He certainly is qualified and certainly deserves better treatment than he has received in this process. I think this is a continuation of the politics of personal destruction. I think his character has been smeared. I think a lot of incorrect information and misleading information was put out about the judge. That was wrong.

Now a number of Senators are saying: Well, yes, we realize that information is not right but voted against him anyway. As a matter of fact, this judge has been very courageous and has been a moderating force and a leader in trying to bring about reconciliation and bringing people together—not drive them apart, particularly in the area of race relations in our State.

I think one thing that strikes me so hard and has hurt me about this is because, once again, I believe this is a slap at Mississippi, my State. I think that some people thought: Oh, well. Good. This is a Federal district judge. He is a known conservative. He is a known Republican. He was selected on the recommendation of TRENT LOTT and THAD COCHRAN by President George W. Bush, and he is from Mississippi. This is one we can nail. He surely must have a bad record over his lifetime, being from that State, on race relations.

Now, people and members of the media that had earlier been critical of him said: No, no, no. We didn't mean that. We never really said that. We take it back. Maybe he has been OK in this area, but now our complaint is something about his demeanor on the bench that we don't like.

But I think, once again, there are people trying to use the ghosts of the past to keep us from rising up and looking toward the future together in a positive way.

When you have African Americans, women, and just about every Democrat in the State saying this is a good man and he ought to be confirmed, you ought to begin to ask yourself something. In fact, somebody said: Well, the national NAACP said he shouldn't be confirmed. However, the local people within the NAACP who know him best say he should be confirmed. When asked about that, and about the response of the people who know him best, one of the critic's responses was: well, they were duped. You don't dupe a lot of people when you live in Laurel, MS, on issues such as race relations. Everybody knows everybody. Everybody knows where you were in 1967, where you were in 1980, and where you have been in the 1990s.

So I take it personally. I am hurt by the attacks on this fine man. He does

feel strongly about his faith. He is a believing Christian. He is an active participant in the church. He was president of the Mississippi Baptist Association. He was president of the Mississippi Gideon Association.

Is that a problem? Is that a disqualification?

This is the second nomination I have seen this year where it has looked as though if you feel strongly about your faith—your Christian faith—that there is something suspicious about that. Whatever your faith is—I think if you are committed to your faith—it should not be a disqualification from office. One of the things I admire most about JOE LIEBERMAN is that he feels strongly about his faith, and he goes to extra lengths to abide by it, even during the campaign.

I remember during the campaign of 2000 when I came into National Airport. The campaign plane of the Vice Presidential candidate for the Democrats was sitting there at the airport on Saturday. Most of us were campaigning like crazy on Saturday. But not JOE LIEBERMAN. He was fulfilling his commitment to his faith.

So, all of this bothers me. It is an attack on my State. It is an attack on the nominee's religion. It is an attack on his positions on race, which have been inaccurately portrayed. I think this is a real tragedy I am so sorry to see.

I saw a letter in a newspaper just last night from an African American. I think maybe it was a paper in New Jersey. The caption of the letter was ''The Fruit Never Falls Very Far From the Tree''. This was an African American talking about his run for Congress. I guess he was an incumbent House Member, a Democrat, and he was running in the primary. When he got to a particular site, he didn't really have enough equipment to put up his signs. When he started working and scurrying around trying to get it done, Congressman CHARLES ''CHIP'' PICKERING showed up.

He said: We will help you. Take some of our stuff. He didn't win, but Charles ''Chip'' Pickering went on to win. It is a small thing. But it tells you a lot about a man and about a man's son.

Charles Pickering's son worked for me. Chip Pickering is one of the finest young men I have known. He was a missionary behind the Iron Curtain. He was my legislative director, and a great legislator. He not only knew the substance, but he knew the art of the possible. Senator FRITZ HOLLINGS can tell you that we got the telecommunications bill passed because of the brilliance of Congressman CHIP PICKERING, the son of this nominee. This young man has now worked day and night to try to help his dad get through this unfair crucible—now without success.

I feel like I failed him. I have tried to understand: Why is this happening? What is happening here? Is it just about this man? I don't think so. No. I think it is a lot bigger than that. I think it is really directed at future Supreme Court nominees. This is a message to the President. You send us a pro-life conservative man of faith for the Supreme Court, and we will take care that he or she does not get confirmed.

That is what it is really about. But I also think it is a shot at this man. I think it is a personal shot at me. This is a: ''We will show you; you didn't always move our nominees'' payback. But, as I recall, the Judiciary Committee under the Republicans didn't kill a single nominee during the Clinton years in the committee. We did defeat one of them, but we first reported him out of the committee and then defeated him on the floor with a recorded vote. Yes, there were some that didn't get through the process. There were some that took a long time to get through.

But again, I think this is payback. The problem with payback is, where does it ever end? You know: We paid you back. You pay us back. Now we are going to pay you back. Where does it end? Is this the way for the Senate to act? Is this the process which this body should use to confirm judges?

Senator JOE BIDEN, in 1997, said: Hey, these nominees should not be killed in the Judiciary Committee. As he put it, ''Everyone that is nominated is entitled to have a shot, to have a hearing, and to have a shot to be heard on the floor and have a vote on the floor.''

Where in the Constitution does it say that the Senate Judiciary Committee will decide on the confirmation of nominees? The Constitution says the Senate is to give its advice and consent. That's where Senator BIDEN was in 1997. I think a week or so ago he kind of hinted at the same sentiment again, particularly when you have straight party-line votes.

But I think really, under any conditions, these judicial nominees should come to the floor for a vote. It does not take a whole lot of time. But maybe we need to try to find a way to work something such as that out.

But in the meantime, it is obvious that this very fine judge has been treated very badly. I think it is beneath the Senate and its dignity when we do that to nominees.

Judge Pickering will not be the loser. He is and will be revered more than ever in my State. Former Governor William Winter came up and talked about him. The sitting attorney general came up and said: We ought to confirm him. So did the sitting Lieutenant Governor. These are all Democrats.

Again, this man's stature has gone up, not down, in the State. And this whole process probably greatly enhances his son's stature as a Congressman in the State of Mississippi. His head will be high and he will be a sitting judge. And he will handle himself with dignity and honesty, like he always has.

No, he is not the loser. We are the loser. We have lost the services of a good man. And we have demeaned the institution by what has happened in this instance.

Every newspaper in our State—every one—has editorialized and run news stories about this, saying this is wrong. And these newspapers are like the news media up here, they are not exactly your basic Republican-leaning organizations. These are Gannett newspapers, Thompson newspapers, the national newspaper chains. And they rip me regularly, as they do most Republicans and most conservatives. But every one of them, including the Clarion-Ledger in Jackson, MS, the Sun Herald on the Mississippi gulf coast and the Northeast Mississippi Journal have editorialized about how unfair, unfortunate, and really dastardly this deed has been.

I ask unanimous consent that this editorial from the Tupelo Daily Journal be printed in the RECORD.

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

[From the Tupelo Daily Journal, Mar. 11, 2002]

5TH CIRCUIT FIASCO

ATTACKS ON PICKERING LIKELY TO BE SUCCESSFUL

Twelve years ago, the U.S. Senate approved Charles Pickering's nomination for a federal district court judgeship unanimously. This week, it's likely that President Bush's nomination of Pickering to the U.S. 5th Circuit Court of Appeals won't even make it out of the Senate Judiciary Committee.

Democrats on the committee, under pressure from liberal interest groups, oppose Pickering. They've either bought into or allowed the grossly distorted picture of Pickering as an unreconstructed, Old South segregationist to go unchallenged.

It doesn't matter that Mississippi Attorney General Mike Moore, a well-known figure in the national Democratic Party, led a delegation to Washington last week in support of Pickering and took him letters of support from Democratic Gov. Ronnie Musgrove, Lt. Gov. Amy Tuck and former Gov. William Winter, himself a respected leader in national party circles.

It doesn't matter that black political and civil rights leaders in south Mississippi who have worked with Pickering for decades almost uniformly support his nomination, a fact confirmed when the New York Times—which editorially opposes Pickering's confirmation—sent a reporter to Laurel to look into his relationships with those leaders.

It doesn't matter that the American Bar Association, hardly a conservative bastion, has given Pickering its top rating of ''highly qualified.''

What matters is that Pickering is a political and judicial conservative whose nomination happens to come along at a time when the left is looking to send a message to the president that they'll fight him—and win—on appellate court nominees, including Supreme Court choices.

No one who has been before him in the 12 years he has been on the federal bench has stepped forward to say that Pickering was anything but fair and unbiased. Those who know Pickering know a man whose deep religious faith—an attribute looked upon with suspicion by some of his opponents—has been the impetus for his active role in racial reconciliation efforts in Mississippi. They also know a man whose personal character and

integrity has never been questioned—until now, when the political ends apparently justify the means in some people's minds.

When confronted with his support in Mississippi among the people—Democrat and Republican, black and white—who have known him longest and best, opponents have simply said that those opinions don't matter, or even that Pickering has duped the home folks. They know the real Pickering, they say, and he's a right-wing extremist who'll turn back the clock on civil rights by decades.

This is sheer demagoguery, made all the more deplorable because it exploits Mississippi's easy-mark image to smear a man who doesn't deserve it. The only bright side of all this is the way so many politically and racially diverse Mississippians have rallied to Pickering's defense.

Barring a political miracle, Pickering's nomination appears doomed. This political mugging will say a lot more about the perpetrators than about their victim.

Mr. LOTT. Mr. President, I am going to read it because it sort of sums up what a lot of the editorials are saying in these newspapers.

It is entitled: ''5th Circuit Fiasco.''

Twelve years ago, the U.S. Senate approved Charles Pickering's nomination for a federal district court judgeship unanimously. This week, it's likely that President Bush's nomination of [Judge] Pickering to the U.S. 5th Circuit Court of Appeals won't even make it out of the Senate Judiciary Committee.

Democrats on the committee, under pressure from liberal interest groups, oppose Pickering. They've either brought into or allowed the grossly distorted picture of Pickering as an unreconstructed, Old South segregationist to go unchallenged.

It doesn't matter that Mississippi Attorney General Mike Moore, a well-known figure in the national Democratic party, led a delegation to Washington last week in support of Pickering and took him letters of support from Democratic Gov. Ronnie Musgrove, Lt. Gov. Amy Tuck and former Gov. William Winter, himself a respected leader in national party circles.

Madam President, All those people have been leaders in trying to help move our State forward in many ways, including in race relations. Let me continue from the editorial.

It doesn't matter that black political and civil rights leaders in south Mississippi who have worked with Pickering for decades almost uniformly support his nomination, a fact confirmed when the New York Times—which editorially opposes Pickering's confirmation—sent a reporter to Laurel to look into his relationships with those leaders.

It doesn't matter that the American Bar Association, hardly a conservative bastion, has given Pickering its top rating of ''highly qualified.''

Madam President, this is not in the article, but I will say from my standpoint, that I am always concerned that the American Bar Association looks particularly hard to find some improper demeanor on the bench, or some hint of some misunderstanding of the Constitution, or some slight in a racial area regarding Republican nominees. But no, not in this instance, they found Judge Pickering highly qualified, the highest rating they can give a judge.

Now reading on from the editorial:

What matters is that Pickering is a political and judicial conservative whose nomination happens to come along at a time when the left is looking to send a message to the president that they'll fight him—and win—on appellate court nominees, including Supreme Court choices.

No one who has been before him in the 12 years he has been on the federal bench has stepped forward to say that Pickering was anything but fair and unbiased. Those who know Pickering know a man whose deep religious faith—an attribute looked upon with suspicion by some of his opponents—has been the impetus for his active role in racial reconciliation efforts in Mississippi. They also know a man whose personal character and integrity have never been questioned—until now, when the political ends apparently justify the means in some people's minds.

When confronted with his support in Mississippi among the people—Democrat and Republican, black and white—who have known him longest and best, opponents have simply said that those opinions don't matter, or even that Pickering has duped the home folks. They know the real Pickering, they say, and he's a right-wing extremist who'll turn back the clock on civil rights by decades.

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Barring a political miracle, Pickering's nomination appears doomed. This political mugging will say a lot more about the perpetrators than about their victim.

Madam President, this is an editorial from a newspaper that certainly isn't known for endorsements, on a regular basis, of Republicans or conservatives. So I think it sums up very well what has happened here.

Now, the larger question is what does it mean for the committee and the Senate? I am not going to let go of this. This is going to stick in my mind for a long time, but I am going to try to look at from a broader perspective.

There are still eight nominees pending before the Judiciary Committee that were sent there last May—I think May 8 or 9——

Mr. McCONNELL. Ninth.

Mr. LOTT. May 9th for the circuit court: men, women, and minorities who have not even had a hearing to date.

Now, I realize that the majority changed hands in June, but these were the first nominees sent up. They are some of the best intellectually qualified nominees to come before the Senate in a long time.

Judge Pickering who was nominated later on May 25th has endured not one, but two hostile hearings. However, the remaining eight nominees from May 9th have not even their first hearings. Why not?

It is true that district judges have moved along a little better. I think there are over 50 court nominees now pending before the Senate. This cannot continue.

I went through the same thing when I was majority leader. And there were complaints on the other side. A lot of things were done by the other side to tie up the Senate and make it difficult to get our work done. And that is unfortunate. But I think that we are fixing to see the same thing occur from our side this time.

We cannot let stand a plan to deny President Bush his nominees to the federal courts. If they are not qualified by education, by experience, if there are some ethical problems, opposition to them is understandable. Don't move them, don't vote on them, don't confirm them. But if we don't see marked progress in general, and if we don't see an end to the orchestrated character assassinations, the Senate will not be the same for a long time. I don't mean it as a threat. I mean it as a requirement, and, therefore something we should find a way to avoid if possible.

It is hard for me to really express the disappointment and the passion I feel about this because I am so disappointed in how this unfair and unfounded episode has turned out. But I could not let this vote go unnoted or without a response this very night.

So I wish to begin the process by offering a Sense-of-the-Senate resolution. It is a simple one. It basically cites the statistics of the nominations that are pending, the vacancies. There are 96 current judicial vacancies. It does talk about what has happened in previous administrations. And all it says is:

It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

Isn't a year long enough to at least have a hearing? That is all it says, just a hearing.

I do want to take a minute to thank President Bush for nominating a fine jurist in Charles Pickering and for sticking by him. I really appreciated the fact he had a press conference yesterday and commenting how fine a man he is and that he should be confirmed. The President also said it is not about this one man; it is about a quality system of justice in our Federal judiciary. That is what has suffered here.

AMENDMENT NO. 3028

Mr. LOTT. I ask unanimous consent that the pending amendment be set aside, and I send an amendment to the desk.

Mr. REID. Reserving the right to object.

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

Mr. REID. Madam President, I was present in a conversation that the majority leader and minority leader had just a short time ago. It is my understanding that the distinguished Senator from Mississippi will allow, if Senator DASCHLE chooses, to offer a second-degree amendment at some subsequent time. The majority leader has not yet decided.

Mr. LOTT. Madam President, I certainly would have no objection to that. That was my understanding. I think we ought to have a full debate. I assume the Democrats are going to vote for the resolution I have offered. If they have

something else they want to offer, fine. Let's have a full debate on it. Maybe that will begin a process that will lead to some changes in the way we are doing things. I hope for the best.

Mr. REID. Continuing my reservation, the majority leader has indicated to me and to the minority leader that he has not decided whether he wants to offer a second-degree amendment. The courtesy of the Senator from Mississippi is appreciated.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3028:

At the appropriate place, add the following:

"SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

(a) FINDINGS.—The Senate finds that—

(1) the Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 of the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

Mr. LOTT. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I would like to respond very briefly to the minority leader's comments.

I am a member of the Senate Judiciary Committee. Let me say at the outset that one of the most painful assignments I have found serving in Congress, particularly in the Senate, is to stand in judgment of another person. We are called on to do that regularly in the advice and consent process. It is never easy, particularly when there is controversy and particularly when you end up voting against that person for whatever reason.

I cannot appreciate the pain that the minority leader feels at this moment. A good and close friend of his has not been successful before the Senate Judiciary Committee, and his words, I am sure, were heartfelt about his love for Judge Pickering and his close friendship. Whatever I am about to say I hope will in no way reflect negatively on what is clearly a strong personal friendship between the minority leader and Judge Pickering. But there are two or three points which I would like to make so that they are clear on the record.

I have served on the Senate Judiciary Committee for 4 of the 6 years now that I have been in the Senate. I have witnessed the Senate Judiciary Committee under the control of Republicans, and I have seen it for the 8 months that the Democrats have been in control. I can tell you that the courtesies that were extended to Judge Pickering in terms of a timely hearing were extraordinary.

They were extraordinary because his first hearing was in October of last year, when this Capitol complex was virtually closed down for security reasons. Exceptional efforts were made to keep our word to Judge Pickering that he would have a full hearing. It was impossible to use the ordinary buildings we use, so the hearing was held in the Capitol Building. Many of us stayed over to give him his opportunity for testimony.

At that hearing, it was established that he had some 1,000 or 1,200 unpublished opinions as a Federal district court judge, and we made it clear we wanted to review those before making a final decision. So a second hearing was scheduled. And as soon as those had been reviewed, that hearing was held in February. The hearing went on for the better part of a day under the chairmanship at the time of Senator FEINSTEIN of California.

Judge Pickering was given complete opportunity to explain his point of view and to answer all questions—another timely hearing. That led to the decision today on Judge Pickering's nomination to the Fifth Circuit Court of Appeals.

I could go into detail, but I will not, about why I voted against Judge Pickering. There was one point that was raised by Senator LOTT as minority leader which I must address. It is a point that, frankly, should not be left unresolved on the floor of the Senate. Until Senator LOTT came to the floor and announced the religious affiliation of Judge Pickering, I had no idea what it was. No question was ever asked of Judge Pickering about his religious affiliation—none whatsoever. Nor in any private conversation with any member of the committee was that subject ever raised. To suggest that anyone on this committee voted against Judge Pickering because of his religious belief is just wrong.

I will say this: If anyone ever raises that issue concerning any nominee, I hope they will join me in protesting questioning a person's religious belief, which should have nothing whatsoever to do with the qualifications to serve this country.

That issue never came up. To suggest he was rejected for that reason is just wrong. There were many questions that were raised. Those can be addressed tomorrow, and I am certain they will be by Senator PATRICK LEAHY, chairman of the Senate Judiciary Committee, and others who will comment on the activities of the committee. I will leave that to them entirely.

I do want to make clear for the record one last point. The Fifth Circuit has been a controversial circuit—it is a circuit that includes the States of Texas, Louisiana, and Mississippi—controversial in that since 1994, no vacancy had been filled in the Fifth Circuit until last year when President Clinton submitted the names of three judges to fill vacancies to that Fifth Circuit. Not a single one of his nominees was even given the courtesy of a hearing. Those judges were pending before the Judiciary Committee under the control of the Republican Party for an extraordinarily long period of time. Let me be specific.

Jorge Rangel, nominated in July of 1997, was returned in October of 1998. It sat before the Senate Judiciary Committee under the direction of the Republican Party for 15 months with no action taken. An effort to fill this vacancy in the Fifth Circuit and the nominee was never even given the courtesy of a hearing.

Enrique Mareno, nominated by President Clinton in September of 1999, renominated in January of 2001, was finally withdrawn in March of 2001; 17 months pending before the Senate Judiciary Committee; never given the courtesy of a hearing.

Alston Johnson, nominated April of 1999, finally, his name was withdrawn 23 months later—never even given the courtesy of a hearing in the same Fifth Circuit. Now, the minority leader comes before us and says all of the nominees of President Bush as of last year have to receive immediate hearings before this committee.

Well, let the record reflect that the action taken today on Judge Pickering was the 43rd Federal judge who has been considered by the Senate Judiciary Committee since control of the Senate passed to the Democrats. More Federal judges have been reported out of the Senate Judiciary Committee under Chairman PAT LEAHY, a Democrat, with a Republican President in the White House, than in 4 of the years that the Republicans controlled the Senate Judiciary Committee and President Clinton, a Democrat, was in the White House.

To suggest we are blocking and stopping the efforts of the President to fill judicial vacancies is just wrong and not supported by the facts.

Let me add one last thing. To suggest this is some discriminatory action against people who live in the Fifth Circuit is wrong as well. The fact that Judge Pickering was from Mississippi, frankly, had no relevance as far as I was concerned. Just last year, Judge Edith Clement of Louisiana, nominated by President Bush to fill a spot on the Fifth Circuit, was approved in record time by a unanimous vote on the Senate Judiciary Committee and a unanimous vote on the floor of the Senate.

For the record, so there is no doubt about it, Judge Edith Clement was conservative, a Republican, and a member of the Federalist Society, and none of those things slowed down the consideration of her nomination by the Judiciary Committee. We gave Judge Clement her opportunity to serve, and we gave President Bush his nominee in record time. We extended courtesies to Judge Clement which were denied consistently by the same Committee under Republican leadership when President Clinton was in the White House.

So I think the record has to be clear in terms of where we stand and where we are going. I am troubled that we have reached this impasse, and I hope we can find our way through it. But I hope the record will be clear as we go through this consideration. For those who have argued that someone called Judge Pickering a racist, I have not heard that word used in reference to Judge Pickering, and repeatedly, on both sides of the table, Democrat and Republican, today in the Senate Judiciary Committee, that conclusion was rejected. I personally reject it. I don't believe Judge Pickering is a racist. I believe if you look at his personal history, you will find he did things in the fifties and sixties in Mississippi which he personally regrets, and said as much to the committee.

Let me be honest. We have all done things in our lives that we regret. It should not be held against him, and it wasn't.

He has also done exceptionally good things in the area of civil rights, and that was made a part of the record as well. Judge Pickering was judged on the basis of his service on the Federal district court bench. Good people can reach different conclusions about whether or not his service merited a promotion to the appellate court. A majority of the Judiciary Committee today adjudged that it did not.

I am not going to take any more time, other than to say it is an unfortunate outcome for a close friend of the minority leader, but I think the committee treated him with courtesy, treated his nomination with dispatch, and gave him every opportunity to present his point of view. He was given better treatment by this committee than many of the nominees submitted by the Clinton White House. I think that shows we are going to start a new day when it comes to the Judiciary Committee. We want to work with the White House so that people who have excellent legal and academic credentials, of the highest integrity and with moderate political views, have a chance to serve.

Mr. HATCH. Mr. President, if that is treating a person good, I would hate to see one who is treated badly, is all I can say. I am going to talk a little about Judge Pickering before I am through.

I have been hearing comments about how badly the Clinton nominees were treated. Lately, I have heard Democrats suggesting that their treatment for Bush nominees is payback for how I treated Clinton nominees when I was chairman.

I want to take a moment to defend my record on Clinton nominees. I first want to state that President Clinton got 377 Federal judges confirmed during the time I was either ranking member or chairman of the Judiciary Committee. That is a number which is only 5 short of the all-time record that Ronald Reagan had of 382. President Clinton would have had 3 more than Reagan—385—had it not been for Democrat holds and objections on this floor. Keep in mind President Reagan had 6 years of a favorable Republican Senate. President Clinton had 6 years of the opposition party Senate, where I was chairman, and he still got that many judges through.

By the way, to talk in terms of the 2 or 3 people I have been hearing about all day who did not get hearings, think of the 54 who were left hanging when Bush I left office—54 Republicans. Terry Boyle, who has been renominated by President George W. Bush, has been sitting in committee since May 9. John Roberts, about whom I had a conversation with one of the Justices—and he said John Roberts is one of the two greatest appellate lawyers appearing before the Supreme Court today—has been sitting there since May 9. Both were first nominated by President George H.W. Bush, and were 2 of the 54 nominees that the Democrats left hanging at the end of his Administration.

I admit 6 nominees were put up so late that, literally, nobody could have gotten them through. So say 48 were left hanging. Compare that to when President Clinton left office. By the way, when Bush I left office, there were 97 vacancies, and 54 were left hanging—but we can reduce it to 48 because of the 6 who were probably nominated too late. When President Clinton left office, there were 67 vacancies—30 less than when the Democrats held the committee, when George Bush the first was President. There were 41 nominees left hanging when Clinton left office. Of the 41, there were 9 put up so late that it was a wash; in other words, it was just to make it look good. They could not have gotten through no matter who tried.

In essence, there were 32 nominees left hanging at the end of the Clinton Administration versus 48 who were left hanging at the end of the first Bush Administration. Of those 48 left hanging, I can match the Senator from Illinois and every other Democrat person for person, and much more, with decent, honorable, wonderful people who just didn't make it through. But you haven't heard us come to the floor every day, or in the Judiciary Committee every day, talking about how badly they were treated, even though they were treated badly. People like John Roberts, one of the greatest appellate lawyers in the history of the country.

Think of that—382 for Reagan, the all-time champion, with the opposition party in the minority for 6 of those years, and 377 for Clinton, with the opposition party in the majority for 6 of those years. Comparing the number confirmed to the number nominated, President Clinton enjoyed an 85 percent confirmation rate on the individuals he nominated.

There were only 68 article III Judicial nominees who were nominated by President Clinton, in all of his 8 years, who did not get confirmed. Of those, 3 were left at the end of the 103rd Congress, when the Democrats controlled the Senate. That leaves 65. Of those, 12 were withdrawn by the President, leaving 53. Nine were nominated too late for the Congress and committee to act on them or they were lacking paperwork. That leaves 44. Now, 17 of those lacked home State support, which was often the result of a lack of consultation with home State Senators. There was no way to confirm them without ignoring the senatorial courtesy that we afford to home State Senators in the nomination process. That left 27. One nominee was defeated on the floor, which leaves only 26 remaining nominees.

Of these, some had other reasons for not moving that I simply cannot comment on because of the security of the committee. So in all 6 years I chaired the committee, while President Clinton was in office, we are really only talking about 26 nominees who were left hanging.

During the first Bush administration, when the Democrats controlled the committee, 59 nominees were not confirmed. I don't know the reasons for all of those. There probably were some. But if you look at those 59 nominees and subtract the 1 who was withdrawn, that leaves 58 Bush I nominees who weren't confirmed over the course of 4 years. If you take the 65 Clinton nominees who were not confirmed over my 6 years, and take away the 12 who were withdrawn, that leaves 53.

So at the end of the day, even subtracting only the withdrawn nominees, there were only 53 Clinton nominees the Senate didn't act on in the 6 years I was chairman, while the Democrats allowed 58 nominations to perish in the committee in only 4 year's time. Do not tell me they were abused. That is part of the process. Some of these people we do not have time to get through. There are reasons why they cannot get

through—for a number of them, for instance, there is not support of home State Senators.

Of those 41 nominees left at the end of the 106th Congress, 1 was eventually confirmed in the 107th Congress. Twelve lacked home State support or had incomplete paperwork. That leaves only 20 nominees who did not go forward at the end of the Clinton administration.

There were 41 Clinton nominees left in committee at the end of the 106th Congress when Clinton left office. When Bush left office, there were 54 nominees left in committee, as I said. So the argument that this all began because the Republicans were unfair to Clinton nominees is simply untrue. We were not. I was more fair to Clinton in confirming nominees than the Democrats were to President George H.W. Bush.

I also heard the allegation that Republican inaction during the Clinton Presidency is to blame for the current vacancy crisis. This is untrue. There were only 67 vacancies at the end of the 106th Congress. Today there are nearly 30 more vacancies; 96 after almost a year. Madam President, 11.2 percent of the Federal judiciary is vacant. At the end of my tenure as chairman during the Clinton Presidency, that rate was only 7.9 percent.

We are in the middle of a circuit court vacancy crisis, and the Senate is doing virtually nothing whatsoever to address it.

There were 31 vacancies in the Federal courts of appeals when President Bush sent us his first 11 circuit nominees on May 9 last year, and there are 31—the exact same number—today. We are making no real progress.

Eight of President Bush's first 11 nominees have not even been scheduled for hearings, including John Roberts and Terry Boyle (both of whom were on the nomination schedule of the first President Bush but who did not get a hearing back then). This time around, they have been pending for 309 days as of today. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

A total of 22 circuit court nominations are now pending for those 31 vacancies, but we have confirmed only 1 circuit judge this year and only 7 since President Bush took office.

The Sixth Circuit is half-staffed, with 8 of its 16 seats vacant. That is a crisis. They cannot function appropriately. This crisis exists despite the fact we have seven Sixth Circuit nominees pending motionless before the Judiciary Committee right now.

Although the Michigan Senators are blocking 3 of those nominees by not returning blue slips, the other 4 are completely ready to go. All have complete paperwork, good ratings by the ABA, and most importantly, the support of both home State Senators.

The DC Circuit is two-thirds staffed with 4 of its 12 seats sitting vacant. This is despite the fact that President Bush nominated Miquel Estrada and John Roberts, who have not yet been given a hearing and whose nominations have not seen the light of day since they were nominated better than 300 days ago. There is simply no explanation for this situation other than stall tactics.

The Senate Democrats are trying to create an illusion of movement by creating great media attention concerning a small handful of nominees in order to make it look like progress.

Some try to blame the Republicans for the circuit court vacancy crisis. That is complete bunk. Look at the record.

Some have suggested that 45 percent of President Clinton's circuit court nominees were not confirmed during his Presidency. That number is a bit of Enron-ization. It is inflated by double counting individuals who were nominated more than once.

For example, by their numbers, Marsha Berzon, who was nominated in the 105th Congress and confirmed in the 106th Congress, would count as 2 nominations and only 1 confirmation. If you remove the double counting and count by individuals, without counting withdrawn nominees, President Clinton nominated 86 individuals for the circuit courts and only 21 were not confirmed. That is 24 percent as opposed to 45 percent.

Of those 21 nominees who were not confirmed, 9 lacked home State support, one had incomplete paperwork, and another was nominated after the August recess in 2000. That leaves 10 circuit court nominees who did not receive action, some of which had issues I cannot discuss publicly.

As I said, there are currently 31 circuit court vacancies. During President Clinton's first term, when Republicans controlled the Judiciary Committee, circuit court vacancies never exceeded 21 at the end of any year.

There were only 2 circuit court nominees left pending in committee at the end of President Clinton's first year in office. In contrast, 23 of President Bush's circuit court nominees were pending in committee at the end of last year.

At the end of President Clinton's second year in office, the Senate had confirmed 19 circuit judges, and there were only 15 circuit court vacancies.

In contrast, today, in President Bush's second year, the Senate has confirmed only one circuit court nominee, and there are 22 pending, and 17 of those are considered emergency positions.

At the end of 1995, my first year as chairman, there were only 13 circuit court vacancies left at the end of the year. At the end of 1996, the end of President Clinton's first term and in a Presidential election year, there were 21 vacancies, only 1 higher than the number the Democrats left at the end of 1993 when they controlled the Senate and Clinton was President.

Taking numbers by the end of each Congress, a Republican-controlled Senate has never—never—left as many circuit court vacancies as currently exist today. At the end of the 104th Congress, the number was 18. At the end of the 105th Congress, that number was 14, and even at the end of the 106th Congress, a Presidential election year, that number was only 25. Today there are 31 vacancies in the circuit courts.

Despite all the talk, and lack of action, the unmistakable fact is that there is a circuit court vacancy crisis of 31 vacancies, which is far higher than the Republicans ever let reach, and the current Senate leadership is doing nothing about it. Actually, I should correct myself. They are doing something about it. They are making it grow even larger. They have acted with a deliberate lack of speed, and that is something the American people do not deserve.

Having said this to set the record straight, there are always a few nominations that have a difficult time whether the Republicans or Democrats are in control. I have to admit, I wish I could have gotten a few more through when I was the committee chairman, but everybody who knows, who really watched the process, knew that I pushed people through, against the wishes of a significant number of outside people. I told a number of the conservative groups to get lost because they were basically distorting the judicial process.

Having said all that, let me talk about Charles Pickering because I am disappointed in what happened today. The real problem that many of the interest groups have with Charles Pickering is he does not think as they do. These groups want to impose an ideological litmus test on judicial nominees. They will mount a campaign against any nominee who does not agree with their position on abortion, civil rights, and a host of other issues, and they will try to label anyone who disagrees with them as an extremist who is out of the mainstream. But the key here is that a nominees's personal or political opinion on such issues is irrelevant when it comes to the confirmation process.

The real question is whether the nominee can follow the law, and Judge Pickering has certainly proved that he can. Judge Pickering has demonstrated an ability to follow the law. This is reflected in his low reversal rate of a half percent during his decade-plus tenure as a district court judge.

Although I have heard some of my colleagues complain about his 26 reversals, let's put this in context. Judge Pickering in his nearly 12 years on the Federal bench handled 4,000 to 4,500 cases.

In all of those cases, he has been reversed only 26 times. This is a record to be proud of, not a reason to vote against him.

I suspect many of my colleagues' misperceptions about Judge

Pickering's record as a district judge stem from the gross distortion of that record by the liberal special interest groups. For example, one often-cited area of concern is Judge Pickering's record on Voting Rights Act cases, but the bottom line is that Judge Pickering has decided a total of three of those cases on the merits: Fairley, Bryant, and Morgan. None of these cases was appealed, a step that one can reasonably expect a party to take if it is dissatisfied with the court's ruling.

Moreover, the plaintiffs in the Fairley case, including Ken Fairley, former head of the Forrest County NAACP, have written letters in support of Judge Pickering's nomination. Judge Pickering's qualifications are also reflected in his ABA rating, which some members of the committee have referred to as the ''gold standard'' in evaluating judicial nominees. The ABA, of course, rated Judge Pickering well qualified for the Fifth Circuit.

I also find it ironic that many of the complaints Judge Pickering's opponents have lodged against him pertain to events that occurred before he became a Federal district court judge, a position for which he was unanimously confirmed by both this committee and the full Senate.

The way liberal special interest groups are working and have worked to change the ground rules on judicial confirmations is evident in the nomination of Charles Pickering for the Fifth Circuit Court of Appeals. This is a gentleman who had overwhelming support in his home State of Mississippi from Democrats and Republicans alike, from the Democrat attorney general of the State, and from prominent members of the African-American community.

Those who know Judge Pickering well know he has worked to improve race relations in Mississippi. For example, he testified against the Imperial Wizard of the KKK for firebombing a civil rights activist in Mississippi in 1967, at great risk to both himself and his family. He hired the first African-American Republican political worker in Mississippi in 1976; represented a black man falsely accused of robbing a 16-year-old white girl in 1981 and won the case for him; chaired a race relations committee for Jones County, Mississippi, in 1988; served on the board of the Institute of Racial Reconciliation at the University of Mississippi since 1999; and worked with at-risk African-American youth in Laurel, Mississippi, in 2000.

I have to say I was pleased that my colleagues on the other side said they do not believe he is a racist and they do not believe that such a case can be made, and they were disappointed that some tried to make it.

I say, in addition, Judge Pickering has compiled an impressive record as a Federal district court judge. During his more than 11 years on the bench, he has disposed of an estimated 4,000 to 4,500 cases, but he has been reversed only 26 times. This means his reversal rate is roughly one-half of 1 percentage point and is lower than the average reversal rate for Federal district court judges in this country.

Despite this impressive career, Judge Pickering had become the target of a smear campaign instigated and perpetrated by liberal Washington interest groups and lobbyists with their own political agenda, some of whom called him, in essence, a racist. These groups painted a caricature of a man that bears little resemblance to reality, all in the name of attempting to change the ground rules for the judicial confirmation process and impose their political litmus test for all of President Bush's judicial nominees.

We are now seeing the same thing starting with another circuit court of appeals nominee, D. Brooks Smith, with the same type of approaches they have used against Judge Pickering.

We had a number of Senators say they voted against Judge Pickering because of his 26 reversals, some of which they considered questionable in the areas of voting rights, in the area of civil rights, in the area of prisoners' rights, and in the area of employment rights. We blew those arguments away today because we cited nearly every case about which they are complaining. They claim Judge Pickering did not follow settled law, and we showed that there was not settled law in many of those cases.

We did not hear those cases really argued today from the principal people who argued them before. They could not. So what did we hear an argument on? The Swan case. Now what was the Swan case? The Swan case the case of a cross burning on the lawn of an African-American family.

I might mention that is a vicious, rotten, lousy thing for anybody to do.

Of the three boys who did it, one of them was a vicious racist who had shot into the house with a gun. Because two of them cooperated, the Justice Department prosecutors gave them basically a giveaway, easy sentence. The third was absolutely drunk at the time. He had not shot into the home, he had not issued any racist comments, but he was with them. He did not think he did anything wrong. He contested the case, lost, and under the mandatory minimum he had to be sentenced to 7 years.

The judge did not think that was right, that the other two really were as or more culpable, and when he looked and found out that this young man had never made a racist comment and he was drunk at the time, he thought it was a tremendous injustice. So what he did was he complained to one of his friends, Frank Hunger, who was with the Justice Department at the time, but not at the Civil Rights Division at the Civil Division. Swan still got a sentence of 27 months, a fairly long time when his two co-defendants got only home confinement and probation.

Because he talked to Frank Hunger, who was with the Civil Division, not the Civil Rights Division, we had efforts to paint that as a tremendous violation of ethics. Hardly. Hunger does not even remember the conversation and is one of the strongest supporters of Judge Pickering, a Democrat from the Clinton Administration Justice Department. He is very disappointed with what happened to Judge Pickering's nomination.

There are other things I would like to say, but I know my colleague would like to speak. I will close with this: I am sorely disappointed with the vote on Judge Pickering's nomination. I am sorely disappointed with the way these outside groups tried to paint Mississippi as the old South, prejudiced, rotten, acting in ways that fly in the face of civil rights, when there have been so many strides made, part of them made because of the efforts of Judge Charles Pickering.

I do not understand this type of thing. In each case in which a nominee was stopped in Committee, I have wondered why they were stopped.

I do not live in Mississippi, but I feel for the people of Mississippi because this action today, it seems to me, is a condemnation of a State that does not deserve it, and a condemnation of a Federal judge who went through the Senate the first time unanimously, who has served well for nearly 12 solid years, and who now has a reputation besmirched because of what I consider to be phony allegations which should never have been accepted.

I am disappointed. But unfortunately, that is the way it is around here. I hope we do not have to put up with much more of this in the future.

I notice my colleagues want to speak, so I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, it is my understanding the Senate is still on S. 517; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. The Senator from Arizona is still present. It is my understanding he is not going to offer his amendment tonight. Is that right?

Mr. KYL. Yes.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to a period for morning business with Senators allowed to speak therein for a period not to exceed 10 minutes.

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

NOMINATION OF CHARLES PICKERING

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, one of our colleagues earlier, in talking about the Pickering nomination, talked about the difficulty of making judgments. Of course, that is what they

pay us to do. It is sometimes difficult. But what is really important for us to be sure of is that the judgment we make is our own, independent judgment, made with integrity, and not influenced by unfair charges or pressure from groups outside the Senate.

I think a nominee is entitled to that. If charges are made against a nominee, we ought to hear about them. We ought to find out if they are correct. Maybe delay the vote and have another hearing, if that is what is required, so be it. But when the nominee can show that the charges against him in case after case after case after case are not justified charges, and there are perfectly good and sound reasons for the actions he has taken, that his words are being taken out of context, outside the normal bounds of any kind of fair criticism, when he can explain that in matter after matter after matter that the charges are untrue, I believe the members of the Senate Judiciary Committee ought to listen to that. Senators should not allow friends from the outside, who have an agenda and a commitment to defeating a nominee who they have picked as the person they want to go after, to control the situation and, in effect, cast a vote in these matters. That is what I am concerned about.

Judge Pickering came before our committee. He was a superb witness. He testified with integrity, with skill, with understanding. He is a man I believe the committee related to well. I was very impressed with his testimony, his whole history as a lawyer and as a judge and as a human being. I thought, what a wonderful presentation he made. But it seemed not to have changed a single vote.

When point A was knocked down, we would go to point B, and when that was knocked down, to point C. Finally, we ended up with the most weak excuses, weak reasons that I do not believe rise to the level, in any way, that would justify rejecting this fine man.

He finished No. 1 in his law class at the University of Mississippi School of Law, an excellent school of law. He decided to go back home where his family were farmers, in the dairy business, in Laurel, MS.

Some suggested he did a lot of things in the past, in the 1960s, of which he wasn't proud. They said over and over again, with great unctuousness: We don't think he's a racist. We are not saying he's a racist. But he is a southerner, you know, from Laurel. We have some complaints up here in Washington about him.

What did his record look like? In the 1960s, things were not easy in Laurel, MS. Having grown up in the rural South, I know that. I know a lot of people made choices they are very greatly disappointed that they made, many years ago. A lot of us should have been more alert to fighting more aggressively for civil rights than we were. I was in high school in those years and I remember the debates that came about. I know how deeply the passions and feelings were running.

In Laurel, there was a trial of a Klansman who was involved in a murder. Judge Pickering, in the 1960s, signed a warrant for his arrest in that murder.

Another case involved a head of the Ku Klux Klan in that area. It was a tense case in a tough time. Something needed to be done to send a signal to that jury that good men and women, in Laurel, MS, knew that he ought to be convicted of the crimes he committed.

Judge Pickering volunteered and testified as a character witness against that defendant, saying that he had a bad reputation for violence in the community. Nobody, I am sure, relished having to do that task at that time. Sure enough, the next election, he lost that election. And the Klan bragged that was the reason, that they got the man who went against them.

That is his background. He has a superb legal mind. He finished at the top of his class at the University of Mississippi. A man, faced with difficult times, was on the right side of the issue.

We had Charles Evers, the brother of Medgar Evers, the slain civil rights worker in Mississippi visit members of the Judiciary Committee. He came up here on Judge Pickering's behalf and spoke strongly and passionately for him. As did an African-American judge. As did others who came. By the way, I think 26 out of 26 living Presidents of the Mississippi Bar Association endorsed Judge Pickering. But this group came here. I asked them, each one of them: During the 1960s and into the 1970s, when civil rights was really a matter of some courage in the South, was Judge Pickering on the good guys' side or the bad guys' side? They all said he was on the right side. He was on the good guys' side. He took actions to reach out and to build harmony and he believed that is important.

He, in fact, serves now as co-chairman—or did until recently—with former Governor Winter, a Democrat of Mississippi, on the Ole Miss Commission to Promote Racial Harmony. He was chosen to be co-chairman of that commission.

Oh, but they say we didn't accuse him of being a racist. He is hostile to employment cases. So Senators HATCH and DEWINE went through all the employment cases that he dealt with, delineated the two, I believe, that were reversed on matters unrelated to the merits, really, of employment cases. I also point out in the state of Mississippi, there are a group of lawyers who specialize in employment cases representing plaintiffs who sue to get their jobs back or for damages for mistreatment. The top plaintiffs' lawyer in Mississippi, who practiced before Judge Pickering many times, wrote an op-ed in the Mississippi paper. Not just a letter, he wrote an op-ed in the paper with his name on it, saying Judge Pickering should be confirmed; the plaintiffs' lawyer said that Judge Pickering is a fair man and that Judge Pickering treated employment cases fairly in court.

Why would we want to even continue to talk about that issue after that matter is raised? But still people do.

There were other complaints. They said he had asked lawyers to write letters on his behalf and that this somehow violated ethics. We had a professor who said this was ambiguous at best, and cited histories going back to Learned Hand, where judges got letters written on behalf of nominees. So I don't think that was the matter.

They said he had them given to him. The Department of Justice asked him to collect the letters and have them sent up. The U.S. Department of Justice asked him to collect those letters and send them forward. It was during the time of the anthrax scare, when the mail was shut down. They wanted him to be sure to collect them all so they could be sent straight to the Department of Justice so they could be disseminated to those of us in the Senate who needed to know about it.

I am, frankly, concerned for about the suggestion that there is an unfairness, or an excessive conservative bent on the Fifth Circuit Court of Appeals. The Fifth Circuit is one of the great circuits in America. It has consistently had some of the great judges in America. I just had the honor to participate in the swearing in of Ginny Granade, the granddaughter of Judge Richard Reeves on the old Fifth Circuit to a Federal judgeship in my hometown of Mobile. She worked for me for 12 years when I was U.S. attorney there. She is one of the finest people I know. She has never been political in any way. She was confirmed and is now serving there. But the old Fifth Circuit and the Fifth Circuit today is a great circuit. It has a good record of being affirmed by the U.S. Supreme Court.

We have had some concerns about the Ninth Circuit Court of Appeals, I will admit. I have raised that issue on occasion. One year the Ninth Circuit had 27 out of 28 cases that went to the Supreme Court of the United States reversed. Year after year—one year it was 13 out of 15. The Ninth Circuit has the highest record of reversals of any circuit in America by far. The Fifth Circuit is nowhere close.

I opposed, I will admit, two nominees to the Ninth Circuit. But they were confirmed.

I would have to add, however, that my concerns have been a bit validated in that Judges Paez and Berzon, the two I did vote against, those two judges on separate occasions have eviscerated and declared unconstitutional the ''three strikes and you are out'' law in the State of California which the State supreme court, which is not a conservative court had previously upheld.

I will just note that was discretion. Perhaps there was a legal basis for those reversals of the important California habitual offender law. Maybe the

law needs to be changed by the legislature. But judges ought to be reluctant to be whacking out long-established State law of this kind. I am interested in studying those cases.

At any rate, I believe we had a good process in the last 8 years of President Clinton. In 8 years, 1 judge was voted down—1 judge was voted down in 8 years—and 377 judges were confirmed.

When President Clinton left office, there were only 41 judges nominated and pending unconfirmed.

When former President Bush left office, on the other hand, in 1992, there were 54 judges nominated and unconfirmed.

It is clear that at least 13 fewer judges were pending when Senator HATCH chaired the committee and the Republicans left office than when the Democrats controlled the Senate and President Bush left office—a very similar circumstance. I think it is impossible to say that President Clinton's judges were abused.

With regard to the historic right of Senators to refuse to submit the blue slip, giving home State Senators, in effect, an ability to block nominees in their home States, that did slow down some of the nominees and keep them from being confirmed. Whether those Senators were right or not, I don't know. But it is a power we have always held.

Let me say this: Do the Democrats in the Senate say this is an abuse of power and ought to be reduced, and it is something that ought not be allowed to go forward? No, they do not. They are now pushing to expand the power of the home State Senators beyond what we have had in the past to block nominees.

I am very sad for the Pickering family, and the young CHIP PICKERING, the Congressman from Mississippi. He is one of the very finest Members of the House of Representatives. He loves his father. It was painful for me to see him have to sit through all of that today. But he is a strong young man. His father has a great record. He has served well. I am sure he too will bounce back from this.

I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I would like to address the Senate in morning business.

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

THE NOMINATION OF JUDGE THOMAS PICKERING

Mr. KYL. Mr. President, I heard the distinguished minority leader speak a couple of hours ago on behalf of the resolution which he submitted to the Senate for its consideration, and hopefully a vote perhaps Tuesday of next week, in which he called for moving forward in a way that was less politicized with respect to judicial nominations. He had just witnessed the defeat in the Senate Judiciary Committee of his candidate for the Fifth Circuit Court of Appeals from his State of Mississippi. The President had nominated this fine man, Judge Thomas Pickering. The judge currently sits on the Federal district court. President Bush nominated him to serve on the Fifth Circuit.

The minority leader had witnessed his defeat in the committee just a few moments before and expressed himself, I thought, quite eloquently, without anger but with a great deal of sadness. I share that sadness tonight because I think a very fine man has been ill treated.

Some of my colleagues have said the process was fair. And I don't argue that the process was unfair. But what I argue was unfair was the characterization of the man. It was done so that there would be a reason to vote against him.

As I will point out in a moment, I think the real reason there were objections to Judge Pickering was that he was a conservative from Mississippi nominated by President Bush. There were too many groups on the outside. Yes, I do think they had some influence with Members of the Senate and characterized him as an extremist, as out of the mainstream, and therefore it became difficult for some Senators to vote for him.

I wish to make it clear that this was not a vote by the Senate. For those who might be watching, what happened today was the Senate Judiciary Committee voted along party lines to defeat his nomination. The majority would not agree to send him to the Senate, as has been done in a few cases, without a recommendation, or even with a negative recommendation. The reason is that had he come to the full Senate for consideration, because of the expressions of support by some members of the majority party, it is clear he would have been confirmed. They were unwilling to let the full Senate vote on him so that he could be confirmed.

There is a question about the advice and consent clause of the Constitution which speaks to the advice and consent of the Senate being exercised by just 10 members of the Judiciary Committee. I think that perhaps is the right of the majority on the Judiciary Committee. But I am not necessarily certain—at least certain in some cases—that it is the right thing to do. It was not a full Senate vote that defeated Judge Pickering; it was just the committee.

The unfair characterization of Judge Pickering was designed to find some reason or some rationale for voting against him.

Why do I say that?

There were a lot of different charges: One, that he was a racist. No Senator was ever willing to stand up to make that charge. There were cases cited. But nobody was ever willing to make that charge.

There was a suggestion that he had collected some letters to support him and that it was unethical. There is no ethics provision that says that one way or the other. As a matter of fact, none of us can stand up and say, yes, or, no, it wasn't. But I think had a decision been made on that basis alone, it would have been extraordinarily unfair.

The American Bar Association, which rated Judge Pickering well qualified, considered all of these matters, obviously. Certainly, the American Bar Association's imprimatur of qualification has been one of the standards most of the members on the majority side have held up as justifying a vote for or against a nominee. When the ABA says this candidate is qualified, it is a little hard for me to justify an assertion that somehow he was unethical because he collected letters of support on his behalf and presented them to the full Senate.

There was an argument made that he had done a lot of reversals. I heard that for several weeks. This morning before the committee, Senator HATCH debunked that totally. The reversal rate is good by any standard. If you take the total number of cases, it is far below the average judge. If you take the number of appeals, it is below the average judge.

If you are going to say how his record stands up against all other judges, he is much better than the average Federal judge.

The reversal rate—25 out of some 5,000 cases—is hardly a reason to vote against him. That was debunked.

This morning, I heard that the reason one Senator was voting against him was that the nomination was so controversial that it was polarizing.

I must say, it is a little like saying, don't you stick your chin out at me or I will hit you, and you will have started a fight. It is hard for me to figure this one out because some outside groups object to a candidate, create a fuss and a stir about the candidate, and the candidate, therefore, becomes controversial. We are supposed to vote against him? There have been a lot of controversial people in history.

I cited this morning people such as Martin Luther King, Jr., Sir Thomas More, and Justice Hugo Black. History is replete with great people who were indeed controversial. In fact, it took courage to stand up for them at the time that they were controversial. But they were right. And the people who stood with them at the time have been validated in their view of what was right, and in their courage.

It seems to me as constitutional officers we have an obligation to follow our constitutional duty and make our decision based on whether a person is qualified or not, not based upon whether that person is controversial.

There is also a very significant undercurrent of retribution. Hardly any conversation about Judge Pickering could occur without members of the majority party saying: And let us remind you of all of the judges who were

treated unfairly when Republicans were in power in the Senate and President Clinton was the President.

Only one judge was defeated on the floor of the Senate, and I do not think any were defeated in the committee, as Judge Pickering was today. But there were some judges who did not get a hearing. Maybe there were too many. But I think that it is quite unfair to try to dream up reasons to vote against somebody if the real reason is that you do not like what happened to some of President Clinton's nominees. That is not right.

We talk about the cycle of violence in the Middle East and say we have to stop it. Yet some people apparently are willing to maintain a different kind of cycle of retribution in the Senate.

I think what it boils down to is a matter of philosophy. I think, if people are honest with themselves, a lot of this boils down to the fact that some members of the majority are uncomfortable supporting a conservative nominated by President Bush. And some on the committee have been courageous enough to, in fact, say that.

One of the Senators from the majority this morning said: Look, I think that he's out of the mainstream. I think that President Bush is nominating waves of conservative ideologues, and that offends my sense of what is proper, and, therefore, I am going to vote against that kind of nominee.

That is an honest statement, at least, even though I think it is very wrong. But I think that really is the reason why a lot of people decided not to support this nominee. And the question is, A, are they right? And, B, is that right?

Well, are they right? I do not doubt that Judge Pickering may be characterized as a conservative, but he has been on the Federal bench for a long time, and I have not seen anybody say that his decisions reflected some kind of conservative bias. Moreover, one man's conservative is another man's mainstreamer, or however you want to characterize it.

I think we get on a slippery slope when a Senator from New York says, for example: Why, those candidates are outside the mainstream. They are conservative ideologues. I say: Gosh, they look pretty good to me. Of course, I am a conservative from Arizona. So it is all in the eye of the beholder. The question is, Who got elected as President of the United States?

I remember when Al Gore said in one of the debates with George Bush: You don't want to elect George Bush because, if he gets elected, he will nominate conservatives to the bench. Everybody in the country knows that whoever is elected President is going to nominate people they like to the bench.

President Clinton nominated a lot of people I thought were pretty liberal. I did not vote for all of them, but I voted for a lot of them because they were qualified, I had to admit. But I thought they were liberal. They were liberal. And I did not like that. And they have added to liberal courts. But, again, he was elected President, not me. I am a conservative from Arizona.

You can characterize President Clinton however you want to characterize him. He had the right to nominate candidates of his choice because he got elected by the whole country. And so did George Bush.

I daresay that George Bush probably is a better representative of the mainstream of America than a lot of individual Senators in this body who are answerable to specific constituencies in Arizona or New York or New Jersey or Minnesota or whatever State it might be. Therefore, I think it is wrong for any of us to have a litmus test of politics determining our vote for judges on the courts. I think if they are qualified, if the ABA says they are qualified, if we acknowledge they are qualified, then we should not be voting against them just because of their judicial philosophy.

That brings me to the conclusion here.

When I saw the distinguished minority leader express himself tonight, after his fellow Mississippian had been defeated in the Senate committee, and he offered his sense of the Senate, I admired Senator LOTT because what he was saying, in effect, was: I am not going to forget this personally. But it is time to move on and stop this business of retribution, this business of saying Clinton judges were treated unfairly, so, therefore, we are justified in doing the same to President Bush's nominations.

What TRENT LOTT was saying was let's move on. Let's stop this nonsense. And the way we can do it is to begin to deal with the backlog of circuit court nominees that we face today. And he pointed out the statistics. Only one of the nine nominees of just about a year ago—on May 9—have even had a hearing. There is no excuse for that. There is absolutely no reason that all nine of these candidates could not have had a hearing.

Judge Pickering is only one. The other eight have not had hearings. Miguel Estrada, for example: No hearing. He is right here. There is no problem. He can have a hearing. But it is going to be a year before he can even conceivably have a hearing now. There is clearly something wrong when that is the situation.

So what Senator LOTT said was let's have a sense of the Senate and agree as a Senate that at least those eight nominees of May 9, 2001, should have a hearing by May 9, 2002; that is not too much to ask; and it isn't. So I hope all of my colleagues will join us in supporting it.

Now, that does not guarantee it, but it expresses the sense of the Senate that we ought to do it. I think that is a good way for us to begin to put some of this acrimony behind us.

I remain disappointed about Judge Pickering. I am resigned to the fact that he is not going to be, at least for now, confirmed to the circuit court. But I do think we can learn from this exercise, adopt Senator LOTT's resolution, agree to hold hearings on these judges, and then, of course, follow through with action by the committee and then action by the full Senate.

The statistics are such that in order for this Senate to confirm the same number of judges that were confirmed for President Reagan, the first President Bush, and President Clinton, in their first 2 years of office—the measure for the end of this current year—we would have to hold a hearing every single week—we, the Senate Judiciary Committee, of which I am a member—that we are in session until the end of this year, with five district court judges and one circuit court judge per hearing.

We would have to do that every single week. And the committee would have to vote on five district court nominees and one circuit court nominee. The full Senate would have to vote on five district court nominees and one circuit court nominee every single week. That is just for us to confirm the same number of judges for President Bush, the second, as we confirmed for his father and for President Clinton and for President Reagan.

Obviously, we have dug ourselves a big hole. We have to start to get out of this hole. An old rancher friend of mine once said: If you're in a hole and want to get out, the first thing you want to do is stop digging.

We have to stop the delay and the recrimination and get on to confirming qualified judges. The best way to do that is to commit to holding hearings and having the Judiciary Committee vote on those nominees. If they vote a nominee down, all right, but let's make sure it is on the qualifications and not some excuse. Then bring those nominees who are supported to the floor so the full Senate can act on them as a body.

I support Senator LOTT's resolution. I hope my colleagues will do so when we have a chance to vote on it, perhaps Tuesday, so we can move beyond the kind of actions that I believe characterize Judge Pickering's rejection today. I hope this is the last time we will have to have a conversation such as this.

I appreciate the Presiding Officer's patience.

APPEAL IN THE LOCKERBIE CASE

Mr. KENNEDY. Mr. President, today justice was shining as the Scottish court in the Netherlands upheld the conviction of Libyan intelligence officer Abdel Basset al-Megrahi for the terrorist bombing of Pan Am flight 103 over Lockerbie, Scotland on December 21, 1988.

In this heinous crime, Libyan terrorists blew up Pan Am flight 103, ruthlessly murdering 270 innocent people, including 189 Americans. Until the September 11 terrorist attack, the Pan Am

case was the most fatal terrorist atrocity in American history.

Since 1989, our Nation has joined the victims' families to bring the terrorists to justice and to compel the Libyan Government to acknowledge its responsibility for this terrible act. Today, after more than 13 years, a measure of justice has finally been achieved.

This verdict by the Scottish court is a victory for the families of the victims who have been tireless advocates for justice. Thirteen families from Massachusetts lost loved ones in the Pan Am flight 103 attack. Over these 13 difficult years, we have worked with them and the other families to bring about today's verdict.

From the outset, the families of the victims have translated their grief into action. They stood up to powerful interests of the oil industry, and they have kept the prosecution of those responsible for the death of their loved ones at the top of our Nation's agenda. This trial and this verdict would not have happened without their impressive and ongoing efforts.

Discussions between the American, British, and Libyan Governments regarding compliance with outstanding U.N. Security Council resolutions are underway in London.

Now that the legal case has run its course, diplomatic efforts will intensify to ensure that the Government of Libya fully and satisfactorily complies with Security Council resolutions before sanctions can be permanently lifted.

In Security Council Resolution 748, the United Nations required the Libyan Government to comply with requests addressed to Libyan authorities by the governments of France, the United Kingdom, and the United States. One of those requests clearly states that the British and American governments expect the Government of Libya to ''accept complete responsibility for the actions of Libyan officials.''

This requirement must be fulfilled completely, totally, and unequivocally. The United States Government has consistently maintained that the Libyan Government carried out this atrocity. Indeed, when two Libyan intelligence officials were indicted in 1991, State Department spokesman Richard Boucher said: ''This was a Libyan Government operation from start to finish. The bombing of Pan Am 103 was not a rogue operation.''

Although the explosion did not take place on American soil, America was clearly the target of this attack. The Scottish court concluded that Libya was responsible for the bombing, and the Libyan regime must accept that responsibility as well. As the London discussions proceed between our government, the British Government and the Libyan Government the U.S. must make it crystal clear that we will accept nothing short of an explicit acceptance of responsibility by Qadhafi's government to satisfy this condition.

Security Council Resolution 748 also requires the Libyan Government to ''disclose all it knows of this crime, including the names of all those responsible.'' The head of Libyan intelligence, Musa Kusa, has been participating in the trilateral discussions in London. At the time of the Pan Am bombing, Musa Kusa was the Deputy Chief of Intelligence, working under colonel Qadhafi's brother-in-law, and he should be able to provide a significant amount of information to satisfy this condition. I expect that the U.S. Government is asking Musa Kusa to provide this information with the goal of fulfilling this requirement.

Another clear requirement of Security Council Resolution 748 calls on the Libyan Government to ''pay appropriate compensation.'' Discussions are underway between private attorneys and the representatives of the Libyan Government to address this condition. I am aware that the State Department is not directly involved in these negotiations. However, our government must ensure that any financial agreement is not considered a substitute for acceptance of responsibility accompanies the financial agreement.

Finally, the Security Council Resolution calls on the Government of Libya to ''commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and promptly, by concrete actions, demonstrate its renunciation of terrorism.'' Libya has in the past supported, trained, and harbored some of the most notorious terrorist groups in the world. Our Government must be convinced, beyond a doubt, that Libya has abandoned all support for terrorism before concluding that this requirement has been satisfied.

The Congress has consistently stated its view that the Libyan Government must fulfill all Security Council resolutions related to the Pan Am 103 bombing, most recently when it overwhelmingly approved a five-year extension of sanctions in the Iran Libya Sanctions Act.

I know the administration is working diligently on this matter, and I look forward to full and satisfactory compliance with Security Council resolutions. These brave families deserve no less.

Mr. President, this tragedy took place 13 years ago. It is instructive for all of us to understand that the only way we are going to be able to deal with terrorists is by developing the kind of hard-edge determination, resolution, persistence in pursuing justice that this case has followed over 13 years.

Too often, with the kinds of challenges we are facing, we find out that there is a flurry of activity, and then we find other forces come to bear to try to override the underlying issues which are basically at stake. We have seen the powerful interests of the oil industry trying to push aside the sanctions which we have had in effect. We have seen powerful interests in Europe as well try to discount these sanctions.

It is only because the United States has been resolute, determined, and persistent over the period of 13 years, both in the area of sanctions as well as pursuing this in the international courts, that we have the judgment as we have seen today. That judgment is extremely clear in pointing out responsibility to the world. The Scottish court is pointing the world to the cause of the terrorism which took 13 families from my State, 67 members of the U.S. Armed Forces, and scores of other Americans. This is a victory for those families.

It is a very important step that has been taken. It is a reaffirmation in our system of justice, and it is a clear indication to countries around the world that the United States is going to be consistent and persistent to bring those who have created terror to justice, no matter how long it takes.

APPLAUDING THE JUSTICE DEPARTMENT FOR THEIR LEADERSHIP IN THE LAWSUIT AGAINST THE TOBACCO INDUSTRY

Mr. DURBIN. Mr. President, about 13 years ago I went to get on an airplane in Phoenix, AZ. I was a Member of Congress. I was late for my plane, as usual. I came running into the airport, went to the United ticket counter, and said: Can I still make the plane? And the lady at the counter said: Yes, I think you can. Hurry up. I said: Can you get me a seat in the nonsmoking section of the plane? It was too late. She said: The only seat I have left is a middle seat in the smoking section of the plane. So I said to her: Isn't there something you can do? She looked down at my airline ticket and at my title and said: No, Congressman. But there is something you can do.

So I got on that airplane and sat in a middle seat in the smoking section between two chain-smoking sumo wrestlers and thought to myself: There has to be a better way.

When I got off that plane, I decided to offer an amendment to ban smoking on airplanes across America, and was successful, to the surprise of myself and everybody else. No one had ever beaten the tobacco lobby on the floor of the House of Representatives. We did it by five votes. It was very bipartisan. It came over to the Senate. Senator Lautenberg of New Jersey picked up the cause. He was successful on this side. We put into law a ban on smoking on airplanes, which I think was the domino that triggered smoking being banned all across America, in restaurants, in office buildings, in hospitals, and not only on planes, but on trains and buses. There has been a real revolution in just 13 years.

But the battle against the tobacco companies goes on. I give credit to a lot of those who followed after that historic legislation, particularly the State attorneys general who filed lawsuits against tobacco companies and successfully brought in billions of dollars to States because of the fraud perpetrated on the public by the tobacco industry.

I was happy to support those State suits. But at the same time, President Clinton was President, and many of us said: Why isn't the administration in Washington doing the same thing? Why don't we bring a lawsuit on behalf of taxpayers across America who have had to pay out billions of dollars for medical care for tobacco-related disease and death? Why shouldn't they be compensated, as the States successfully prosecuted the tobacco companies for compensation at the State level?

To their credit, in the closing days of the Clinton administration, they prepared a lawsuit and started it against the tobacco companies by the Federal Government. And then, with the change in the administration, there was a question as to whether or not this new administration would still dedicate its resources and determination to successfully prosecute the same lawsuit.

We were concerned because initially there was criticism that the Department of Justice was putting too much money into this lawsuit. Attorney General John Ashcroft, as a Senator in this Chamber, was critical of this lawsuit against the tobacco companies. So many of us had justifiable concerns about whether or not the Federal Government would really vigorously pursue the lawsuit against the tobacco industry.

I am happy to report to you today that what has been disclosed within the last several weeks gives us great encouragement because we now have had disclosed documents that have been prepared by our Government, by our Department of Justice, demanding, in this lawsuit, changes in policy by the tobacco companies which could not be more encouraging.

Many of the things I am about to read to you have been proposed by people such as myself concerning the tobacco industry for years, and it has fallen on deaf ears in Congress. Congress is one of the worst places in the world to go and discuss the tobacco issue. The tobacco lobbyists are all over the Capitol. The tobacco interests fund campaigns right and left, and they make it very difficult for anything to be done on Capitol Hill. That is why the courts have been more successful.

But let me give you an idea of a number of the things this administration is asking for as part of their lawsuit which would really change the way tobacco products are going to be sold in America.

It would restrict all cigarette advertising to black and white print-only formats, with 50 percent of the space dedicated to graphic health warnings. In other words, all the glamour and glitz of the billboards, and all the other advertising on cigarette packaging and in magazines, would be replaced by very stark and clear black and white advertising with very graphic health warnings.

This is not a new idea. The Canadians have been in this business for a long time. Other countries around the world, such as Poland, for example, have started doing things relating to tobacco advertising the United States should have done years ago.

It would require cigarette packaging, under this demand from the Department of Justice, to carry health leaflet inserts.

It would end trade promotions and giveaways.

It would ban all vending-machine sales, which is the avenue by which many underage smokers start their habit.

It would forbid ''light,'' ''low-tar,'' or ''mild'' labels, which are deceptive on their face.

It would require the industry to publicly disclose all ingredients, additives, and toxic chemicals.

It would require the industry to publicly disclose manufacturing methods and marketing research.

And it would eliminate the slotting fees paid to retailers for favorable placement of tobacco products.

This is an amazing array of remedies being asked for by the Department of Justice. I stand in this Chamber as someone who has been skeptical of their commitment. I applaud them for the real leadership they are showing in this lawsuit. If this is a change of heart in the administration, let this Democrat stand here and be the first to praise the administration for its leadership.

We need this. We need a commitment not just of resources, but a commitment of talent at the Department of Justice to make this legal action successful. Congress now needs to ensure, in our appropriation, that we adequately fund the Department of Justice to pursue this lawsuit. Give the Department of Justice the resources it needs to fight the tobacco industry. They are going to put together hundreds of lawyers to defend their miserable product and their practices. We need to have a team just as good and well funded on our side.

I can tell you as well, don't be deceived by the advertising from the tobacco industry. They have not changed. The Department of Justice uncovered documents that show, as recently as 1997, when the State settlements were being negotiated, the tobacco industry was conducting studies so that they could determine the brand preferences of young smokers between the ages of 12 and 20. Despite all of that beautiful advertising put on by Philip Morris and other companies on the television, which says: No we can't sell you these cigarettes, kiddo; you know what the law is. The fact is, this industry would die if they could not recruit teenage smokers. They are still trying to find ways to reach them.

As long as they are doing that, this insidious effort to make addicts of our children so that they ultimately become hooked and die from tobacco-related disease has to be fought every step of the way. It is time for us in Congress to wake up to the need for the Food and Drug Administration to have new authority to regulate tobacco products. They have slipped through the cracks entirely too long when it comes to Government oversight. It is time to change it.

IN MEMORY OF TOM WINSHIP

Mr. KERRY. Madam President, I share a loss which many in New England, and Massachusetts particularly, feel today. Thomas Winship, editor of the Boston Globe from 1965 to 1984, and a champion of the role that the American newspaper plays in our lives and the lives of our country, died early this morning after a long and brave battle with cancer, leaving behind his wife Beth, a sister, Joanna Crawford; two sons, Lawrence and Ben; two daughters, Margaret and Joanna, and eight grandchildren.

Our condolences from all in the State of Massachusetts and all who knew him. Our prayers go out to them today as they grieve the passing of this very special man.

Their loss is also our country's loss. I can say without embellishment that Tom Winship was one of America's great newspapermen. He was an extraordinary editor, a giant among a generation of editors that includes people such as Ben Bradlee and Joe Lelyveld, and a host of others, all of whom were a band of brothers at that time, who sought to change the face of America, our politics, our culture, and our lives, in a positive way, using their power of the print to be able to reach the American people with what they thought were best interpretations and aspirations of our country.

Tom was a man who lived the word ''citizen'' to its fullest. He loved his family, his country, his community, and the newspaper business, all with a burning passion. In his years at the Boston Globe, he left an indelible mark on the newspaper lore of our Nation. It is not an exaggeration to say that through his efforts and the efforts of others, they made a real and a significant contribution, certainly to the history of Massachusetts, of New England, and, in the conglomerate of all of them, of the country.

I first met Tom Winship when I was a young veteran, recently returned from Vietnam. I went to see him to talk about the war, a visit which led to a friendship that lasted some 31 years. When we veterans came to Washington in the early 1970s to speak our minds about the war in which we had fought, as veterans who believed we had no other choice but to tell another side of the story, something we thought was not sufficiently reported, Tom Winship showed a special and personal interest. He understood the meaning of that effort. He insisted that his paper cover that story, our story, and I think, even fairly stated, America's story. He insisted that be covered when others were not so sure that was wise or that it mattered.

Tom's courage was measured not just in printing ''The Pentagon Papers,'' for which he was bitterly attacked by some, but in covering all the words of the time—harsh words sometimes, honest words always, and words that might much more easily, were it not for him, have been ignored.

Tom's brand of special leadership did not begin or end with Vietnam. Perhaps it began even with the civil rights movement when he faced not just the segregation of the South but a segregation that he also recognized existed at home in the North. It was also his early activism, his willingness to protect the environment in the days when Rachel Carson and her book ''Silent Spring'' touched a new consciousness about clean air, clean water, and the birth of the environmental movement that never could have reached full momentum without Tom's stewardship of a newspaper determined to make it an issue.

It was the unflinching effort to press for reforms—in Massachusetts, in the State legislature, in the State constitution—and his creation of the Globe's Spotlight Team that awoke citizens to what was happening in too many instances in government, that made it possible for a new generation of reformers, Governors, to have a voice and find the platform that ultimately helped usher in the modern era of politics in our State.

On all these issues and so many more, it was Tom Winship who never shied away from steering the Boston Globe by his own moral compass. He believed that a newspaper served an important national purpose: To report the news, yes, but also, he believed equally importantly, to help his fellow citizens understand how events in their neighborhoods and beyond their borders impacted their lives. He believed in the role of the newspaper to help frame choices for each of us, to help us find a direction as a people, to open our eyes to the outcomes and possibilities which, as it always is in a democracy, are left up to the people to decide.

Tom thought it was entirely appropriate to make public a sense of moral outrage about the actions of people in public life whose choices or whose unwillingness to make choices, their inaction, came into conflict with the public interest. Tom Winship did not easily accept the changes he perceived in America's print media which seemed more and more interested in personality and conflict and less and less interested in ideas and ideals. Tom's sense of what was news and what was merely new never shifted. It was seared into him by his passion for a debate on big choices and his deep and unshakable belief that the newspapers were there to help us wrestle with those decisions.

For his enduring faith in the responsibility of journalists to our country, and for his remarkable energy spent to preserve that special role of the American newspaper in our democracy, for his courage in fighting to put real news, however contentious, on the front pages of America's consciousness, Tom earned the enormous and unfailing respect of his peers. He also earned the admiration of a generation of activists and outsiders who might well have otherwise been written out of our Nation's dialog.

For all that he did in his life and throughout his career, Tom leaves an enormous legacy, one that will endure, even as newsprint fades and newspapers yellow with age. It will not be just a memory but a standard, a standard that teaches us lessons about telling the truth and focusing on what is really important. When you lose a man such as Tom Winship, your first instinct is to say you will not see another one like him. But knowing what we do about Tom Winship, knowing all he stood for and all he accomplished, we also know he would not want that. He simply would not believe it. He would want us to think that the world we live in, in the future will be a world with more people pursuing the same goals, with more people who believe they can change things and follow his example.

He would have believed nothing less than that. Although the standard he set is exceedingly high, it will mean so much more to our country to see another generation that walks the path Tom Winship so courageously blazed for all of us.

I yield the floor.

OTTO REICH IS ON THE JOB

Mr. HELMS. Madam President, this past Monday, March 11, I was among the hundreds of Otto Reich's friends and supporters when he was sworn in by Secretary of State Colin Powell to serve as Assistant Secretary for Western Hemisphere Affairs.

His nomination had been delayed, to a frivolous extent, by a few Senators who held a grudge against Mr. Reich because he so ably served President Reagan in the 1980s as head of the U.S. Office of Public Diplomacy for Latin America.

Now, on this past Monday, March 11, surrounded by his family, his two daughters held the Holy Bible on which Otto placed his hand while taking the oath of office by Secretary Powell. There followed a thunderous and prolonged applause when the oath was concluded and Secretary Powell turned over the podium to Secretary Reich.

Madam President, it occurs to me that many will find Otto Reich's remarks on that occasion of special interest. Therefore, I ask unanimous consent that the text of those remarks be printed in the RECORD.

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

REMARKS BY OTTO J. REICH UPON HIS SWEARING-IN AS ASSISTANT SECRETARY FOR WESTERN HEMISPHERE AFFAIRS, IN THE BENJAMIN FRANKLIN ROOM, U.S. DEPARTMENT OF STATE, MARCH 11, 2002

Mr. REICH. As President Bush would say, ''Basta.''

Thank you very much, Mr. Secretary, for those very kind words and for your presence here. I know how busy your schedule is and I very much appreciate your officiating at this ceremony.

Excellencies, Senator Helms—Chairman Helms, Secretary Martinez, colleagues from many years of service in the U.S. Government, Army buddies, un-indicted co-conspirators, friends, family, and special guests:

I know many of you have traveled many hours to be here, and I want to thank you all for sharing this important occasion with me and with my family. I believe, however, the delegation from Panama holds the record for the longest distance traveled. If anybody else has traveled longer, we have a prize for you afterwards.

As much as I appreciate your presence, my first words of gratitude, on behelf of myself and my brother, my family and my fellow Cuban-Americans, must go to this most generous of countries, the United States of America.

As most of you know, my country of birth, Cuba, lost its liberty to a totalitarian dictatorship forty-three years ago. My family, like so many other nonpolitical families, was in danger simply because of our love of liberty, which ran counter to the communist ideology being imposed by force on that island.

The United States of America opened its doors to us, as it has done for millions yearning to breathe free. It did not ask anything in return, except allegiance and respect for the laws. It protected our lives, gave us liberty and the opportunity to pursue our happiness.

The Greek philosopher Thucydides said that Justice is the right of any person to do those things which God gave him the ability to do. By that or any other definition, this is a just country. Our nation is not perfect, but it allows its citizens to do that for which God gave them the ability. To say that I am proud to be an American is the height of understatement.

I want you to reflect for a minute on what you have just witnessed: where else but in the United States of America could the son of Jamaican immigrants rise to be the National Security Advisor to the President, then become the highest ranking officer in the most powerful Armed Forces in the world and then the Secretary of State.

Where else could he administer the oath of office to another son of the Caribbean—half-Cuban, half-Austrian, half-Catholic, half-Jewish—and charge him with directing our country's relations with the 34 nations of our home hemisphere. But I don't want you White Anglo Saxon Protestants out there to despair. There is room in our society for you, too.

I wish all of you had the opportunity I now have to work with Secretary Powell and President Bush. I have been in meetings with them and with heads of state or foreign ministers of other nations. And in private, in staff meetings, I can tell you that you would sleep better at night knowing how calm, competent, strong and dedicated they are.

I would sleep better at night also, except for Deputy Secretary Armitage calling me to ask where is the memo that was supposed to be upstairs by close of business!

I am proud today not just because I am being sworn in to this office. I was proud when I was given the opportunity by this

country to be the first one in my family to graduate from college, and then to obtain a graduate degree; to be an officer in the U.S. Army; and to be sworn-in three previous times to Presidential appointments. I am proud of every single job I have performed in service to our country.

Much has been written in the so-called ''prestige press'' about my previous work. Some of it even true! There were charges of ''covert propaganda'' by the office I headed in the 1980's: the Office of Public Diplomacy for Latin America and the Caribbean. Well, Mr. Secretary, today I have a confession to make about the work of that office. Now that the Statute of Limitations has expired, I think it is safe for me to confirm what so many on the other side suspected: Yes, the Office of Public Diplomacy for Latin America and the Caribbean was single-handedly responsible for the downfall of the Soviet Union!

There are so many things for which I am grateful today. Like two beautiful and intelligent young ladies who held the Bible. The person responsible for their being smart and pretty is here, their mother—Connie—my friend and former wife, and someone who made many sacrifices to help get me to where I am today. I don't think anyone has a more supportive ex-spouse than I do. Thank you, Connie.

And also here is another very special lady, Lourdes Ramos, who this past weekend accepted my proposal of marriage. Thank you, Lourdes. I look forward to our life together. It's a busy weekend.

Standing up here, I stand figuratively on the shoulders of all of you. Each of you is here because you had something to do with my being here, some more than others. As George Orwell said in Animal Farm, ''All animals are equal but some are more equal than others.''

I am not going to start naming the names of those who are more equal than others, but you know who you are. Since I can't possibly name each one, please consider yourselves properly singled out.

I do want to thank President Bush and Secretary Powell not only for selecting me to this incredibly exciting post, but for sticking with me in the face of unfair, anonymous or just plain false charges. I want to thank those who kept encouraging me to ''Hang In There.''

Believe me, I hung in there and I have the rope burns around my neck to prove it!

But how could I not persevere? I am an American. When the Founding Fathers pledged their lives, their fortunes and their sacred honor to create this experiment in democracy in 1776, they did not qualify their words. They didn't say they were going to reconsider if they ran into some resistance from the British. Well, I was not going to reconsider either.

How could I? My late parents were not quitters, and they are proud of my service to their adopted country. My mother was a poet and a free spirit. She was also practical and hard-working, a telephone operator and a union member.

I like to remind my Democrat friends that I come from a labor union family and am proud to have served the only U.S. President to have been president of a labor union: Ronald Reagan, the man who with his foreign policy vision and courage laid the groundwork for the end of the Evil Empire. And by the way, with the help of a lot of people who are in this room, such as Ambassador Kirkpatrick, Secretary Powell, and many others.

How could I quit? The memory of my father would not have let me. He left his home in Vienna in August of 1938, after being beaten up numerous times by Nazi thugs because of his Jewish religion. He rode 700 kilometers on a motorcycle, driven by his best friend, a Catholic, to the Swiss border, and crossed the Alps on foot into Switzerland.

He made his way to France and joined the French Foreign Legion so he could fight the Nazis who had taken over his beloved Austria. The same Nazis who would later kill his parents, my grandparents, along with millions of other innocent victims.

More than a year after the French Army surrendered, he boarded a Portuguese freighter in Casablanca, headed for Jamaica and Cuba, and in 1942 he landed in Havana, where he found work, met my mother, started a family and hoped he could finally live in peace.

I would not be deterred, also because of the memory of my maternal grandfather, Juan Fleites. At the age of fifteen, exactly one hundred and seven years ago, in 1895, he joined the Cuban insurgents who were fighting for Cuba's independence from the Spanish. He was too young to serve as a warrior, so he became a medic's assistant and a stretcher-bearer, helping to carry the casualties off the battlefield and cleaning their wounds as best he could.

Secretary Powell is rightfully proud of his heritage and his accomplishments as a military officer and a civilian. But I am also proud, Mr. Secretary, that my grandfather served in Cuba's liberation army under a general named Antonio Maceo.

Maceo was the equivalent of the Chairman of the Joint Chiefs of Cuba's insurrection. He was a black man and the descendant of slaves. Today we would call him Afro-Cuban. Over one hundred years ago, Cubans of all races willingly fought and died for their independence under the general they called ''El Titan de Bronze,'' the Titan of Bronze, in honor of the color of his skin.

Antonio Maceo was the highest-ranking military officer of African heritage in this hemisphere until Colin Powell came along. And today I am proud to serve under another ''Titan de Bronze.''

Much has been made of my Cuban-American heritage. One group said that I couldn't possibly handle our relations with this hemisphere because I don't have the right temperament, by virtue of my ethnic background. They actually put that in writing. They said that I can't make rational decisions because of my ideology! Well, they are not saying that anymore, because I had them all arrested this morning!

Seriously, I think it is time that Cuban Americans cease to be the one ethnic group which the media still finds acceptable to denigrate. How could I not persevere to be appointed into what I think is the best job in the government? Where else can you work twice the number of hours as in the private sector, make half the money, and get public abuse in the process? As my father would have said: ''Such a deal!''

I am part of a great team of professionals, both career and non-career. I am both excited and apprehensive about this assignment, because seldom have we faced as many challenges and opportunities simultaneously in the Americans as we do today.

This is a continent of contrasts: incredible wealth and unbearable poverty; freedom and repression; world class literature and high illiteracy; abundance and injustice. It is a continent where peasants and workers and laborers work from dawn to dusk, but reach the end of their lives in misery. What is the reason for that? It is not for lack of resources.

This continent has all the natural and human resources necessary to achieve levels of development like those of Europe or North America.

The creative forces of all the population must be allowed to flourish. Governing elites must encourage, not discourage, individual initiative. People must be given the freedom to produce and then to enjoy the fruits of their work.

There is too much false nationalism and not enough commitment to national advancement. Those who keep the masses of the people from climbing the social and economic ladder are condemning their nations to perpetual underdevelopment.

We must battle a number of threats all at once: terrorism, drug trafficking, common crime, disease, ignorance, illiteracy, poverty, apathy, racism, despotism, selfishness. As Secretary Powell mentioned—corruption. Corruption is the single largest obstacle to development in the developing world. Those who steal from the public purse are doing as much harm to their country as a foreign invader would.

Whether it is the policeman who takes a $2 bribe to tear up a traffic ticket or the Cabinet official who takes $2 million to rig a government contract, they are doing untold damage to their countries.

But in adversity there is opportunity. For each financial collapse there is the possibility of recovery. For every war there is the prospect of peace. The Mexican patriot, Benito Juarez, said ''El respeto al derecho ajeno es la paz.'' Peace, he said, is achieved through respect for the rights of others. And when governments and persons follow Juarez's advice and respect the civil, political and economic rights of others, we will have peace.

The U.S. cannot solve all the problems of this Hemisphere. But we can help those who help themselves.

Finally, as I said earlier, questions were raised about my ideology. If you want to know what my ideology is, you need not go far. Just drive a few blocks from here to the Jefferson Memorial.

Inscribed in the largest letters at the highest point of the inside of the monument is a quotation from that great Virginian and first Secretary of State: ''I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.'' That is where my American ideology is founded.

As Thomas Jefferson's words remind us, our struggle against tyranny is not finished. Since September 11, exactly six months ago today, we are more determined and indivisible than at any time since World War II. Whether they are terrorists in Afghanistan or Colombia, or despots in Baghdad or Havana, anyone trying to impose tyranny over the mind of man has earned our eternal hostility.

Thank you all for sharing this very important day with me and my family.

God Bless you and God Bless this great country of ours.

ARSENIC-TREATED RESIDENTIAL-USE LUMBER PROHIBITION ACT

Mr. NELSON of Florida. Mr. President, I take this opportunity to share with the Senate a letter I received from a 13-year-old named Kevin from St. Cloud, FL. It is a town in Osceola County, near Orlando, FL, in the center of our State. Kevin writes this letter, and I will read part of it:

> I'm 13 years old and a Boy Scout of America. I would like to address you about a problem in a local park, that may be a problem in other parks. The park near my house has arsenic in the wood.
>
> Please help with this quickly. I have a little brother who plays in the park.

That is from a 13-year-old writing to a Senator.

Kevin, I hear you. I hope my colleagues do, too.

Kevin is addressing a problem many families and communities all across our Nation now find themselves confronting. They are all asking the question: Is my local park safe from the arsenic-treated wood which, when the rains come, leach the arsenic from the playground wood into the soil? Should I tell my children they cannot play in the park because of the wood that is treated as a preservative with arsenic?

What I found is that local officials, county commissioners, city commissioners all across Florida and many other States have raised similar questions about the use of arsenic to treat wood in playgrounds and backyard decks. The fact is, none of these communities has been given any clear guidance of what to do about arsenic-treated wood in their parks, in their backyards, and neither have the parents of kids such as Kevin. That is why I wanted to share Kevin's letter with the Senate today. The Senate has an opportunity, after more than two decades of delay, to finally ban the use of arsenic-treated wood and to provide parents and communities and local officials the information needed so they can make intelligent decisions about safety.

While the Environmental Protection Agency recently announced a voluntary phaseout of arsenic-treated wood, this agreement with the wood-preserving industry does not go far enough. For one, it is only a voluntary agreement, reminiscent of a voluntary agreement 20 years ago that the industry did not honor. Remember, we are talking about arsenic which can cause cancer and other serious illnesses, which is what this little boy from St. Cloud, FL, is writing me about because his little brother plays in the park.

Many European countries recognized the dangers long ago. It is time we get serious about a process we know can be harmful to children and consumers. The EPA has studied and negotiated this issue to death. Yet the best deal for consumers that they can come up with is a voluntary phaseout. Also, the EPA agreement with the wood-preserving industry fails to provide enough guidance to consumers, fails to provide the guidance to parents and local government officials about what to do with all that arsenic-treated wood on those playgrounds about which little Kevin is writing.

I urge my colleagues to join me in enacting legislation I filed to permanently ban this potentially harmful product. It is S. 1963.

TRIBUTE TO MARVIN SEDWAY

Mr. REID. Mr. President, I rise today to celebrate the official opening of the Marvin Sedway Middle School in Las Vegas, NV. This state-of-the-art facility provides an enduring tribute to one of Nevada's most esteemed and courageous political figures.

Marvin Sedway was a man with a ferocious spirit. His language was rough and his determination was fearless, but in everything that he did, Marvin was dedicated to the betterment of Nevada. As a State assemblyman he demonstrated an unwavering dedication to the children of his State and made their education his top priority.

Marvin Sedway moved to Las Vegas from New York City when he was 13 years old. In 1946 he graduated from Las Vegas High School and then he attended the University of Nevada at Reno. After completing his professional education at Pacific University in 1954, Marvin worked as an optometrist for almost 40 years. Throughout his career, Marvin Sedway's compassion and generosity were evident. It was widely known that Marvin volunteered thousands of hours to serve handicapped and underprivileged children who could not afford proper care.

Even before his election to the Nevada State Assembly in 1983, Marvin was an integral part of the Nevada political scene. In 1958 Marvin was a member of the Democratic Party Reform Commission, and in 1968 he became the State chairman of the ''Humphrey for President'' campaign. Marvin was also selected by several Nevadan Governors, including my good friend Governor Mike O'Callaghan, to serve on various State boards. He was a member of the Governor's Task Force on Rural Health Emergency Services and an advisory board member for Clark County Community College. In addition, he served as secretary of the State Board of Optometric Examiners and president of the Clark County Mental Health Society.

As a member of the Nevada State Assembly, Marvin gained prominence across the State for his service as chairman of the Assembly Ways and Means Committee, which allowed him to determine which bills would survive and which bills would not move forward. Marvin used his coveted position to advocate for those who often are voiceless including welfare mothers and low-income workers and families. In addition, while many others shied away from unpopular tax increases, Marvin's courage led him to support increases that would fund the State's expanding services and social programs.

Marvin's greatest cause was improving the education of Nevada's school children. He was a great believer in the importance of a strong public education system and continuously pushed for increasing funds for State schools. Throughout his 8 years in the Nevada State Assembly and even before then, he worked to ensure that Nevada's children had the resources to improve their lives, receive a solid education, and fulfill the American dream.

When Marvin Sedway died of lung cancer on July 7, 1990 at the age of 61, Nevada lost a great leader. But as the doors of the Marvin Sedway Middle School officially open, we can celebrate his legacy as a public servant committed to education. Thousands of young Nevadans will be educated in this remarkable facility, fulfilling Marvin's hopes and ambitions for Nevada's children.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in August 1994 in Sioux City, IA. Two gay men were attacked when two intruders broke into their residence. The assailants, Anthony L. Smith, 17, and Henry White, 18, were charged with first-degree burglary and second-degree criminal mischief under the State hate crime statute.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

RETIREMENT SECURITY ADVICE ACT OF 2002

Mr. BOND. Mr. President, today I am adding my name as a co-sponsor of the Retirement Security Advice Act of 2002, S. 1978, introduced by my good friend from Arkansas, Senator TIM HUTCHINSON. I do so, and submit this statement for the RECORD, because the bill holds important implications for small businesses in this country and the millions of Americans they employ.

In 1996, we created the Savings Incentive Match Plans for Employees SIMPLE, as a pension-plan option for small firms in this country. The goal was a simple one: provide a pension plan with low administrative costs for employers so they can offer pension benefits to encourage employees to save for their retirement. I am pleased that these plans have become quite popular, and together with the other pension simplifications and improvements enacted in the last five years, they have contributed to better access to pension benefits by small businesses and their employees.

Greater retirement savings, however, have raised new and complex issues for many employees who have seen their pension accounts grow substantially. As the Ranking Member of the Committee on Small Business and Entrepreneurship, I have heard many constituents raise difficult questions in this area: What are appropriate investments for my personal circumstances and risk tolerance? Should I buy stocks, bonds, annuities, or something

else? How should I diversify my investments? When should I modify my investment mix? And so on.

The importance of these questions has increased substantially in light of recent high-profile business failures and more generally because of the economic downtown. Gone are the days of the momentum market where any dollar invested seemed to grow with little effort or risk.

The return to more cautious investing has left employees who participate in employer-sponsored pension plans in a real dilemma, hire an outside investment advisor or go it alone in most cases. Why? Current pension rules effectively preclude most employers from offering investment advice to their employees. In fact, recent estimates are that only about 16 percent of participants have access to investment advice through their pension plan. In today's complex investment environment that is simply too little help for employees who are trying to manage their retirement security.

Senator HUTCHINSON's bill addresses this situation in a responsible way. For most businesses, and particularly small firms, the logical place to look for an investment advisor would be the company that manages the plan's investment options or an affiliated firm. Under Senator HUTCHINSON's bill that option would now be available, opening the door for countless businesses to offer this important benefit at a low cost to their employees who participate in the company's pension plan. In addition, by allowing more businesses to offer investment-advice benefits, the bill creates an opportunity for increased competition among investment advisors, which can lead to better advice products and lower costs overall.

Senator HUTCHINSON's bill, however, does not simply change the rules to help the business community. It also includes critical protections for the plan participants. Investment advisors must satisfy strict requirements concerning their qualifications, and they must disclose on a regular basis all their business relationships, fees, and potential conflicts of interest directly to the participants. In addition, and arguably most importantly, the investment advisor must assume fiduciary liability for the investment advice it renders to the employee participants in the plan. In short, if the investment advisor does not act solely in the interest of the participant, it will be liable for damages resulting from the breach of its fiduciary duty. Together, the bill's provisions provide substantive safeguards to protect the interests of the plan participants who take advantage of the new investment-advice benefit.

Some have contended that a better alternative is to force small businesses to engage an independent third party to provide investment advice. I disagree. The result would simply be the same as under current law. Cost is a real issue for small businesses seeking to offer benefits like pension plans and related investment advice, hence, the genesis of the SIMPLE pension plan. As under the current rules, if the only option is a costly outside advisor, the small firm will not offer the investment-advice benefit. As a result, we would not move the ball even a yard further, employees would still be left to their own devices to figure out the complex world of investing or they would have to seek out and hire their own advisor, which few have the wherewithal to do.

More to the point, nothing under the Hutchinson bill prevents a business from engaging an independent advisor if the employer deems that the best alternative. The standard under the Hutchinson bill for selecting the investment advisor is prudence; the same criteria that the employer must exercise under current law when selecting the company that manages the pension plan and its investment options. If a prudent person would not hire or retain the investment advisor, then under the Hutchinson bill, the employer should not do so either or face liability for breach of fiduciary duty. Again, additional protection for the plan participants.

In my assessment, investment advice is an increasingly important benefit that employees want and need. Moreover, small businesses in particular need the flexibility to offer benefits that keep them competitive with big companies as they seek to hire and retain the very best employees possible. And when we talk about small business, we are not dealing with an insignificant employer in this country. In fact, according to Small Business Administration data, small businesses represent 99 percent of all employers and provide about 75 percent of the net new jobs in this country.

The Retirement Security Advice Act provides a carefully balanced and responsible solution to this situation. Most importantly, it provides a solution that employers will actually use to offer the investment advice sought by their employees who struggle to put money aside in the hopes of having a nest egg that someday will provide them with a comfortable retirement. I am pleased to co-sponsor this bill and look forward to working with my colleague from Arkansas to see it enacted into law.

REMEMBERING THE VICTIMS OF SEPTEMBER 11

Mrs. BOXER. Mr. President, today, I speak with great pain in my heart as our country remembers the victims of September 11. Monday was the 6-month anniversary of the attack on the World Trade Center and the Pentagon. Once again, I want to offer my condolences for the people who lost family members, friends, and loved ones.

The amazing generosity and outpouring of love expressed by so many people in our country over these past six months has been heartwarming, and I have never seen such unity.

Our country has been through a very difficult time. Each of us will remember where we were when we heard the news that commercial planes were turned into weapons against the World Trade Center and the Pentagon. Each of us will remember how we felt when we realized the incredible devastation of terrorism in our midst.

On that day I was in the Capitol in a meeting with Senate Majority Leader TOM DASCHLE and several other Senators when the planes struck the World Trade Center. As we evacuated the Capitol building, our brace Californians on Flight 93 were bringing down the plane, hijacked by the terrorists and most likely headed for us. I truly believe that those Californians on Flight 93 that day have made it possible for me to be here today.

Even as time has gone on, all I can think of is the people on those planes, every one of whom had a family. It is the families today that are coping with the results of September 11, and it is the families that will continue to keep the memory of the victims alive in all of our hearts. We have decided to fight and stand up for them and their memories.

I want to read the names of the victims—in the planes, in the Towers, and in the Pentagon—from the State of California: David Angell and Lynn Angell, Seima Aoyama, Barbara Aresteguis, Melissa Barnes, Alan Beaven, Berry Berenson, Yeneneh Betru, Carolyn Beug and Mary Alice Wahlstrom, Mark Bingham, Deora Bodley, Touri Bolourchi, Richard Guadagno, Daniel Brandhourst and David Brandhourst, Charles ''Chic'' Burlingame III, Thomas Burnett, Suzanne Calley, Jefferey Collman, Jason Dahl, Dorothy Dearaujo, Darlene Flagg, Dee Flagg, Wilson Flagg, Lisa Frost, Ronald Gamboa, Andrew Garcia, Edmund Glazer, Jeremy Glick, Lauren Grandcolas, Andrew Curry Green, Stanley Hall, Gerald Hardacre, John Hofer, Stephen Hyland, Barbara Keating, Chandler Keller, Jude Larson, Natalie Larson, Daniel John Lee, Maclovio ''Joe'' Lopez, Dora Menchaca, Hilda Marcin, Nicole Miller, Mildred Naiman, Laurie A. Neira, Christopher Newton, Jacqueline Norton and Robert Norton, Ruben Orneda, Jerrold Paskins, Thomas Pecorelli, Robert Penniger, Mari-Rae Sopper, Hilda Taylor, Douglas Stone, Alicia Titus, Otis Tolbert, James Trentini and Mary Trentini, Pendyala Vamsikrishna, Timothy Ward, John Wenckus, John Yamnicky, Sr.

Every generation has its time of testing. For my parents it was World War II, and for their parents it was World War I. Now, this our time, and this our challenge.

THE UNINSURED

Mr. SMITH of Oregon. Mr. President, I rise today to give tribute to some of

the health care heroes in my home State of Oregon. During a recent visit to the Volunteers in Medicine Clinic in Eugene, OR, I was tremendously impressed by the strong public service ethic of the professionals who deliver high quality health care to their uninsured clients.

In 1999, a concerned group of citizens in Eugene, OR, convened to study the extent of the health insurance problem in Lane County. It found that 28,000 of their friends and neighbors in the county were uninsured. Of these, almost half were working families or low-income people.

As a result of that study, the Volunteers in Medicine Clinic came about. Under the executive director and board chair, Sister Monica Heeran, the mission of the clinic is to meet the health and wellness needs of the working poor by providing free medical care.

The Volunteers in Medicine model relies on practicing and retired medical professionals to serve individuals and families who have limited access to health care, typically the working poor. Over 300 health care professionals have generously given their time for this worthy cause that has helped hundreds of families secure a medical home.

One of the volunteers at the Volunteers in Medicine Clinic is Dr. John Haughom, vice chair of the Board and volunteer physician. He told me about a woman he had seen recently at the clinic, Mrs. Gonzalez, who had presented with a large mass under her right jaw. It had been growing for some time, but she had not sought medical care because she knew she could not afford it. Dr. Haughom diagnosed Mrs. Gonzalez with non-Hodgkins lymphoma and was able to arrange for the best possible treatment for her advanced condition. As she was treated, Dr. Haughom continued to visit her at her workplace. He clearly shared her joy when she told him that a surgeon had been able to remove the entire tumor, and that her recovery is expected to be complete.

I also heard from a patient who had gone to the Volunteers in Medicine Clinic with what he thought was a case of acid reflux—heartburn. In addition to being given medication to control the symptoms, the patient was referred to a cardiologist, who advised the patient to get an angiogram. It turned out that the underlying condition was no less than five clogged arteries, and the patient was scheduled for open-heart surgery the following day, which saved his life.

In both these cases, the high-quality care by dedicated medical professionals clearly saved the lives of these patients.

In my mind, every single person who volunteers his or her time at the Volunteers in Medicine Clinic is a true health care hero. It is truly inspiring to see what can happen when people share a vision and work to make life better for thousands one patient at a time. Today, I salute the work and workers of the Volunteers in Medicine Clinic, true heroes for Oregon.

CELEBRATING GIRL SCOUTS

Mr. NELSON of Nebraska. Mr. President, I rise today during the celebration of the 90th anniversary of the Girl Scouts of the U.S.A., to express my support for this respected organization.

The mission of the Girl Scouts is to help all girls grow strong. Girl Scouting empowers girls to develop to their full potential and to develop values that provide the foundation for sound decision-making. Scouting teaches girls to relate positively to others and to contribute in constructive ways to society.

Through Girl Scouting, girls acquire self-confidence, learn to take on responsibility, and are encouraged to think creatively and act with integrity. Girl Scouts take part in activities that teach them about science and technology, finance, sports, health and fitness, the arts, global awareness, and community service. These experiences allow Girl Scouts to develop the qualities that are essential in developing strong leaders.

Perhaps the best proof that Girl Scouting has had an important impact on women leaders in our country is the fact that over two-thirds of our doctors, lawyers, educators, and community leaders were once Girl Scouts.

I also would like to thank the many volunteers who make the Girl Scouts such a successful organization. These mentors and role models are essential in providing support to girls and empowering them to realize their potential and to achieve.

I think it is important to take this time today to celebrate and recognize the contribution Girl Scouting has made to our society by providing positive role models for girls and by encouraging them to become good citizens and effective future leaders.

Mr. SANTORUM. Mr. President, I would like to take this opportunity to recognize the Girl Scouts of the USA, as they are celebrating their 90th anniversary this week. Today, as the result of founder Juliette Gordon Low's vision, 2.7 million girls in more than 233,000 troops are learning the skills and building the character necessary to make a positive impact in the world. It is the Girl Scouts mission to help all girls grow strong by empowering them to develop their full potential, relate positively to others, and contribute to society. The Girl Scouts recognize the importance of training girls to become effective leaders by instilling in them strong values, increasing their social awareness, giving them responsibilities, and encouraging them to think creatively and act with integrity. The Girl Scouts also provide experience and instruction through a wide range of activities related to science and technology, money management and finance, sports, health and fitness, the arts, global awareness, and community service.

This significant undertaking would not be possible without the commitment and sacrifice of Girl Scout adult members. I would like to note that 99 percent of the nearly one million adults involved with the Girl Scouts are volunteers. Their willingness to invest in the girls of America is highly commendable and is the kind of service that President Bush has been praising and encouraging. It provides a perfect example of the good that can be accomplished when dedicated people get involved in their communities. More than 50 million Girl Scout alumnae are a testament to their success. Over two-thirds of our doctors, lawyers, educators, community leaders, and women Members of Congress were once girl scouts, as were 64 percent of the women listed in Who's Who of American Women.

Another facet of the Girl Scouts that makes them so admirable is the diverse membership they embrace. Troops can be found in every kind of community; girls are not limited by racial, ethnic, socioeconomic, or geographic boundaries. The Girl Scouts continue to expand, with troops now meeting in homeless shelters, migrant farm camps, and juvenile detention facilities. And because of a Girl Scouts initiative, called Girl Scouts Beyond Bars, girls can meet in prisons where their mothers are incarcerated. In addition to creating more troops, the organization has also established a research institute and has received funding to address violence prevention.

The Girl Scouts is an organization that we in this country are very proud of. The combination of educational and service-oriented programs and exemplary leadership produces the caliber of responsible citizens America needs, especially in this time of uncertainty. So today I would like to thank the Girl Scouts for their outstanding contribution to our society, and I want to express my firm support and congratulations as they strive to carry out the mission that was begun 90 years ago.

Mr. INHOFE. Mr. President, often when we think of Girl Scouts, we think of those delicious cookies that come to our door every year, delivered by smiling-faced girls. But we may not realize the positive impact Girl Scouts has had on so many women in our society.

Established by Juliette Gordon Low in 1912, Girl Scouts has evolved from a group of 18 girls in Savannah, GA to a national membership of 3.8 million. This week Girl Scouts celebrates its 90th anniversary and I want to recognize these exceptional girls and women who work so hard to become leaders in our society.

Currently, more than 50 million women are Girl Scout alumni, over two-thirds of which are doctors, lawyers, educators, and community leaders. Today, there is even a ''Troop Capitol Hill'' which is made up entirely of congresswomen who are honorary Girl Scouts.

In a time when more positive role models are needed, Girls Scouts often become good citizens and strong leaders through learning self-confidence, responsibility, and the ability to think creatively and act with integrity. They also participate in activities that teach them about science and technology, money management, sports, health and fitness, the arts, global awareness, community service, and much more.

In my State of Oklahoma, the Girl Scouts—Red Lands Council has launched an initiative to serve girls who have special financial and educational needs. This project has allowed many girls to become Girl Scouts who might not have otherwise had the opportunity.

Please join me in recognizing this outstanding organization for its role in giving today's girls a chance to become tomorrow's leaders.

Mr. DOMENICI. Mr. President, I rise today to congratulate the Girl Scouts of America on celebrating 90 years of making a difference in the lives of millions of girls and young women. Founded by Juliette Gordon Low on March 12, 1912, the Girl Scouts of America has a long and storied tradition of providing girls with the tools they will need to be successful members of our communities. America is a better country because this organization has led the way in preparing girls for leadership roles.

I have long supported efforts and organizations that help our young people deal with the very unique challenges they face. The Girl Scouts is an organization that is doing just that. In fact, that is exactly the mission of the Girl Scouts. I am proud of the efforts that the Girl Scouts has made in understanding and addressing the needs of girls.

As you know, I believe that we need to do better in teaching math and science to our young people. This is particularly true when it comes to our girls and young women. I am told that women constitute only 22 percent of our scientists and engineers in spite of making up 46 percent of our work force. The Girl Scouts is working successfully to change this through the Girls at the Center program, the National Science Partnership, the Elliott Wildlife Values Project, and one of the newest initiatives, Girls Go Tech. These programs have been very successful in helping girls realize their full potential in the areas of Math and Science and I look forward to the continued success of these programs.

Another feature of the Girl Scouts that I am excited about is its volunteer component. I believe that the Girl Scouts is exactly the type of organization that the President has referred to in his call for more volunteers. I don't think anyone could disagree when I say that this organization is only successful because of the efforts of its volunteers. Over 99 percent of the adults involved in the Girl Scouts volunteer their time.

In closing, I want to thank the women who came by my office yesterday to share with me the exciting things that the Girl Scouts of America is doing in my state of New Mexico. Based on the quality of women who made the long trip to our nation's capitol, I am confident in predicting much continued success for this organization in our state and in this great country.

Mr. MILLER. Mr. President, I rise today to recognize the contributions an extraordinary organization has had on the lives of young women in America. In 1912, the Girl Scouts of America was founded in my home State of Georgia by a visionary young lady named Juliette Gordon Low. Juliette's hope was to bring girls together in the spirit of service and community. Within a few years of the establishment of the first troop, the Girl Scouts had expanded to many different cities across the country, and had opened their doors to girls of all races and backgrounds. Since that time, the Girl Scouts have been a symbol of leadership in this country, from their involvement in relief efforts during the Great Depression to their activism for civil rights and environmental responsibility in the turbulent 60s and 70s. The Girl Scouts have celebrated traditional values like volunteerism and have taught young women the importance of leadership, financial literacy, good health, and global awareness.

Today, Girl Scouts organizations across America play a role in the lives of over 3.7 million young women. On this, the 90th anniversary of the creation of the Girl Scouts in Savannah, GA, I wish to recognize the vision of Juliette Gordon Low and the contributions of the Girl Scouts of America to the development of the intelligent, self-confident young women who play such an important role in America today.

Mr. BUNNING. Mr. President, today I would like to take the opportunity to honor the Girl Scouts of the United States of America for all that they have accomplished for America's young women. This week, the Girl Scouts is amazingly celebrating its 90th anniversary, and I believe it appropriate that we congratulate all involved with this storied institution for having the courage and capability to withstand and conquer the hands of time.

March 12, 1912, Juliette ''Daisy'' Gordon and 18 girls from Savannah, Georgia gathered for what was to become the first official meeting of the Girl Scouts. Like most great innovators, Juliette Gordon began her journey with a very simple and progressive idea. She thoroughly believed that every young woman deserves the opportunity to fully develop physically, mentally, and spiritually. Today, the Girl Scouts of the United States of America has a membership of 3.8 million—2.7 million girl members and over 900,000 adult members. That small southern group of 18 Savannah women has grown over the last 90 years into the largest organization for girls in the world. Through its membership in the World Association of Girl Guides and Girl Scouts, Girl Scouts is part of the worldwide family of 10 million girls and adults in 140 countries. They even received a charter from the United States Congress in 1950 officially establishing the Girl Scouts of the United States of America.

By enrolling in the Girl Scouts, a young women is afforded the unique opportunity to enhance her communication and social skills, to develop a strong sense of self, to participate in innovative programs, and to foster her creative side. At the different levels of Girl Scouting, girls learn relevant and applicable skills relating to science and technology, money management and finance, health and fitness, community service, sports, and global awareness. These young women are learning how to be productive and proactive citizens, who will some day have the chance to change the way the world works. In fact, over two-thirds of women doctors, lawyers, educators, community leaders, and members of Congress in the United States were once proud participants in the Girl Scouts. In 1999 ''Troop Capitol Hill'' was founded to honor those women members of Congress who were in the Girl Scouts. Furthermore, 64 percent of the women listed in the Who's Who of American Women were at one point Girl Scouts. The Girl Scouts has found a successful way to bring out the best in its young women, and I personally thank the leaders and supporters of this great organization for continually producing strong and bright young women committed to making this country a better place to live.

I would now like to pay a special tribute to the Girls Scouts of Kentucky. In the Commonwealth of Kentucky, over 43,000 girls and 13,000 adult volunteers participate in the Girl Scouts. In fact, all five of my daughters were Girl Scouts and six of my beautiful granddaughters are currently learning what it means to live by The Girl Scout Law. Girl Scouts of Kentucky has made a substantial effort to reach out to young girls who typically might not be able to be involved in the program due to monetary issues. They have even gone as far as to establish troops in homeless shelters and low-income housing projects. The women of Girl Scouts of Kentucky have gone above and beyond their call of duty to ensure that every young woman in the Commonwealth has the opportunity to realize the vision Juliette Gordon set out in 1912. I ask that my fellow colleagues join me in applauding their selfless efforts.

Finally, I would like to share with my colleagues the timeless words of The Girl Scout Law.

I will do my best to be
honest and fair,
friendly and helpful,
considerate and caring,
courageous and strong, and

responsible for what I say and do and to
respect myself and others,
respect authority
use resources wisely
make the world a better place, and
be a sister to every Girl Scout.

Mrs. CLINTON. Mr. President, on the occasion of the 90th anniversary of the Girl Scouts, I want to take this opportunity to discuss the exciting work of the Girl Scouts in New York State. I am proud to report that over 190,000 girls participate in New York Girl Scout troops, with the help of over 50,000 adult volunteers.

For 90 years, the Girl Scouts have been hard at work building the self-esteem of girls, raising awareness about the importance of public service, building character, and developing leadership skills. Today, as scouting enters the 21st century, Girl Scouts in New York are involved in a series of new projects and outreach efforts.

Immediately after September 11th, New York troop leaders quickly revised a curriculum on tolerance and diversity to include the attack on New York and our country. The revised curriculum helped to provide local leaders across the State with the tools they needed to help girls deal with our national tragedy.

New York Girl Scouts are reaching out to new members in underserved communities. Troop leaders are working through the schools and through housing programs to recruit girls who may not be familiar with scouting, and to create opportunities for new experiences and challenges.

The Genesee Valley Girl Scouts offer an innovative conflict resolution program that provides anger and conflict management training for middle school girls referred by school guidance counselors. Role-playing is used to teach girls a range of peaceful solutions to different situations. This program has been a huge success: 88 percent of participants maintained or improved school attendance, 72 percent maintained or improved their GPA and 82 percent reduced disciplinary problems.

From Buffalo to Chappaqua, from Elmira to Long Island, Girl Scout troops across New York are committed to public service projects that help instill in our youth the importance of helping others. And girls across the State are learning the value of hard work and commitment through their efforts to meet the requirements of merit badges.

Every year in New York, a small number of girls are honored with the Gold Award, the highest achievement award given by the Girl Scouts. In order to be eligible for a Gold Award, a Girl Scout must first meet the requirements of a series of awards that require leadership and work on behalf of their community. Gold Award recipients must also design and follow through with an extensive community service project. I want to take this opportunity to congratulate the New York Gold Award honorees for their great public service accomplishments and commitment to scouting.

As a member of the Honorary Congressional Girl Scout Troop and a former Girl Scout, I encourage my colleagues to support Girl Scouts in the 21st century. I look forward to working with New York Girl Scouts to help create opportunities for girls and to encourage youth involvement in public service.

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. CHARLES H. WRIGHT: DOCTOR, HISTORIAN, AND CIVIC LEADER

• Mr. LEVIN. Mr. President, I ask the Senate to join me today in extending my condolences to the family and friends of Dr. Charles H. Wright, who passed away on March 7, 2002. During his 83 years, Dr. Wright left an indelible mark on this country through his work as a doctor, a civil rights leader, a community activist and a leader in the national movement to create museums celebrating the history, culture and accomplishments of African Americans.

Legend has it that it was Charles Wright's mother who inspired him to attend medical school, by declaring at age eight that he would become a doctor. Growing up in segregated Alabama, to parents who's own education stopped at elementary school, Wright had to overcome many obstacles to make his mother's dream a reality. But, as those who knew Dr. Wright can attest, he was not one to shy away from a challenge. He did attend medical school, and in 1946 he moved to Detroit, where he served his community as an obstetrician/gynecologist. He delivered more than 7,000 babies, including those of some of my staff. Today, you can still meet adults in Detroit who will refer to themselves as ''Dr. Wright's babies.''

Dr. Wright was always concerned about the plight of black people, both here and in Africa. He answered the call of Dr. Martin Luther King, traveling to the South to protest and to help those protesters who required medical assistance. He worked to end discrimination in hospitals, where empty beds were being denied to blacks because the hospital refused to put black patients and white patients in the same room together. He traveled to newly post-colonial Africa to work in villages lacking adequate health care resources. He helped raise money so that African children could come to American universities. He was constantly driven to serve others, and to serve those whom he felt he could best help.

Dr. Wright is perhaps best known as the man responsible for Detroit's Museum of African American History, the largest such museum in the world. Inspired by his travels to Africa, and concerned that the children he was helping to bring into the world had no place to learn about themselves and their history, he decided to create a museum dedicated to educating people about the contributions of African Americans to society. In 1965, he opened the International Afro-American Museum in the basement of his home and office. Investing significant amounts of his own money and time into the museum, it eventually outgrew his home and was moved into a new, larger building in the heart of Detroit's University Cultural Center and was renamed the Museum of African American History.

That museum moved again in 1997 to an even larger building, and has received international recognition as one of the finest museums of its kind. In 1998, it was renamed the Charles H. Wright Museum of African American History in recognition of the vision and dedication of Dr. Wright. Each year millions of Americans of all races visit this museum and learn about the history of African Americans, ensuring that Dr. Wright's legacy will live on and be passed down to future generations.

Dr. Wright's life should serve as an example to all Americans. Throughout all his endeavors, he stressed the values of education, understanding and overcoming obstacles. But perhaps most importantly, he lived his life in service to others. While he will be sorely missed by those whose lives he touched, he will long be remembered for all that he gave.•

TRIBUTE TO KYLIE WHITE

• Mr. BROWNBACK. Mr. President, I would like to take this moment to recognize Kylie White, a fifth grade student at Lowther South Intermediate School in Emporia KS. Kylie was recently selected as the Kansas recipient of the Nicholas Green Distinguished Student Award from the National Association of Gifted Children.

The NAGC—Nicholas Green Distinguished Student Awards program—recognizes excellence in young children between third and sixth grade who have distinguished themselves in academics, leadership, or the arts. This program is funded by the Nicholas Green Foundation, established by Maggie and Reg Green, and the Nicholas Green Scholarship Fund, both created to honor the memory of the Green's seven-year-old son Nicholas, who was killed in a drive-by-shooting while vacationing in Italy in 1994. The program highlights high-ability students across the country, demonstrating that gifted and talented children come from all cultures, racial and ethnic backgrounds, and socioeconomic groups.

The NAGC—Nicholas Green Distinguished Student Award honors America's outstanding students, who serve as role models for all of our Nation's children as they strive for excellence. I am proud that Kylie has been selected to receive this honor on behalf of the State of Kansas. I wish her continued success in all of her future endeavors.

I ask consent that Kylie's NAGC—Nicholas Green Distinguished Student Award composition be printed in the RECORD following my remarks.

The composition follows:

''Mama, a problem is only a problem until you solve it.'' These were the words I spoke when I was only three. Ever since then I have been solving all different kinds of problems, whether they only took a couple minutes or months to figure out. What I like about problems is that each and every one of them is different and you have to pull together all of your knowledge and creativity to figure them out.

I got interested in problem solving when I was little. My Dad taught me how to solve all kinds of problems. Whether it was figuring out the money in Monopoly or deciding how to make a stable structure out of Legos all kinds of ''problems'' were tackled. I was very lucky to have great first and second grade teachers who daily stretched my skills and encouraged me to set high goals. Mrs. Davidson and Ms. Newton taught me how to really push myself.

In second, third and fourth grades, my principal offered the ''Principal's Problem of the Week.'' These were optional challenging word or math problems that always got me thinking. I was awarded top ''Principal's Problem of the Week Solver'' three consecutive years. In grade school I went to the library once every week and solved challenging problems for gifted children.

I've been in Odyssey of the Mind for three years now. Odyssey of the Mind is a team problem-solving competition with both ''long-term'' and ''spontaneous'' problems. The long-term solution you work on for months before you go to the competition. The spontaneous problem's name kind of explains itself. You get the problem and usually you get 1 minute to think and 2 minutes to answer. The team I was on in fourth grade made it all the way to World Finals in Knoxville, Tennessee. Raising the money to get there was a problem in itself. We had a lot of fun there and we took 25th place out of 44 teams in our division even though we were a very young team.

This year in 5th grade my biggest challenge has been learning how to speak French. I have also served as a peer mentor in a group for students having problems making and maintaining friendships. I like helping others solve their problems.

Problem solving opens up a lot of opportunities for me. The cure for cancer is a problem. Putting the pieces together at a crime scene and helping find a serial killer are important problems that will help people feel safer in their beds. I could help people solve their problems if I were to become a psychologist. I could be a teacher and help kids learn how to solve problems. Or maybe I could be a top presidential adviser and solve international problems.

Problems solving is a way to exercise your brain. It is a fun way to expand your knowledge horizon. I hope to stay at it for a long, long time.●

RECOGNITION OF THE LYON COLLEGE CONCERT CHOIR

● Mrs. LINCOLN. Mr. President, I rise today in recognition of the Lyon College Concert Choir on the occasion of their performance at the National Cathedral, March 17, 2002. Lyon College, located in Batesville, AR, offers a liberal arts education of superior quality in a personalized setting. A selective, independent, undergraduate, residential teaching and learning community affiliated with the Presbyterian Church, USA, Lyon encourages the free intellectual inquiry essential to social, ethical and spiritual growth. With a rich and scholarly and religious heritage, Lyon develops, in a culture of honor, responsible citizens and leaders committed to continued personal growth and service. We in Arkansas are extremely proud of the young people from Lyon College who will fill the cathedral with song on March 17.●

CITY OF ABSECON CELEBRATES CENTENNIAL

● Mr. CORZINE. Mr. President, it is with great pride that I bring to your attention the lovely waterfront community of Absecon, which is celebrating its centennial year on March 24, 2002. Absecon, originally Absecum, comes from the Algonquin Indian word Absegami, meaning ''Across Little Water.'' Located in Atlantic County, Absecon was incorporated as a city on March 24, 1902. It is governed by an elected body consisting of a mayor and council members. The community, which lies adjacent to Atlantic City, encompasses 6 square miles and is predominantly residential, with a population of approximately 7,700 residents.

Finding the area lush with pines, cedars, and bayberry bushes, early English settlers in Absecon earned their living clamming and oystering. Soon wharves lined the creek, and boats large and small were built along the banks of this bustling seaport. In 1795, Thomas Budd purchased 10,000 acres of land in what later became Atlantic County. He paid 4 cents an acre for the land on which Atlantic City now stands. It was called Further Island, further from Absecon, and later called Absecon Beach and finally became Atlantic City. The land was originally purchased for control of the waterways and not for farming.

In 1819, Dr. Jonathan Pitney, saddlebags brimming with medical supplies, a blanket, and clothing, rode into Absecon on horseback to set up his medical practice. Only 21 years old, Dr. Pitney came to Absecon after completing 2 years as an assistant in a hospital on Staten Island, following his graduation from a New York medical school. Few in the village could have known that this young doctor would one day become famous and be forever known as the ''Father of Atlantic City.'' For by 1834, the village known as Absecum in Galloway Township still only consisted of a tavern, store, and 8 to 10 dwellings.

When not visiting patients, Dr. Pitney could always be found strolling the shoreline taking in the sea air. It did not take long for Dr. Pitney to realize the benefits of the sea air and to determine that this area was magical and had the ideal climate for a health resort. Convincing the municipal authorities that a railroad to the beach would be beneficial, he was to be responsible for the construction of the railroad east across New Jersey through the salt marshes to Absecon Island, now Atlantic City. Shortly thereafter, Dr. Pitney again became a leading force in the Village, petitioning Congress to construct a lighthouse at the north end of Absecon Island. Years later the Absecon Lighthouse was constructed putting an end once and for all to the countless scores of shipwrecks along the shoals and beaches near ''Graveyard Inlet.''

By 1899, Absecon's population was only 530 people but, in March of 1902 the legislature of the State of New Jersey approved an act to incorporate Absecon City in the County of Atlantic, as a city. From these humble beginnings, Absecon has grown to become a charming city by the water, housing a Central Business District and Light Industrial areas.

I invite my colleagues to join me in congratulating Mayor Peter C. Elco and the citizens of Absecon on their centennial. May they have another 100 years of prosperity and community.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 12:06 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2341. An act to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

MEASURE REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2341. An act to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for

class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

MEASURE PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar

H.R. 2175. An act to protect infants who are born alive.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–5730. A communication from the Secretary of the Interior, transmitting a draft of proposed legislation entitled ''Bureau of Land Management Appropriations Reauthorization Act of 2002''; to the Committee on Energy and Natural Resources.

EC–5731. A communication from the General Counsel of the Department of Commerce, transmitting a draft of proposed legislation entitled ''Analog Spectrum Lease Fee Act''; to the Committee on Commerce, Science, and Transportation.

EC–5732. A communication from the General Counsel of the Department of Commerce, transmitting a draft of proposed legislation entitled ''Promoting Certainty in Upcoming Spectrum Auctions Act''; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 206: A resolution designating the week of March 17 through March 23, 2002 as ''National Inhalants and Poison Prevention Week''.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title and with an amended preamble:

S. Res. 207: A resolution designating March 31, 2002, and March 31, 2003, as ''National Civilian Conservation Corps Day''.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 221: A resolution to commemorate and acknowledge the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers..

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

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

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

Sally Strop, of Virginia, to be Assistant Secretary for Postsecondary Education, Department of Education.

By Mr. LEAHY for the Committee on the Judiciary.

Don Slazinik, of Illinois, to be United States Marshal for the Southern District of Illinois for the term of four years.

Kim Richard Widup, of Illinois, to be United States Marshal for the Northern District of Illinois for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. HARKIN (for himself, Mr. DURBIN, Mrs. CLINTON, and Mr. SCHUMER):

S. 2013. A bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2014. A bill to provide better Federal interagency coordination and support for emergency medical services; to the Committee on Governmental Affairs.

By Mr. SMITH of New Hampshire:

S. 2015. A bill to exempt certain users of fee demonstration areas from fees imposed under the recreation fee demonstration program ; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI:

S. 2016. A bill to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

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

S. 2017. A bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program; to the Committee on Indian Affairs.

By Mr. SARBANES:

S. 2019. A bill to extend the authority of the Export-Import Bank until April 30, 2002; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER:

S. Res. 226. A resolution designating April 6, 2002, as ''National Missing Persons Day''; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 170

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 170, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 177

At the request of Mr. SMITH of New Hampshire, his name was added as a cosponsor of S. 177, a bill to amend the provisions of title 39, United States Code, relating to the manner in which pay policies and schedules and fringe benefit programs for postmasters are established.

S. 780

At the request of Mr. INHOFE, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 780, a bill to amend the Internal Revenue Code of 1986 to allow individuals who do not itemize their deductions a deduction for a portion of their charitable contributions, and for other purposes.

S. 952

At the request of Mr. GREGG, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 952, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1258

At the request of Mr. DORGAN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1258, a bill to improve academic and social outcomes for teenage youth.

S. 1278

At the request of Mrs. LINCOLN, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of S. 1278, a bill to amend the Internal Revenue Code of 1986 to allow a United States independent film and television production wage credit.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1617

At the request of Mr. DODD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1617, a bill to amend the Workforce Investment Act of 1998 to increase the hiring of firefighters, and for other purposes.

S. 1752

At the request of Mr. CORZINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1752, a bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other sexually transmitted diseases.

S. 1794

At the request of Mr. CLELAND, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1794, a bill to amend title 49, United States Code, to prohibit the unauthorized circumvention of airport security systems and procedures.

S. 1899

At the request of Mr. BROWNBACK, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1899, a bill to amend title 18, United States Code, to prohibit human cloning.

S. 1995

At the request of Ms. SNOWE, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1995, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. RES. 206

At the request of Mr. MURKOWSKI, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. GRASSLEY), the Senator from North Dakota (Mr. CONRAD), the Senator from Tennessee (Mr. FRIST), and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Res. 206, a resolution designating the week of March 17 through March 23, 2002 as ''National Inhalants and Poison Prevention Week.''

S. RES. 219

At the request of Mr. GRAHAM, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 219, a resolution expressing support for the democratically elected Government of Colombia and its efforts to counter threats from United States-designated foreign terrorist organizations.

S. RES. 221

At the request of Mr. DEWINE, his name was added as a cosponsor of S. Res. 221, a resolution to commemorate and acknowledge the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. CON. RES. 84

At the request of Mr. SCHUMER, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Con. Res. 84, a concurrent resolution providing for a joint session of Congress to be held in New York City, New York.

AMENDMENT NO. 3008

At the request of Mr. DAYTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 3008 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN (for himself, Mr. DURBIN, Mrs. CLINTON, and Mr. SCHUMER):

S. 2013. A bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. HARKIN. Mr. President, today I am introducing the Meat and Poultry Pathogen Reduction Act of 2002. On December 6, 2001, the Fifth Circuit Court of Appeals upheld and expanded an earlier District Court decision that removes the U.S. Department of Agriculture's, USDA, authority to enforce its Pathogen Performance Standard for *Salmonella*. Passage of this bill is vital because the Fifth Circuit's decision in Supreme Beef v. USDA, Supreme Beef, seriously weakens the substantial food safety improvements adopted by USDA in its 1996 Hazard Analysis Critical Control Point and Pathogen Reduction, HACCP, rule.

According the Fifth Circuit's opinion in Supreme Beef, today, USDA does not have the authority to enforce Performance Standards for reducing viral and bacterial pathogens. This decision seriously undermines the new meat and poultry inspection system.

The Pathogen Performance Standard rule recognized that bacterial and viral pathogens were the foremost food safety threat in America, responsible for 5,000 deaths, 325,000 hospitalizations and 76 million illnesses each year. To address the threat of foodborne illness, USDA developed a modern inspection system based on two fundamental principles.

The first was that industry has the primary responsibility to determine how to produce the safest products possible. Industry must examine its plants and determine how to control contamination throughout the food production process, from the moment a product arrives at their door until the moment it leave their plant.

The second, even more crucial principle was that plants nationwide must reduce levels of dangerous pathogens in meat and poultry products. To ensure the new inspection system accomplished this, USDA developed Pathogen Performance Standards. These standards provide targets for reducing levels of pathogens and require all USDA-inspected facilities to meet them. Facilities failing to meet a standard may be shut down until they create a corrective action plan to meet the standard.

So far, USDA has only issued one Pathogen Performance Standard, for Salmonella. The vast majority of plants in the U.S. have been able to meet the new standard, so it is clearly workable. in addition, USDA reports that Salmonella levels for meat and poultry products have fallen substantially. The Salmonella standard, therefore has been successful. The Fifth Circuit Court's decision threatens to destroy this success and set our food safety system back by years.

The other major problem is that we have an industry dead set on striking down USDA's authority to enforce meat and poultry pathogen standards. Ever since the original Supreme Beef decision, I have spent many hours trying to find a compromise that will allow us to ensure we have enforceable, science-based standards for pathogens in meat and poultry products. I have previously introduced legislation to address this issue and I have worked with industry leaders attempting to reach a reasonable compromise.

However, despite repeated attempts to address industry concerns, industry has continually back-tracked and moved the finish line. Many times, I have made changes in my legislation to address their concerns of the moment only to have them come back and say we have not gone far enough. We cannot let the intransigence of the meat and poultry industry place our children and our families at increased risk of getting ill or dying, because some in the industry want to backtrack on food safety.

I plan to seek every opportunity to get the Meat and Poultry Pathogen Reduction Act enacted. I think it is essential, both to ensuring the modernization of our food safety system, and ensuring consumers that we are making progress in reducing dangerous pathogens.

I hope that both parties, and both houses of Congress will be able to act to pass this legislation without delay. The public's confidence in our meat and poultry inspection system depends on it.

Mr. DURBIN. Mr. President, today I am joining Senator HARKIN in introducing legislation that will clarify the United States Department of Agriculture's, USDA, authority to enforce pathogen reduction standards in meat and poultry products. I am pleased to join in this very important effort.

Make no mistake, our country has been blessed with one of the safest and most abundant food supplies in the world. However, we can do better. While food may never be completely free of risk, we must strive to make our food as safe as possible. Foodborne illnesses and hazards are still a significant problem that cannot be passively dismissed.

The Centers for Disease Control and Prevention, CDC, estimate that as many as 76 million people suffer from foodborne illnesses each year. Of those individuals, approximately 325,000 will be hospitalized, and more than 5,000 will die. Children and the elderly are especially vulnerable. In terms of medical costs and productivity losses, foodborne illnesses cost the nation billions of dollars annually, and the situation is not likely to improve without decisive action. In fact, the Department of Health and Human Services

predicts that foodborne illnesses and deaths will increase 10–15 percent over the next decade.

In an age where our Nation's food supply is facing tremendous pressures, from emerging pathogens to an ever-growing volume of food imports, from changing food consumption patterns to an aging population susceptible to food-related illnesses, and from age-old bacterial threats to new potential food security risks, we must have a stronger system in place to ensure the safety of our food.

A key tool for addressing foodborne illness in this country has been USDA's Pathogen Reduction/Hazard Analysis and Critical Control Point, PR/HACCP, regulations that were phased in beginning in January 1998. Under these regulations, USDA developed a scientific approach aimed at protecting consumers from foodborne pathogens. Instead of a system based on sight, smell and touch, USDA moved to a system that would successfully detect harmful pathogens whether visible or not and keep them from entering the food supply. A major part of this system included testing for Salmonella, which is not only one of the most common foodborne pathogens, but also one of the easiest to detect. USDA used this testing data to determine if meat and poultry plants were producing products that were safe for human health.

Research indicates that USDA's system was working well. According to former Secretary of Agriculture, Dan Glickman, the testing techniques were successful in controlling Salmonella and other deadly pathogens. In less than three years, the Salmonella standard was working, cutting the incidence of Salmonella in ground beef by a third.

USDA's pathogen testing regulations provided consumers with much needed confidence in the safety of meat and poultry products. However, that confidence has been shattered by a recent court decision. Last December, the 5th Circuit Court of Appeals ruled that USDA could not close down the meat processor Supreme Beef, Inc., a supplier providing products to our Nation's school children through the Federal school lunch program, even after USDA inspectors tested and found the presence of potentially harmful levels of Salmonella at the plant on three separate occasions. The result of this court case is that USDA can no longer ensure that meat and poultry plants comply with pathogen standards. This creates a significant risk that meat and poultry products contaminated with common but potentially deadly foodborne pathogens will be sold to unsuspecting consumers.

The legislation we are introducing today will clarify USDA's authority to enforce strong safety standards for contamination in meat and poultry products. Specifically, this legislation will provide the Secretary of Agriculture with the clear authority to control for pathogens and enforce pathogen performance standards for meat and poultry products. Only with this authority will the Secretary of Agriculture be able to ensure the safety of the meat and poultry products sold in this country.

The court's decision in the Supreme Beef case is a step back for food safety. We must work together to ensure that USDA has the necessary authority to enforce pathogen performance standards that will protect public health. Let's not turn our back on food safety and consumer protection at such a critical time for food safety and security. I encourage my colleagues to join us in this effort to protect our food supply and public health.

By Mr. FEINGOLD (for himself, and Ms. COLLINS):

S. 2014. A bill to provide better Federal interagency coordination and support for emergency medical services; to the Committee on Governmental Affairs.

By Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation that will help to improve and streamline Federal support for community-based emergency medical services. Our proposal will also provide an avenue for local officials and EMS providers to help Federal agencies improve existing programs and future initiatives.

Five Federal agencies currently provide technical assistance and funding to State and local EMS systems. These Agencies are the National Highway Traffic Safety Administration, the Department of Health and Human Services' Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Agency's U.S. Fire Administration, and the Centers for Medicare and Medicaid Services.

Last year, the General Accounting Office cited the need to increase coordination between these agencies as they address the needs of local emergency medical service providers. According to GAO, these needs, including personnel, training, equipment, and more emergency personnel in the field, tend to vary between urban and rural communities.

The Federal Government needs to step up to the plate and provide support to our firefighters, EMTs, emergency physicians, emergency nurses, state medical directors, and others who provide the emergency care to those in need. And the Federal agencies must listen to their priorities. We have five Federal agencies currently involved in supporting EMS services, but they lack coordination and the necessary input from our local EMS providers.

Over the past few years, each of the five Federal agencies has separately initiated attempts to promote activities to strengthen support for EMS providers and address the needs cited in the GAO report. While these efforts are certainly welcome, our legislation will help to coordinate and prioritize Federal EMS activities that support first responders, and at the same time, ensure effective utilization of taxpayer dollars.

This legislation does not begin to address many of the challenges facing our local EMS providers, but it is an important first step. I know it is an important step because this legislation is a direct result of the input by Wisconsin's fire chiefs, members of Emergency Medical Service Board and others. In particular, I would like to thank Dr. Marvin Birnbaum of the University of Wisconsin, Fire Chief Dave Bloom of the Town of Madison, and Dan Williams, the Chair of Wisconsin's EMS advisory board, for their advice and guidance.

I am also pleased that my legislation has support from public health groups such as the American Heart Association and other important groups such as the State EMS Directors. In particular, I would like to express my appreciation to Steve Hise of the State EMS Directors and Karl Moeller of the American Heart Association for their input and consistent advocacy on issues facing the EMS community.

We must be aggressive in seeking the advice of our local EMS providers, and helping them to attain the resources that they need to provide effective services. They are on the front lines, and deserve our support. I ask my colleagues to join me in taking this important first step to cosponsor this legislation and improve and streamline Federal support for community-based emergency medical services.

By Mr. SMITH of New Hampshire:

S. 2015. A bill to exempt certain users of fee demonstration areas from fees imposed under the recreation fee demonstration program; to the Committee on Energy and Natural Resources.

Mr. SMITH of New Hampshire. Mr. President, I rise today to introduce legislation that would provide equity and fairness to the application of the Recreational Fee Demonstration Program, or the Fee Demo Program, as it is more commonly called. This bill, the Host Community Fairness Act, would exempt local residents from fees imposed as part of the Fee Demo Program.

As I am sure my colleagues are all aware, the Fee Demo Program, which started in fiscal year 1996, was established to fund recreational and resource needs, and repair facilities throughout our national forests, parks and other public lands. Currently, each land management agency can establish any number of fee projects and retain and spend all the revenue collected. However, at least 80 percent of the fees collected are retained at the site where collected. The program was originally supposed to end at the end of FY98; however, due to extensions that have occurred through the appropriations process, it is now set to expire at the end of FY04.

While I agree that the intentions of this program are good, there are flaws that must be addressed. What concerns me most is double-taxation for the local residents who live in and around these Fee Demo areas. These individuals should not also be required to pay to use these lands. Especially when they already suffer from a decreased tax-base due to the presence of Federal lands in their community and who help to provide emergency services. It is wrong to ask them to pay to use land that they already support and is essentially in their own backyard.

Just to be clear, this legislation would exempt residents of any county or counties that host any Federal land that has a Fee Demo project from paying the fee, regardless of where in the forest or park the fee is being imposed. When I say Federal land, I mean any National Forest, National Park, National Wildlife Refuge or Bureau of Land Management land.

I would like to take a moment to talk about how this impacts the State of New Hampshire. Nearly 50-percent of Berlin, New Hampshire, which has a population of about 10,000, falls within the boundaries of the White Mountain National Forest. Unfortunately, the city of Berlin has dealt with several economic setbacks, including the recent closure of a local paper mill, its largest employer. When this situation is combined with the fact that half their land is tied up in the National Forest, the result is a severe hit to this city's tax base. Asking these citizens to pay a fee to hike in their own backyard is not only unfair, it is also wrong. I think it is also reasonable to assume that this kind of economic situation is not unique to host communities in New Hampshire.

Finally, it should be noted that a clear and convincing majority of the New Hampshire House of Representatives sent a message to the U.S. Congress regarding their serious concerns with this program. On February 14, 2002, the New Hampshire House overwhelmingly voted in favor of a resolution that clearly outlines what they see as the negative effect this program has had on their local communities.

The New Hampshire House is one the largest parliamentary bodies in the world. Its 400 members receive only a $100 per year stipend and they are truly citizen legislators. The resolution's primary sponsors included both Republicans and Democrats as well as the Speaker of the House and the former Speaker of the House, who is now a State Senator.

What concerns me most with what these citizen legislators are saying is that, ''. . . the Recreational Fee Demonstration Program has undermined the longstanding goodwill between the White Mountain National Forest and New Hampshire citizens and communities . . .'' and ''. . . the traditional support of the New Hampshire citizens for activities such as trail maintenance and fire safety have been compromised . . .''. As the senior Senator from New Hampshire, I find these statements very disheartening. In New Hampshire, there is a longstanding tradition of open access to both public and private lands. The Fee Demo program runs counter to that tradition. Members of Congress have a duty to their constituents to maintain a cooperative relationship between the Federal land management agencies and the communities that are required to host them.

Enactment of the Host Community Fairness Act is one small step we can take in addressing these legitimate concerns and restoring the goodwill previously enjoyed between the Federal lands across this country and their host communities.

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. 2015

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 ''Host Community Fairness Act of 2002''.

SEC. 2. LOCAL EXEMPTIONS FROM USER FEES.

Section 315 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1996 (16 U.S.C. 460*l*–6a note; Public Law 104–134) is amended—

(1) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively; and

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

''(c) LOCAL EXEMPTIONS FROM USER FEES.—

''(1) IN GENERAL.—A person that resides in a county in which a fee demonstration area is located, in whole or in part, shall be exempt from any recreational user fees imposed under this section for access to any portion of the fee demonstration area.

''(2) ADMINISTRATION.—The Secretary of the Interior and the Secretary of Agriculture in consultation with affected State and local governments, shall establish a method for identifying and exempting persons covered by this subsection from the user fees.''.

By Mr. MURKOWSKI.

S. 2016. A bill to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I rise today to introduce legislation to address a critical concern for one of Alaska's rural villages.

The village of Newtok, in far western Alaska, is facing the loss of its homes and facilities to ever-encroaching erosion by the Ninglick River. The village is presently located on the north bank of the river, just downstream of a sweeping bend, which is reclaiming the bank at a rate of several feet per year.

By at least 2008, some homes will no longer be habitable and the village airport will begin to suffer irreparable damage. It is critical for the future of Newtok's residents that Congress act this year to make provision for the relocation of the village.

Newtok is located within the boundaries of the Yukon Delta National Wildlife Refuge. Under the Alaska Native Claims Settlement Act of 1971, Newtok had land selection rights within the Refuge. Most of the lands selected by and conveyed to the village by the United States lie on the north side of the Ninglick River, although a portion of the village land holdings are on Nelson Island, to the south.

The village has identified 5,580 acres on Nelson Island that will be more suitable for a permanent village location. The land on Nelson Island is higher in elevation and is underlain with rock and gravel. Furthermore, it is situated such that hydraulic forces of the river are unlikely to pose any future threat to the well-being of the village.

The proposed legislation authorizes an equal value exchange of lands between the Fish and Wildlife Service and the Newtok Native Corporation, the ANCSA corporation organized by the village which owns the Newtok Village lands. The proposed exchange is the first important step in allowing the Newtok villagers to relocate their village to safe ground.

The exchange is proposed primarily for health and safety reasons, to protect the lives and property of Alaska Native villagers. However, there is a direct benefit to the broader interest of the United States. The land Newtok proposes to relinquish contains habitat of higher value for geese, brant, and Spectacled Eider than the land on Nelson Island that has been selected for the new village location. Thus the Yukon Delta National Wildlife Refuge, while receiving lands of equal economic value in the exchange, will actually be receiving lands of greater value for waterfowl habitat.

We should not underestimate the importance of congressional action this year on this matter. It will take several years to actually relocate the village. Facilities must be constructed and homes must be built. Before any of that can begin, the land must be exchanged. I therefore urge my colleagues to support this important legislation.

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

S. 2017. A bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, it is my pleasure to introduce the Indian Financing Act Amendments of 2002 to improve the effectiveness of an economic development program essential to our Native American community. As one of the legislative flowerings of President Nixon's ''Special Message to Congress on Indian Affairs,'' the Indian Financing Act joins the Indian Self Determination and Education Assistance Act as pillars of Federal Indian policy. Since Congress enacted the Indian Financing Act of 1974 and established the

Indian Revolving Loan Fund program, the Secretary of the Interior has had the ability to insure and guaranty the repayment by qualified Native American borrowers of small business loans issued by private banks and lenders. The focus of the loan program is commercial lending to Native American-owned businesses who cannot otherwise obtain financing in conventional credit markets.

The Indian Revolving Fund Program has grown over the past 28 years to reach $60 million in annual lending to Native Americans, though the need for capital in Indian economies far outstrips this amount. The ''Mortgage Finance News'' reports that for housing finance alone, there is $2.7 billion in pent-up demand in the Indian community. In addition, the ''Native American Lending Study'' released by the Community Development Financial Institutions shows, there are great needs in Native communities for more capital and liquidity. These unmet needs are holding back the growth of Indian economies.

The purpose of a Federal loan guaranty is to stimulate the private lending community into being more active with clients and customers they should be serving. Under the current Indian guaranteed loan program, the lender shares in the cost of any loan default, and is not 100 percent guaranteed by the government.

Lenders across the country have told the Committee on Indian Affairs that a major problem restraining their participation in this program is the lack of liquidity once the loan is made. These small business loans tend to stay on the books for a long time. They are paid down but not as rapidly refinanced as conventional loans. Therefore, a bank has its capital tied up in these loans, and cannot easily turn around and use that capital again.

The financial community long ago came up with a system to respond to this general need, and that is to allow investors to buy loans on the secondary market. This is the cornerstone for our private mortgage market and the essential job of Fannie Mae and Freddie Mac. But it is also an important part of commercial lending. The Small Business Administration, which makes loan guaranties available through over 1,000 lenders nationwide, 17 years ago recognized the importance of secondary market for its SBA loan guaranties. At its request, Congress enacted legislation which allows for the orderly transfer and sales of the guaranteed portion of the SBA loans through a secondary market fiscal transfer agent. This system operates largely at no cost to the government, as the fees for the transfer are paid by the buyers and sellers of the loans, and not passed back to the borrowers.

The SBA loan program is highly successful. It assists smaller lenders who may not regularly participate in these government programs by giving them a standardized and simple process for transfer of the loan. The use of the fiscal transfer agent ensures that loan repayments made to the original lender are properly flowed through any investors. Most importantly, the ability of the SBA to regulate or otherwise discipline originating lenders is unimpeded by the secondary market.

The ''Indian Financing Act Amendments of 2002'' directs the Secretary of the Interior to take similar steps to the SBA program by allowing the efficient functioning of a secondary market for Native American loans or loan guaranties made by the Interior Department.

It is my hope that the Indian Financing Act Amendments of 2002 will profoundly effect Native American small business owners throughout the United States, and that the support of the Department, and the Native American and financial communities, we can effect positive change not just for Native American small business owners, and for Indian communities generally.

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. 2017

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Financing Act Amendments of 2002.''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide Native American borrowers with access to commercial capital sources that, but for that Act, would not be available through loans guaranteed by the Secretary of the Interior;

(2) although the Secretary of the Interior has made loan guarantees available, acceptance of loan guarantees by lenders to benefit Native American business borrowers has been limited;

(3) 27 years after enactment of the Act, the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

(4) acceptance by lenders of the loan guarantees may be limited by liquidity and other capital market-driven concerns; and

(5) it is in the best interest of the guaranteed loan program to—

(A) encourage the orderly development and expansion of a secondary market for loans guaranteed by the Secretary; and

(B) expand the number of lenders originating loans under that Act.

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

(1) to stimulate the use by lenders of secondary market investors for loans guaranteed by the Secretary of the Interior;

(2) to preserve the authority of the Secretary to administer the program and regulate lenders;

(3) to clarify that a good faith investor in loans guaranteed by the Secretary will receive appropriate payments;

(4) to provide for the appointment by the Secretary of a qualified fiscal transfer agent to administer a system for the orderly transfer of the loans;

(5) to authorize the Secretary to—

(A) promulgate regulations to encourage and expand a secondary market program for loans guaranteed by the Secretary; and

(B) allow the pooling of the loans as the secondary market develops; and

(6) to authorize the Secretary to establish a schedule for assessing lenders and investors for the necessary costs of the fiscal transfer agent and system.

SEC. 3. LOAN GUARANTEES.

Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Any loan''; and

(2) by adding at the end the following:

''(b) TRANSFER OF LOANS AND UNGUARANTEED PORTIONS OF LOANS.—

''(1) TRANSFER.—

''(A) IN GENERAL.—The lender of a loan guaranteed under this title may transfer to any person—

''(i) all of the rights and obligations of the lender under the loan, or in an unguaranteed portion of the loan; and

''(ii) the security given for the loan or unguaranteed portion.

''(B) REGULATIONS.—A transfer under subparagraph (A) shall be consistent with such regulations as the Secretary shall promulgate under subsection (g).

''(C) NOTICE.—A lender that completes a transfer under subparagraph (A) shall give notice of the transfer to the Secretary (or a designee of the Secretary).

''(2) EFFECT OF TRANSFER.—On any transfer under this subsection, the transferee shall—

''(A) be considered to be the lender under this title;

''(B) become the secured party of record; and

''(C) be responsible for—

''(i) performing the duties of the lender; and

''(ii) servicing the loan or portion of the loan, as appropriate, in accordance with the terms of guarantee of the Secretary of the loan or portion of the loan.

''(c) TRANSFER OF GUARANTEED PORTIONS OF LOANS.—

''(1) TRANSFER.—

''(A) IN GENERAL.—The lender of a loan guaranteed under this title, and any subsequent transferee of all or part of the guaranteed portion of the loan, may transfer to any person—

''(i) all or part of the guaranteed portion of the loan; and

''(ii) the security given for the guaranteed portion transferred.

''(B) REGULATIONS.—A transfer under subparagraph (A) shall be consistent with such regulations as the Secretary shall promulgate under subsection (g).

''(C) NOTICE.—A lender that completes a transfer under subparagraph (A) shall give notice of the transfer to the Secretary (or a designee of the Secretary).

''(D) ACKNOWLEDGEMENT.—On receipt of notice of a transfer under subparagraph (C), the Secretary (or a designee of the Secretary) shall issue to the transferee the acknowledgement of the Secretary of—

''(i) the transfer; and

''(ii) the interest of the transferee in the guaranteed portion of a loan that was transferred.

''(2) EFFECT.—Notwithstanding any other provision of law, with respect to any transfer under this subsection, the lender shall—

''(A) remain obligated under the guarantee agreement between the lender and the Secretary;

''(B) continue to be responsible for servicing the loan in a manner consistent with the guarantee agreement; and

''(C) remain the secured creditor of record.

''(d) FULL FAITH AND CREDIT.—

''(1) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all loan guarantees made under this title.

''(2) VALIDITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the validity of a guarantee of a loan under this title shall be incontestable if the guarantee is held by a transferee of a guaranteed obligation whose interest in a guaranteed loan has been acknowledged by the Secretary (or a designee of the Secretary) under subsection (c)(1)(D).

''(B) FRAUD OR MISREPRESENTATION.—Subparagraph (A) shall not apply in a case in which the Secretary determines that a transferee of a loan or portion of a loan transferred under this section has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with the loan.

''(e) DAMAGES.—The Secretary may recover from a lender any damages suffered by the Secretary as a result of a material breach of an obligation of the lender under the guarantee of the loan.

''(f) FEE.—The Secretary may collect a fee for any loan or guaranteed portion of a loan transferred in accordance with subsection (b) or (c).

''(g) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall promulgate such regulations as are necessary to facilitate, administer, and promote the transfer of loans and guaranteed portions of loans under this section.

''(h) CENTRAL REGISTRATION.—On promulgation of final regulations under subsection (g), the Secretary shall—

''(1) provide for the central registration of all loans and portions of loans transferred under this section; and

''(2) contract with a fiscal transfer agent—

''(A) to act as a designee of the Secretary; and

''(B) on behalf of the Secretary—

''(i) to carry out the central registration and paying agent functions; and

''(ii) to issue acknowledgements of the Secretary under subsection (c)(1)(D).

''(i) POOLING.—

''(1) IN GENERAL.—Nothing in this title prohibits the pooling of whole loans, or portions of loans, transferred under this section.

''(2) REGULATIONS.—The Secretary may promulgate regulations to effect orderly and efficient pooling procedures under this title.''.

By Mr. SARBANES:

S. 2019. A bill to extend the authority of the Export-Import Bank until April 30, 2002; considered and passed.

Mr. BINGAMAN. Mr. President, today I am pleased to introduce a bill that would create a unique area within the Cibola National Forest in New Mexico, entitled the T'uf Shur Bien Preservation Trust Area. The importance of this bill cannot be overstated. It would resolve, through a negotiated agreement, the Pueblo of Sandia's land claim to Sandia Moutain, an area of significant value and use to all New Mexicans. The bill would also maintain full public ownership and access to the National Forest and Sandia Mountain Wilderness lands within the Pueblo's claim area; clear title for affected homeowners; and grant the necessary rights-of-way and easements to protect private property interests and the public's ongoing use of the Area.

The need for this bill and the basis for Sandia Pueblo's claim arise from a 1748 grant to the Pueblo from a representative of the King of Spain. That grant was recognized and confirmed by Congress in 1858, 11 Stat. 374). There remains, however, a dispute over the location of the eastern boundary of the Pueblo that stems from an 1859 survey of the grant. That survey fixed the eastern boundary roughly along the top of a foothill on the western slope of the mountain, rather than along the true crest of the mountain. The Pueblo has contended that the interpretation of the grant, and thus the survey and subsequent patent, are erroneous, and that the true eastern boundary is the crest of the mountain.

In the early 1980's, the Pueblo approached the Department of the Interior seeking a resurvey of the grant to locate the eastern boundary of the Pueblo along the main ridge of Sandia Mountain. In December 1988, the Solicitor of the Department of the Interior issued an opinion rejecting the Pueblo's claim. The Pueblo challenged the opinion in federal district court and in 1998, the court issued on Order setting aside the 1988 opinion and remanding the matter to Interior for forther proceedings. *Pueblo of Sandia* v. *Babbitt*, Civ. No. 94–2624, D.D.C., July 18, 1998. The Order was appealed but appellate proceedings were stayed for more than a year while a settlement was being negotiated. Ultimately, on April 4, 2000, a settlement agreement was executed between the United States, Pueblo, and the Sandia Peak Tram Company. That agreement was conditioned on congressional ratification, but remains effective until November 15, 2002.

In November, 2000, the Court of Appeals of the District of Columbia Circuit dismissed the appeal for lack of jurisdiction because the District Court's action was not a final appealable decision. Upon dismissal, the Department of the Interior proceeded with its reconsideration of the 1988 Solicitor's opinion in accord with the 1998 Order of the District Court. On January 19, 2001, the Solicitor issued a new opinion that concluded that the 1859 survey of the Sandia Pueblo grant was erroneous and that a resurvey should be conducted. Implementation of the opinion would therefore remove the area from its National Forest status and convey it to the Pueblo. The Department stayed the resurvey, however, until after November 15, 2002, so that there would be time for Congress to legislate the settlement and make it permanent.

To state the obvious, this is a very complicated situation. The area that is the subject of the Pueblo's claim has been used by the Pueblo and its members for centuries and is of great significance to the Pueblo for traditional and cultural reasons. The Pueblo strongly desires that the wilderness character of the area continue to be preserved and its use by the Pueblo protected. Notwithstanding that interest and use, the Federal Government has administered the claim area as a unit of the National Forest system for most of the last century and over the years has issued patents for several hundred acres of land within the area to persons who had no notice of the Pueblo's claim. As a result, there are now several subdivisions within the external boundaries of the area, and although the Pueblo's lawsuit specifically disclaimed any title or interest in privately-owned lands, the residents of the subdivisions have concerns that the claim and its associated litigation have resulted in hardships by clouding titles to land. Finally, as a unit of the National forest system, the areas has great significance to the public and in particular, the people in the State of New Mexico, including the residents of the Counties of Bernalillo and Sandoval and the City of Albuquerque, who use the claim area for recreational and other purposes and who desire that the public use and natural character of the area be preserved.

Because of the complexity of the situation, including the significant and overlapping interests just mentioned, Congress has not yet acted in this matter. In particular, concerns about the settlement were expressed by parties who did not participate in the final stages of the negotiations. I have worked with those parties to address their concerns while still trying to maintain the benefits secured by the parties in the Settlement Agreement. I believe the legislation that I have introduced today is a fair compromise. It provides the Pueblo specific rights and interests in the area that help to resolve its claim with finality but also, as noted earlier, maintains full public ownership and access to the National Forest system lands. In that sense, using the term ''Trust'' in the title recognizes those specific interests but does not confer the same status that exists when the Secretary of the Interior accepts title to land in trust on behalf of an Indian tribe.

Most importantly, the bill I am introducing today relies on a settlement as the basis for resolving this claim. Although other approaches have been circulated, this bill is the only one with the potential to secure a consensus of the interested parties. Not only is a negotiated settlement the appropriate manner by which to resolve the Pueblo's claim, it also allows for a solution that fits the unique circumstances of this situation. To my knowledge, Sandia Pueblo's claim is the only Indian land claim that exists where the tribe may effectively recover ownership of federal land without an Act of Congress. Nonetheless, the parties have negotiated a creative arrangement to address the Pueblo's interest, protect private property, and still maintain public ownership of the land. That is to be commended and I am proud to introduce this legislation to preserve the substance of that arrangement.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 226—DESIGNATING APRIL 6, 2002, AS ''NATIONAL MISSING PERSONS DAY''

Mr. SCHUMER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 226

Whereas Saturday, April 6, 2002, marks the 24th birthday of the University of Albany student, Suzanne Lyall, who has been missing since March 2, 1998;

Whereas through her disappearance, Suzanne Lyall has come to represent thousands of other missing persons;

Whereas in 2001, there were 198,575 persons over the age of 18 reported missing to law enforcement agencies nationwide;

Whereas many of those reported missing may be victims of Alzheimer's disease or other health related issues, or victims of foul play;

Whereas regardless of age or circumstances, all missing persons have families who need support and guidance to endure the days, months, or years they may spend searching for their missing loved ones; and

Whereas it is important to applaud the committed efforts of families, law enforcement agencies, and concerned citizens who work to locate missing persons and to prevent all forms of victimization: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 6, 2002, as ''National Missing Persons Day''; and

(2) requests that the President issue a proclamation that—

(A) calls upon the people of the United States to observe the day with appropriate programs and activities; and

(B) urges all Americans to support worthy initiatives and increased efforts to locate missing persons.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3012. Mr. THOMAS (for himself, Mr. CAMPBELL, Mr. SHELBY, Mr. CRAPO, and Mr. SMITH, of Oregon) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 3013. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3014. Mr. WYDEN (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3015. Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3016. Mr. BINGAMAN proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3017. Mr. JEFFORDS (for himself, Mr. WELLSTONE, and Mr. KERRY) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3018. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3019. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3020. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3021. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3022. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3023. Mrs. LINCOLN (for herself, Mr. BOND, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HUTCHINSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BUNNING, Mr. BAYH, and Mr. CRAIG) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3024. Mr. VOINOVICH (for himself, Ms. LANDRIEU, Mr. SMITH, of New Hampshire, and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3025. Mr. INHOFE (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3026. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3027. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3028. Mr. LOTT proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3029. Mr. REID (for Mr. ALLARD) proposed an amendment to the bill S. 1372, to reauthorize the Export-Import Bank of the United States.

SA 3030. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3012. Mr. THOMAS (for himself, Mr. CAMPBELL, Mr. SHELBY, Mr. CRAPO, and Mr. SMITH of Oregon) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

On page 21, strike line 16 and all that follows through page 23, line 24 and insert the following:

''Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following after section 215 as added by this Act:

"SEC. 216. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section—

''(1) 'bulk-power system' means the network of interconnected transmission facilities and generating facilities;

''(2) 'electric reliability organization' means a self-regulating organization certified by the Commission under subsection (c) whose purpose is to promote the reliability of the bulk power system; and

''(3) 'reliability standard' means a requirement to provide for reliable operation of the bulk power system approved by the Commission under this section.

''(b) JURISDICTION AND APPLICABILITY.—The Commission shall have jurisdiction, within the United States, over an electric reliability organization, any regional entities, and all users, owners and operators of the bulk power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(c) CERTIFICATION.—

''(1) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(2) Following the issuance of a Commission rule under paragraph (1), any person may submit an application to the Commission for certification as an electric reliability organization. The Commission may certify an applicant if the Commission determines that the applicant—

''(A) has the ability to develop, and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(B) has established rules that—

''(i) assure its independence of the users and owners and operators of the bulk power system; while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any committee or subordinate organizational structure;

''(ii) allocate equitably dues, fees, and other charges among end users for all activities under this section;

''(iii) provide fair and impartial procedures for enforcement of reliability standards through imposition of penalties (including limitations on activities, functions, or operations, or other appropriate sanctions); and

''(iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.

''(3) If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best implement the provisions of this section.

''(d) RELIABILITY STANDARDS.—

''(1) An electric reliability organization shall file a proposed reliability standard or modification to a reliability standard with the Commission.

''(2) The Commission may approve a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a proposed standard or modification to a reliability standard, but shall not defer with respect to its effect on competition.

''(3) The electric reliability organization and the Commission shall rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the electric reliability organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order an electric reliability organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(e) ENFORCEMENT.—

''(1) An electric reliability organization may impose a penalty on a user or operator of the bulk power system if the electric reliability organization, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator of the bulk power system has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice with the Commission, which shall affirm, set aside or modify the action.

''(2) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk power system has violated or threatens to violate a reliability standard.

''(3) The Commission shall establish regulations authorizing the electric reliability organization to enter into an agreement to delegate authority to a regional entity for the purpose of proposing and enforcing reliability standards (including related activities) if the regional entity satisfies the provisions of subsection (c)(2)(A) and (B) and the agreement promotes effective and efficient administration of bulk power system reliability, and may modify such delegation. The electric reliability organization and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved. Such regulation may provide that the Commission may assign the electric reliability organization's authority to enforce reliability standards directly to a regional entity consistent with the requirements of this paragraph.

''(4) The Commission may take such action as is necessary or appropriate against the electric reliability organization or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the electric reliability organization or a regional entity.

''(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—An electric reliability organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the electric reliability organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c)(2).

''(g) COORDINATION WITH CANADA AND MEXICO.—

''(1) The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

''(2) The President shall use his best efforts to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the electric reliability organization in the United States and Canada or Mexico.

''(h) RELIABILITY REPORTS.—The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America.

''(i) SAVINGS PROVISIONS.—

''(1) The electric reliability organization shall have authority to develop and enforce compliance with standards for the reliable operation of only the bulk-power system.

''(2) This section does not provide the electric reliability organization or the Commission with the authority to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the electric reliability organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a state action is inconsistent with a reliability standard, taking into consideration any recommendations of the electric reliability organization.

''(5) The Commission, after consultation with the electric reliability organization, may stay the effectiveness of any state action, pending the Commission's issuance of a final order.

''(j) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—To the extent undertaken to develop, implement, or enforce a reliability standard, each of the following activities shall not, in any action under the antitrust laws, be deemed illegal per se:

''(A) activities undertaken by an electric reliability organization under this section, and

''(B) activities of a user or owner or operator of the bulk power system undertaken in good faith under the rules of an electric reliability organization.

''(2) RULE OF REASON.—In any action under the antitrust laws, an activity described in paragraph (1) shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition and reliability.

''(3) DEFINITION.—For purposes of this subsection, 'antitrust laws' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

''(k) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each state, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the electric reliability organization, a regional reliability entity, or the Commission regarding the governance of an existing or proposed regional reliability entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the regional are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an interconnection-wide basis.

''(l) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

SA 3013. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 226, line 23, strike ''Act,'' and all that follows through page 227, line 2, and insert ''Act.''.

SA 3014. Mr. WYDEN (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

On page 57, between lines 17 and 18, insert the following:

SEC. 253. OFFICE OF CONSUMER ADVOCACY.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) ENERGY CUSTOMER.—The term ''energy customer'' means a residential customer or a small commercial customer that receives products or services from a public utility or natural gas company under the jurisdiction of the Commission.

(3) NATURAL GAS COMPANY.—The term ''natural gas company'' has the meaning given

the term in section 2 of the Natural Gas Act (15 U.S.C. 717a), as modified by section 601(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

(4) OFFICE.—The term ''Office'' means the Office of Consumer Advocacy established by subsection (b)(1).

(5) PUBLIC UTILITY.—The term ''public utility'' has the meaning given the term in section 201(e) of the Federal Power Act (16 U.S.C. 824(e)).

(6) SMALL COMMERCIAL CUSTOMER.—The term ''small commercial customer'' means a commercial customer that has a peak demand of not more than 1,000 kilowatts per hour.

(b) OFFICE.—

(1) ESTABLISHMENT.—There is established within the Department of Justice the Office of Consumer Advocacy.

(2) DIRECTOR.—The Office shall be headed by a Director to be appointed by the President, by and with the advice and consent of the Senate.

(3) DUTIES.—The Office may represent the interests of energy customers on matters concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission—

(A) at hearings of the Commission;

(B) in judicial proceedings in the courts of the United States;

(C) at hearings or proceedings of other Federal regulatory agencies and commissions;

SA 3015. Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XVII, add the following:

SEC. 1704. NATIONAL ACADEMY OF SCIENCES STUDY OF PROCEDURES FOR SELECTION AND ASSESSMENT OF ROUTES FOR SHIPMENT OF SPENT NUCLEAR FUEL.

(a) IN GENERAL.—The Secretary of Transportation shall enter into an agreement with the National Academy of Sciences under which agreement the National Academy of Sciences shall conduct a study of the procedures by which the Department of Energy, together with the Department of Transportation and the Nuclear Regulatory Commission, selects routes for the shipment of spent nuclear fuel.

(b) ELEMENTS OF STUDY.—In conducting the study under subsection (a), the National Academy of Sciences shall analyze the manner in which the Department of Energy—

(1) selects potential routes for the shipment of spent nuclear fuel;

(2) selects a route for a specific shipment of spent nuclear fuel; and

(3) conducts assessments of the risks associated with shipments of spent nuclear fuel.

(c) CONSIDERATIONS REGARDING ROUTE SELECTION.—The analysis under subsection (b) shall include a consideration whether, and to what extent, the procedures analyzed for purposes of that subsection take into account the following:

(1) The proximity of the routes under consideration to major population centers and the risks associated with shipments of spent nuclear fuel through densely populated areas.

(2) Current traffic and accident data with respect to the routes under consideration.

(3) The quality of the roads comprising the routes under consideration.

(4) Emergency response capabilities along the routes under consideration.

(5) The proximity of the routes under consideration to places or venues (including sports stadiums, convention centers, concert halls and theaters, and other venues) where large numbers of people gather.

(d) RECOMMENDATIONS.—In conducting the study under subsection (a), the National Academy of Sciences shall also make such recommendations regarding the matters studied as the National Academy of Sciences considers appropriate.

(e) DEADLINE FOR DISPERSAL OF FUNDS FOR STUDY.—The Secretary shall disperse to the National Academy of Sciences the funds for the cost of the study required by subsection (a) not later than 30 days after the date of the enactment of this Act.

(f) REPORT ON RESULTS OF STUDY.—Not later than six months after the date of the dispersal of funds under subsection (e), the National Academy of Sciences shall submit to the appropriate committees of Congress a report on the study conducted under subsection (a), including the recommendations required by subsection (d).

(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Commerce, Science, and Transportation, Energy and Natural Resources, and Environment and Public Works of the Senate; and

(2) the Committee on Energy and Commerce of the House of Representatives.

SA 3016. Mr. BINGAMAN proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

On page 67, strike line 6 and all that follows through page 76, line 11, and insert the following:

Title VI of the Public Utility Regulatory Policies Act of 1978 is amended by adding at the end the following:

''SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.

''(a) MINIMUM RENEWABLE GENERATION REQUIREMENT.—For each calendar year beginning in calendar year 2005, each retail electric supplier shall submit to the Secretary, not later than April 1 of the following calendar year, renewable energy credits in an amount equal to the required annual percentage specified in subsection (b).

''(b) REQUIRED ANNUAL PERCENTAGE.—

''(1) For calendar years 2005 through 2020, the required annual percentage of the retail electric supplier's base amount that shall be generated from renewable energy resources shall be the percentage specified in the following table:

''Calendar Years	Required annual percentage
2005 through 2006	1.0
2007 through 2008	2.2
2009 through 2010	3.4
2011 through 2012	4.6
2013 through 2014	5.8
2015 through 2016	7.0
2017 through 2018	8.5
2019 through 2020	10.0

''(2) Not later than January 1, 2015, the Secretary may, by rule, establish required annual percentages in amounts not less than 10.0 for calendar years 2020 through 2030.

''(c) SUBMISSION OF CREDITS.—(1) A retail electric supplier may satisfy the requirements of subsection (a) through the submission of renewable energy credits—

''(A) issued to the retail electric supplier under subsection (d);

''(B) obtained by purchase or exchange under subsection (e); or

''(C) borrowed under subsection (f).

''(2) A credit may be counted toward compliance with subsection (a) only once.

''(d) ISSUANCE OF CREDITS.—(1) The Secretary shall establish, not later than one year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track renewable energy credits.

''(2) Under the program, an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits. The application shall indicate—

''(A) the type of renewable energy resource used to produce the electricity,

''(B) the location where the electric energy was produced, and

''(C) any other information the Secretary determines appropriate.

''(3)(A) Except as provided in paragraphs (B), (C), and (D), the Secretary shall issue to an entity one renewable energy credit for each kilowatt-hour of electric energy the entity generates from the date of enactment of this section and in each subsequent calendar year through the use of a renewable energy resource at an eligible facility.

''(B) For incremental hydropower the credits shall be calculated based on the expected increase in average annual generation resulting from the efficiency improvements or capacity additions. The number of credits shall be calculated using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission. The calculation of the credits for incremental hydropower shall not be based on any operational changes at the hydroelectric facility not directly associated with the efficiency improvements or capacity additions.

''(C) The Secretary shall issue two renewable energy credits for each kilowatt-hour of electric energy generated and supplied to the grid in that calendar year through the use of a renewable energy resource at an eligible facility located on Indian land. For purposes of this paragraph, renewable energy generated by biomass cofired with other fuels is eligible for two credits only if the biomass was grown on the land eligible under this paragraph.

''(D) For renewable energy resources produced from a generation offset, the Secretary shall issue two renewable energy credits for each kilowatt-hour generated.

''(E) To be eligible for a renewable energy credit, the unit of electric energy generated through the use of a renewable energy resource may be sold or may be used by the generator. If both a renewable energy resource and a non-renewable energy resource are used to generate the electric energy, the Secretary shall issue credits based on the proportion of the renewable energy resource used. The Secretary shall identify renewable energy credits by type and date of generation.

''(5) When a generator sells electric energy generated through the use of a renewable energy resource to a retail electric supplier under a contract subject to section 210 of this Act, the retail electric supplier is treated as the generator of the electric energy for the purposes of this section for the duration of the contract.

''(6) The Secretary may issue credits for existing facility offsets to be applied against a retail electric suppliers own required annual percentage. The credits are not

tradeable and may only be used in the calendar year generation actually occurs.

''(e) CREDIT TRADING.—A renewable energy credit may be sold or exchanged by the entity to whom issued or by any other entity who acquires the credit. A renewable energy credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may be carried forward for use within the next four years.

''(f) CREDIT BORROWING.—At any time before the end of calendar year 2005, a retail electric supplier that has reason to believe it will not have sufficient renewable energy credits to comply with subsection (a) may—

''(1) submit a plan to the Secretary demonstrating that the retail electric supplier will earn sufficient credits within the next 3 calendar years which, when taken into account, will enable the retail electric suppliers to meet the requirements of subsection (a) for calendar year 2005 and the subsequent calendar years involved; and

''(2) upon the approval of the plan by the Secretary, apply credits that the plan demonstrates will be earned within the next 3 calendar years to meet the requirements of subsection (a) for each calendar year involved.

''(g) CREDIT COST CAP.—The Secretary shall offer renewable energy credits for sale at the lesser of 3 cents per kilowatt-hour or 200 percent of the average market value of credits for the applicable compliance period. On January 1 of each year following calendar year 2005, the Secretary shall adjust for inflation the price charged per credit for such calendar year, based on the Gross Domestic Product Implicit Price Deflator.

''(h) ENFORCEMENT.—The Secretary may bring an action in the appropriate United States district court to impose a civil penalty on a retail electric supplier that does not comply with subsection (a), unless the retail electric supplier was unable to comply with subsection (a) for reasons outside of the supplier's reasonable control (including weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority. A retail electric supplier who does not submit the required number of renewable energy credits under subsection (a) shall be subject to a civil penalty of not more than the greater of 3 cents or 200 percent of the average market value of credits for the compliance period for each renewable energy credit not submitted.

''(i) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

''(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section,

''(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary, and

''(3) the quantity of electricity sales of all retail electric suppliers.

''(j) ENVIRONMENTAL SAVINGS CLAUSE.—Incremental hydropower shall be subject to all applicable environmental laws and licensing and regulatory requirements.

''(k) STATE SAVINGS CLAUSE.—This section does not preclude a State from requiring additional renewable energy generation in that State, or from specifying technology mix.

''(l) DEFINITIONS.—For purposes of this section—

''(1) BIOMASS.—

''(A) Except with respect to material removed from National Forest System lands, the term 'biomass' means any organic material that is available on a renewable or recurring basis, including dedicated energy crops, trees grown for energy production, wood waste and wood residues, plants (including aquatic plants, grasses, and agricultural crops), residues, fibers, animal wastes and other organic waste materials, and fats and oil.

''(B) With respect to material removed from National Forest System lands, the term 'biomass' means fuel and biomass accumulation from precommercial thinnings, slash, and brush.

''(2) ELIGIBLE FACILITY.—The term 'eligible facility' means—

''(A) a facility for the generation of electric energy from a renewable energy resource that is placed in service on or after the date of enactment of this section; or

''(B) a repowering or cofiring increment that is placed in service on or after the date of enactment of this section at a facility for the generation of electric energy from a renewable energy resource that was placed in service before that date.

''(3) ELIGIBLE RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (excluding solid waste and paper that is commonly recycled), landfill gas, a generation offset, or incremental hydropower.

''(4) GENERATION OFFSET.—The term 'generation offset' means reduced electricity usage metered at a site where a customer consumes energy from a renewable energy technology.

''(5) EXISTING FACILITY OFFSET.—The term 'existing facility offset' means renewable energy generated from an existing facility, not classified as an eligible facility, that is owned or under contract to a retail electric supplier on the date of enactment of this section.

''(6) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional generation that is achieved from increased efficiency or additions of capacity after the date of enactment of this section at a hydroelectric dam that was placed in service before that date.

''(7) INDIAN LAND.—The term 'Indian land' means—

''(A) any land within the limits of any Indian reservation, pueblo or rancheria,

''(B) any land not within the limits of any Indian reservation, pueblo or rancheria title to which was on the date of enactment of this paragraph either held by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation,

''(C) any dependent Indian community, and

''(D) any land conveyed to any Alaska Native corporation under the Alaska Native Claims Settlement Act.

''(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(9) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated by a renewable energy resource.

''(10) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, or geothermal energy, biomass (including municipal solid waste), landfill gas, a generation offset, or incremental hydropower.

''(11) REPOWERING OF COFIRING ENFORCEMENT.—The term 'repowering or cofiring enforcement' means the additional generation from a modification that is placed in service on or after the date of enactment of this section to expand electricity production at a facility used to generate electric energy from a renewable energy resource or to cofire biomass that was placed in service before the date of enactment of this section.

''(12) RETAIL ELECTRIC SUPPLIER.—The term 'retail electric supplier' means a person, that sells electric energy to electric consumers and sold not less than 1,000,000 megawatt-hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year; except that such term does not include the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or a rural electric cooperative.

''(13) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier to electric customers during the most recent calendar year for which information is available, excluding electric energy generated by—

''(A) an eligible renewable energy resource;

''(B) municipal solid waste; or

''(C) a hydroelectric facility.

''(m) SUNSET.—This section expires December 31, 2030.''.

SA 3017. Mr. JEFFORDS (for himself, Mr. WELLSTONE, and Mr. KERRY) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

Beginning on page 1, strike line 5 and all that follows through page 9, line 8, and insert the following:

SEC. 606. FEDERAL RENEWABLE ENERGY STANDARD.

SEC. 1. DEFINITIONS.

In this section:

(1) BIOMASS.—The term 'biomass' means—

(A) organic material from a plant that is planted exclusively for the purpose of being used to produce electricity; and

(B) nonhazardous, cellulosic or agricultural animal waste material that is segregated from other waste materials and is derived from—

(i) a forest-related resource, including—

(I) mill and harvesting residue;

(II) precommercial thinnings;

(III) slash; and,

(IV) brush;

(ii) an agricultural resource, including—

(I) orchard tree crops;

(II) vineyards;

(III) grain;

(IV) legumes;

(V) sugar; and

(VI) other crop by-products or residues;

(iii) miscellaneous waste such as—

(I) waste pallet;

(II) crate;

(III) dunnage; and

(IV) landscape or right-of-way tree trimmings, but not including—

(aa) municipal solid waste;

(bb) recyclable postconsumer wastepaper;

(cc) painted, treated, or pressurized wood;

(dd) wood contaminated with plastic or metals; or

(ee) tires; and

(iv) animal waste that is converted to a fuel rather than directly combusted, the residue of which is converted to biological fertilizer, oil, or activated carbon.

(2) INCREMENTAL HYDROPOWER.—The term ''incremental hydropower'' means additional generation capacity achieved from increased efficiency after January 1, 2002, at a hydroelectric dam that was placed in service before January 1, 2002.

(3) LANDFILL GAS.—The term ''landfill gas'' means gas generated from the decomposition of household solid waste, commercial solid waste, and industrial solid waste disposed of in a municipal solid waste landfill unit (as those terms are defined in regulations promulgated under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.)).

(4) RENEWABLE ENERGY.—The term ''renewable energy'' means electricity generated from—

(A) a renewable energy source; or

(B) hydrogen that is produced from a renewable energy source.

(5) RENEWABLE ENERGY SOURCE.—The term ''renewable energy source'' means—

(A) wind;

(B) biomass;

(C) incremental hydropower;

(D) landfill gas; or

(E) a goethermal, solar thermal, or photovoltaic source.

(6) RETAIL ELECTRIC SUPPLIER.—

(A) IN GENERAL.—The term ''retail electric supplier'' means a person or entity that sells retail electricity to consumers, and which sold not less than 500,000 megawatt-hours of electric energy to consumers for purposes other than resale during the preceding calendar year.

(B) INCLUSIONS.—The term ''retail electric supplier'' includes—

(i) a regulated utility company (including affiliates or associates of such a company);

(ii) a company that is not affiliated or associated with a regulated utility company;

(iii) a municipal utility;

(iv) a cooperative utility;

(v) a local government; and

(vi) a special district.

(7) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

SEC. 2. RENEWABLE ENERGY GENERATION STANDARDS.

(a) RENEWABLE ENERGY CREDITS.—

(1) IN GENERAL.—Not later than April 1 of each year, each retail electric supplier shall submit to the Secretary renewable energy credits in an amount equal to the required annual percentage of the retail electric supplier's total amount of kilowatt-hours of non-hydropower electricity sold to consumers during the previous calendar year.

(2) RATE.—The rates charged to each class of consumers by a retail electric supplier shall reflect an equal percentage of the cost of generating or acquiring the required annual percentage of renewable energy under subsection (b).

(3) ELIGIBLE RESOURCES.—A retail electric supplier shall not represent to any customer or prospective customer that any product contains more than the percentage of eligible resources if the additional amount of eligible resources is being used to satisfy the renewable generation requirement under subsection (b).

(4) STATE RENEWABLE ENERGY PROGRAM.—

(A) IN GENERAL.—Nothing in this section precludes any State from requiring additional renewable energy generation in the State under any renewable energy program conducted by the State.

(B) LIMITATION.—A State may limit the benefits of any State renewable energy program to renewable energy generators located within the boundaries of the State or other boundaries (as determined by the State).

(b) REQUIRED RENEWABLE ENERGY.—Of the total amount of non-hydropower electricity sold by each retail electric supplier during a calendar year, the amount generated by renewable energy sources shall be not less than the percentage specified below:

Calendar years:	Percentage of renewable energy each year:
2005–2009	5
2010–2014	10
2015–2019	15
2020 and subsequent years	20

(c) SUBMISSION OF RENEWABLE ENERGY CREDITS.—To meet the requirements under subsection (a)(1), a retail electric supplier may submit to the Secretary—

(1) renewable energy credits issued under subsection (d) for renewable energy generated by the retail electric supplier during the calendar year for which renewable energy credits are being submitted or the previous calendar year; or

(2) renewable energy credits—

(A) issued under subsection (d) to any renewable energy generator for renewable energy generated during the calendar year for which renewable energy credits are being submitted or the previous calendar year; and

(B) acquired by the retail electric supplier under subsection (e); or (3) renewable energy credits acquired from the Secretary for a cost equal to three cents per renewable energy credit in 2003 dollars, adjusted for inflation.

(d) SMALL UTILITY PROGRAM.—The Secretary shall apply proceeds from the sale of renewable energy credits acquired under subsection (c)(3) to a program, utilizing a competitive bidding process, to encourage maximum renewable energy generation and/or purchase by retail electric suppliers which sold not 500,000 megawatt-hours or less of electric energy to consumers for purposes other than resale during the preceding calendar year.

(e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program to issue, monitor the sale or exchange of, and track renewable energy credits.

(2) APPLICATION.—

(A) IN GENERAL.—Under the program established under paragraph (1), an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of renewable energy credits.

(B) REQUIREMENTS.—An application under subparagraph (A) shall identify—

(i) the type of renewable energy resource used to produce the electric energy;

(ii) the State in which the electric energy was produced; and

(iii) any other information that the Secretary determines appropriate.

(3) NUMBER OF RENEWABLE ENERGY RESOURCE CREDITS.—

(A) IN GENERAL.—The Secretary shall issue to an entity 1 renewable energy credit for each kilowatt-hour of electric energy that the entity generates through the use of a renewable energy resource in any State in calendar year 2002 and each year thereafter.

(B) PARTIAL CREDIT.—If both a renewable energy resource and a nonrenewable energy resource are used to generate the electric energy, the Secretary shall issue renewable energy credits based on the proportion of the renewable energy resource used.

(4) ELIGIBILITY.—To be eligible for a renewable energy credit under this subsection, the unit of electricity generated through the use of a renewable energy resource shall be sold for retail consumption or used by the generator.

(5) IDENTIFICATION OF RENEWABLE ENERGY CREDITS.—The Secretary shall identify renewable energy credits by—

(A) the type of generation; and

(B) the State in which the generating facility is located.

(6) FEE.—

(A) IN GENERAL.—To receive a renewable energy credit, the entity shall pay a fee, calculated by the Secretary, in an amount that is equal to the lesser of—

(i) the administrative costs of issuing, recording, monitoring the sale of exchange of, and tracking the renewable energy credit; or

(ii) 5 percent of the national average market value (as determined by the Secretary) of that quantity of renewable energy credits.

(B) USE.—The Secretary shall use the fee to pay the administrative costs described in subparagraph (A)(i).

(f) SALE OR EXCHANGE.—A renewable energy credit may be sold or exchanged by the entity issued the renewable energy credit or by any other entity that acquires the renewable energy credit.

(g) VERIFICATION.—The Secretary may collect the information necessary to verify and audit—

(1) the annual electric energy generation and renewable energy generation of any entity applying for renewable energy credits under this section;

(2) the validity of renewable energy credits submitted by a retail electric supplier to the Secretary; and

(3) the amount of electricity sales of all retail electric suppliers.

(h) ENFORCEMENT.—

(1) IN GENERAL.—The Secretary may bring an action in United States district court to impose a civil penalty on a retail electric supplier that fails to comply with subsection (a).

(2) AMOUNT OF PENALTY.—A retail electric supplier that fails to submit the required number of renewable energy credits under subsection (a) shall be subject to a civil penalty of not more than 3 times the estimated national average market value (as determined by the Secretary) of that quantity of renewable energy credits for the calendar year concerned.

SA 3018. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 189, in the table between lines 10 and 11, in the item relating to calendar year 2004, strike ''2.3'' and insert ''1.8''.

SA 3019. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 195, strike line 19 and all that follows through page 196, line 4, and insert the following:

''(B) PETITIONS FOR WAIVERS.—

''(i) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2)

within 30 days after the date on which the petition is received by the Administrator.

''(ii) FAILURE TO ACT.—If the Administrator fails to approve or disapprove a petition within the period specified in clause (i), the petition shall be deemed to be approved.

SA 3020. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 189, line 3, strike ''2004'' and insert ''2005''.

On page 189, line 5, strike ''2004'' and insert ''2005''.

On page 189, line 8, strike ''2004'' and insert ''2005''.

On page 189, in the table between lines 10 and 11, strike the item relating to calendar year 2004.

On page 193, line 10, strike ''2004'' and insert ''2005''.

On page 194, line 21, strike ''2004'' and insert ''2005''.

On page 196, line 17, strike ''2004'' and insert ''2005''.

On page 197, line 4, strike ''2004'' and insert ''2005''.

On page 199, line 4, strike ''2004'' and insert ''2005''.

On page 199, line 17, strike ''2004'' and insert ''2005''.

SA 3021. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 204, strike line 15 and all that follows through page 205, line 8, and insert the following:

''Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective than any other motor vehicle fuel or fuel additive.''.

SA 3022. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 191, strike lines 8 through 11 and insert the following:

''(4) CELLULOSIC BIOMASS ETHANOL.—

''(A) IN GENERAL.—For the purpose of paragraph (2)—

''(i) except as provided in clause (ii), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallons of renewable fuel; and

''(ii) 1 gallon of cellulosic biomass ethanol shall be considered the equivalent of 2 gallons of renewable fuel if the cellulosic biomass ethanol is derived from agricultural commodities and residues.

''(B) CELLULOSIC BIOMASS ETHANOL CONVERSION ASSISTANCE.—

''(i) IN GENERAL.—The Secretary of Energy may make grants to merchant producers of cellulosic biomass ethanol to assist such producers in building eligible facilities for the production of cellulosic biomass ethanol.

''(ii) ELIGIBLE FACILITIES.—A facility shall be eligible to receive a grant under this paragraph if the facility—

''(I) is located in the United States; and

''(II) uses cellulosic biomass ethanol feed stocks derived from agricultural commodities and residues.

''(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph such sums as may be necessary for fiscal years 2003, 2004, and 2005.''.

SA 3023. Mrs. LINCOLN (for herself, Mr. BOND, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HUTCHINSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BUNNING, Mr. BAYH, and Mr. CRAIG) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 142, strike lines 8 through 11 and insert the following:

SEC. 817. TEMPORARY BIODIESEL CREDIT EXPANSION.

(a) BIODIESEL CREDIT EXPANSION.—Section 312(b) of the Energy Policy Act of 1992 (42 U.S.C. 13220(b)) is amended by striking paragraph (2) and inserting the following:

''(2) USE.—

''(A) IN GENERAL.—A fleet or covered person—

''(i) may use credits allocated under subsection (a) to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V; but

''(ii) may use credits allocated under subsection (a) to satisfy 100 percent of the alternative fueled vehicle requirements of a fleet or covered person under title V for 1 or more of model years 2002 through 2005.

''(B) APPLICABILITY.—Subparagraph (A) does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).''.

(b) TREATMENT AS SECTION 508 CREDITS.—Section 312(c) of the Energy Policy Act of 1992 (42 U.S.C. 13220(c)) is amended—

(1) in the subsection heading, by striking ''CREDIT NOT'' and inserting ''TREATMENT AS''; and

(2) by striking ''shall not be considered'' and inserting ''shall be treated as''.

(c) ALTERNATIVE FUELED VEHICLE STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(B) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(C) LIGHT DUTY MOTOR VEHICLE.—The term ''light duty motor vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) BIODIESEL CREDIT EXTENSION STUDY.—As soon as practicable after the date of enactment of this Act, the Secretary shall conduct a study—

(A) to determine the availability and cost of light duty motor vehicles that qualify as alternative fueled vehicles under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.); and

(B) to compare—

(i) the availability and cost of biodiesel; with

(ii) the availability and cost of fuels that qualify as alternative fuels under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(A) describes the results of the study conducted under paragraph (2); and

(B) includes any recommendations of the Secretary for legislation to extend the temporary credit provided under subsection (a) beyond model year 2005.

SA 3024. Mr. VOINOVICH (for himself, Ms. LANDREIU, Mr. SMITH of New Hampshire, and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 119, between lines 10 and 11, insert the following:

Subtitle B—Growth of Nuclear Energy

SEC. 511. COMBINED LICENSE PERIODS.

Section 103c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended—

(1) by striking ''c. Each such'' and inserting the following:

''c. LICENSE PERIOD.—

''(1) IN GENERAL.—Each such''; and

(2) by adding at the end the following:

''(2) COMBINED LICENSES.—In the case of a combined construction and operating license issued under section 185(b), the duration of the operating phase of the license period shall not be less than the duration of the operating license if application had been made for separate construction and operating licenses.''.

SEC. 512. SCOPE OF ENVIRONMENTAL REVIEW.

(a) IN GENERAL.—Chapter 10 of title I of the Atomic Energy act of 1954 (42 U.S.C. 2131 et seq.) is amended—

(1) by redesignating sections 110 and 111 as section 111 and 112, respectively; and

(2) by inserting after section 109 the following:

''SEC. 110. SCOPE OF ENVIRONMENTAL REVIEW.

''In conducting any environmental review (including any activity conducted under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)) in connection with an application for a license or a renewed license under this chapter, the Commission shall not give any consideration to the need for, or any alternative to, the facility to be licensed.''.

(b) CONFORMING AMENDMENTS.—

(1) The Atomic Energy Act of 1954 is amended—

(A) in the table of contents (42 U.S.C. prec. 2011), by striking the items relating to section 110 and inserting the following:

''Sec. 110. Scope of environmental review.

''Sec. 111. Exclusions.

''Sec. 112. Licensing by Nuclear Regulatory Commission of distribution of certain materials by Department of Energy.'';

(B) in the last sentence of section 57b. (42 U.S.C. 2077(b)), by striking ''section 111 b.'' and inserting ''section 112b.''; and

(C) in section 131a.(2)(C), by striking ''section 111 b.'' and inserting ''section 112b.''.

(2) Section 202 of the Energy Reorganization Act o f 1974 (42 U.S.C. 5842) is amended—

(A) by striking ''section 110 a.'' and inserting ''section 111a.''; and

(B) by striking ''section 110 b.'' and inserting ''section 111b.''.

Subtitle C—NRC Regulatory Reform

SEC. 521. ELIMINATION OF DUPLICATIVE ANTITRUST REVIEW.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by striking subsection c. and inserting the following:

''c. CONDITIONS.—

''(1) IN GENERAL.—A condition for a grant of a license imposed by the Commission under this section shall remain in effect until the condition is modified or removed by the Commission.

''(2) MODIFICATION.—If a person that is licensed to construct or operate a utilization or production facility applies for reconsideration under this section of a condition imposed in the person's license, the Commission shall conduct a proceeding, on an expedited basis, to determine whether the license condition—

''(A) is necessary to ensure compliance with subsection a.; or

''(B) should be modified or removed.''.

SEC. 522. HEARING PROCEDURES.

Section 189a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)(1)) is amended by adding at the end the following:

''(C) HEARINGS.—A hearing under this section shall be conducted using informal adjudicatory procedures unless the Commission determines that formal adjudicatory procedures are necessary—

''(i) to develop a sufficient record; or

''(ii) to achieve fairness.''.

SEC. 523. AUTHORITY OVER FORMER LICENSEES FOR DECOMMISSIONING FUNDING.

Section 161i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

Subtitle D—NRC Personnel Crisis

SEC. 531. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

''y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.''.

SEC. 532. CONTRACTS WITH THE NATIONAL LABORATORIES.

Section 170A of the Atomic Energy Act of 1954 (42 U.S.C. 2210a) is amended by striking subsection c. and inserting the following:

''c. CONTRACTS, AGREEMENTS, AND OTHER ARRANGEMENTS WITH THE NATIONAL LABORATORIES.—Notwithstanding subsection b. and notwithstanding the potential for a conflict of interest that cannot be avoided, the Commission may enter into a contract, agreement, or other arrangement with a national laboratory if the Commission takes reasonable steps to mitigate the effect of the conflict of interest.''.

SEC. 533. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical safety skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2002 through 2005.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SA 3025. Mr. INHOFE (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 407, line 4, after ''including'', insert ''flexible alternating current transmission systems,''.

SA 3026. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 247, between lines 10 and 11, insert the following:

SEC. 903. STATE ENERGY PLANS.

(a) IN GENERAL.—No later than 1 year after the date of enactment of this Act, each State shall submit to the Secretary of Energy a plan that outlines possible methodologies that would ensure that, by the date that is 10 years after the date of submission of the report, the amount of energy produced in the State will be equal to at least 85 percent of the amount of energy consumed in the State (as those amounts are measured by the Energy Information Agency).

(b) FAILURE TO SUBMIT A PLAN.—

(1) IN GENERAL.—After the date that is 1 year after the date of enactment of this Act, a State that has not submitted a plan under subsection (a) shall not receive any funding authorized by this Act or any amendment made by this Act until the State submits a report.

(2) EXCEPTION.—Paragraph (1) does not apply to funding authorized under subsection (b) or (e) of section 2602 of the Low Income Housing Energy Assistance Act of 1981 (42 U.S.C. 8621).

SA 3027. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike Title II and insert:

''TITLE II—ELECTRICITY

''Subtitle A—Consumer Protections

''SEC. 201. INFORMATION DISCLOSURE.

''(a) OFFERS AND SOLICITATIONS.—The Federal Trade Commission shall issue rules requiring each electric utility that makes an offer to sell electric energy, or solicits electric consumers to purchase electric energy to provide the electric consumer a statement containing the following information:

''(1) the nature of the service being offered, including information about interruptibility of service;

''(2) the price of the electric energy, including a description of any variable charges;

''(3) a description of all other charges associated with the service being offered, including access charges, exit charges, back-up service charges, stranded cost recovery charges, and customer service charges; and

''(4) information the Federal Trade Commission determines is technologically and economically feasible to provide, is of assistance to electric consumers in making purchasing decisions, and concerns—

''(A) the product or its price;

''(B) the share of electric energy that is generated by each fuel type; and

''(C) the environmental emissions produced in generating the electric energy.

''(b) PERIODIC BILLINGS.—The Federal Trade Commission shall issue rules requiring any electric utility that sells electric energy to transmit to each of its electric consumers, in addition to the information transmitted pursuant to section 115(f) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625(f)), a clear and concise statement containing the information described in subsection (a)(4) for each billing period (unless such information is not reasonably ascertainable by the electric utility).

''SEC. 202. CONSUMER PRIVACY.

''(a) PROHIBITION.—The Federal Trade Commission shall issue rules prohibiting any electric utility that obtains consumer information in connection with the sale or delivery of electric energy to an electric consumer from using, disclosing, or permitting access to such information unless the electric consumer to whom such information relates provides prior written approval.

''(b) PERMITTED USE.—The rules issued under this section shall not prohibit any electric utility from using, disclosing, or permitting access to consumer information referred to in subsection (a) for any of the following purposes.

''(1) to facilitate an eclectic consumer's change in selection of an electric utility under procedures approved by the State or State regulatory authority;

''(2) to initiate, render, bill, or collect for the sale or delivery of electric energy to electric consumers or for related services;

''(3) to protect the rights or property of the person obtaining such information;

''(4) to protect retail electric consumers from fraud, abuse, and unlawful subscription in the sale or delivery of electric energy to such consumers;

''(5) for law enforcement purposes; or

''(6) for purposes of compliance with any Federal, State, or local law or regulation authorizing disclosure of information to a Federal, State, or local agency.

''(c) AGGREGATE CONSUMER INFORMATION.—The rules issued under this subsection may permit a person to use, disclose, and permit access to aggregate consumer information and may require an electric utility to make such information available to other electric utilities upon request and payment of a reasonable fee.

''(d) DEFINITIONS.—As used in this section:

''(1) The term ''aggregate consumer information'' means collective data that relates to a group or category of retail electric consumers, from which individual consumer identifies and characteristics have been removed.

''(2) The term ''consumer information'' means information that relates to the quantity, technical configuration, type, destination, or amount of use of electric energy delivered to any retail electric consumer.

''SEC. 203. UNFAIR TRADE PRACTICES.

''(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer.

''(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

''SEC. 204. APPLICABLE PROCEDURES.

''The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule required by this subtitle.

''SEC. 205. FEDERAL TRADE COMMISSION ENFORCEMENT.

''Violation of a rule issued under this subtitle shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) respecting unfair or deceptive acts or practices. All functions and powers of the Federal Trade Commission under such Act are available to the Federal Trade Commission to enforce compliance with this subtitle notwithstanding any jurisdictional limits in such Act.

''SEC. 206. STATE AUTHORITY.

''Nothing in this subtitle shall be construed to preclude a State or State regulatory authority from prescribing and enforcing laws, rules or procedures regarding the practices which are the subject of this subtitle.

''SEC. 207. DEFINITIONS.

''As used in this subtitle:

''(1) The term 'aggregate consumer information' means collective data that relates to a group or category of electric consumers, from which individual consumer identities and identifying characteristics have been removed.

''(2) The term 'consumer information' means information that relates to the quantity technical configuration, type, destination, or amount of use of electric energy delivered to an electric consumer.

''(3) The term 'electric consumer', 'electric utility', and 'State regulatory authority' have the meanings given such terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

''Subtitle B—Electric Reliability

''SEC. 208 ELECTRIC RELIABILITY.

''Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following after section 215 as added by this Act:

''SEC. 216. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section—

''(1) 'bulk-power system' means the network of interconnected transmission facilities and generating facilities;

''(2) 'electric reliability organization' means a self-regulating organization certified by the Commission under subsection (c) whose purpose is to promote the reliability of the bulk power system; and

''(3) 'reliability standard' means a requirement to provide for reliable operation of the bulk power system approved by the Commission under this section.

''(b) JURISDICTION AND APPLICABILITY.—The Commission shall have jurisdiction, within the United States, over an electric reliability organization, any regional entities, and all users, owners and operators of the bulk power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(c) CERTIFICATION.—

''(1) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(2) Following the issuance of a Commission rule under paragraph (1), any person may submit an application to the Commission for certification as an electric reliability organization. The Commission may certify an applicant if the Commission determines that the applicant—

''(A) has the ability to develop, and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(B) has established rules that—

''(i) assure its independence of the users and owners and operators of the bulk power system; while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any committee or subordinate organizational structure;

''(ii) allocate equitably dues, fees, and other charges among end users for all activities under this section;

''(iii) provide fair and impartial procedures for enforcement of reliability standards through imposition of penalties (including limitations on activities, functions, or operations; or other appropriate sanctions); and

''(iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.

''(3) If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best implement the provisions of this section.

''(d) RELIABILITY STANDARDS.—

''(1) An electric reliability organization shall file a proposed reliability standard or modification to a reliability standard with the Commission.

''(2) The Commission may approve a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a proposed standard or modification to a reliability standard, but shall not defer with respect to its effect on competition.

''(3) The electric reliability organization and the Commission shall rebuttably presume that a proposal from a regional entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the electric reliability organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order an electric reliability organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(e) ENFORCEMENT.—

''(1) An electric reliability organization may impose a penalty on a user or owner or operator of the bulk power system if the electric reliability organization, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator of the bulk power system has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice with the Commission, which shall affirm, set aside or modify the action.

''(2) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk power system has violated or threatens to violate a reliability standard.

''(3) The Commission shall establish regulations authorizing the electric reliability organization to enter into an agreement to delegate authority to a regional entity for the purpose of proposing and enforcing reliability standards (including related activities) if the regional entity satisfies the provisions of subsection (c)(2)(A) and (B) and the agreement promotes effective and efficient administration of bulk power system reliability, and may modify such delegation. The electric reliability organization and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and shall be approved. Such regulation may provide that the Commission may assign the electric reliability organization's authority to enforce reliability standards directly to a regional entity consistent with the requirements of this paragraph.

''(4) The Commission may take such action as is necessary or appropriate against the electric reliability organization or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the electric reliability organization or a regional entity.

''(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—An electric reliability organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the electric reliability organization. A proposed rule or proposed rule change shall take effect upon a

finding by the Commission, after notice and opportunity for comment,that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c)(2).

''(g) COORDINATION WITH CANADA AND MEXICO.—

''(1) The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

''(2) The President shall use his best efforts to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the electric reliability organization in the United States and Canada or Mexico.

''(h) RELIABILITY REPORTS.—The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America.

''(i) SAVINGS PROVISIONS.—

''(1) The electric reliability organization shall have authority to develop and enforce compliance with standards for the reliable operation of only the bulk-power system.

''(2) This section does not provide the electric reliability organization or the Commission with the authority to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within the State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the electric reliability organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a state action is inconsistent with a reliability standard, taking into consideration any recommendations of the electric reliability organization.

''(5) The Commission, after consultation with the electric reliability organization, may stay the effectiveness of any state action, pending the Commission's issuance of a final order.

''(j) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—To the extent undertaken to develop, implement, or enforce a reliability standard, each of the following activities shall not, in any action under the antitrust laws, be deemed illegal per se:

''(A) activities undertaken by an electric reliability organization under this section, and

''(B) activities of a user or owner or operator of the bulk power system undertaken in good faith under the rules of an electric reliability organization.

''(2) RULE OF REASON.—In any action under the antitrust laws, an activity described in paragraph (1) shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition and reliability.

''(3) DEFINITION.—For purposes of this subsection, 'antitrust laws' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

''(k) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the electric reliability organization, a regional reliability entity, or the Commission regarding the governance of an existing or proposed regional reliability entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an interconnection-wide basis.

''(1) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''

''Subtitle B—Amendments to the Public Utility Holding Company Act

"SEC. 209. SHORT TITLE.

''This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

"SEC. 210. DEFINITIONS.

''For purposes of this subtitle:

''(1) The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

''(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

''(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

''(4) The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

''(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

''(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

''(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

''(8) The term ''holding company'' means—

''(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

''(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

''(9) The term 'holding company system' means a holding company, together with its subsidiary companies.

''(10) The term 'jurisdictional rates' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

''(11) The term 'natural gas company' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

''(12) The term 'person' means an individual or company.

''(13) The term 'public utility' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

''(14) The term 'public utility company' means an electric utility company or a gas utility company.

''(15) The term 'State commission' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate utility companies.

''(16) The term 'subsidiary company' of a holding company means—

''(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

''(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

''(17) The term 'voting security' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

"SEC. 211. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

''The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

"SEC. 212. FEDERAL ACCESS TO BOOKS AND RECORDS.

''(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

''(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the commission deems to be relevant to costs incurred

by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

''(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

''(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

''SEC. 213. STATE ACCESS TO BOOKS AND RECORDS.

''(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

''(1) have been identified in reasonable detail by the State commission;

''(2) the State commission deems are relevant to costs incurred by such public utility company; and

''(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

''(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

''(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

''(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

''(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

''SEC. 214. EXEMPTION AUTHORITY.

''(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall promulgate a final rule to exempt from the requirements of section 224 any person that is a holding company, solely with respect to one or more—

''(1) qualifying facilities under the Public Utility Regulatory Policies of Act of 1978 (16 U.S.C. 2601 et seq.);

''(2) exempt wholesale generators; or

''(3) foreign utility companies.

''(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 224, if, upon application or upon the motion of the Commission—

''(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

''(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

''SEC 215. AFFILIATE TRANSACTIONS.

''(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the promulgation of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

''(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

''SEC. 216. APPLICABILITY.

''Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

''(1) the United States;

''(2) a State or any political subdivision of a State;

''(3) any foreign governmental authority not operating in the United States;

''(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

''(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

''SEC. 217. EFFECT ON OTHER REGULATIONS.

''Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

''SEC. 218. ENFORCEMENT.

''The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

''SEC. 219. SAVINGS PROVISIONS.

''(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this subtitle.

''(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

''SEC. 220. IMPLEMENTATION.

''Not later than 18 months after the date of enactment of this subtitle, the Commission shall—

''(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle (other than section 225); and

''(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

''SEC. 221. TRANSFER OF RESOURCES.

''All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

''SEC. 222. INTER-AGENCY REVIEW OF COMPETITION IN THE WHOLESALE AND RETAIL MARKETS FOR ELECTRIC ENERGY.

''(a) TASK FORCE.—There is established an inter-agency task force, to be known as the ''Electric Energy Market Competition Task Force'' (referred to in this section as the ''task force''), which shall consist of—

''(1) 1 member each from—

''(A) the Department of Justice, to be appointed by the Attorney General of the United States;

''(B) the Federal Energy Regulatory Commission, to be appointed by the chairman of that Commission; and

''(C) the Federal Trade Commission, to be appointed by the chairman of that Commission; and

''(2) 2 advisory members (who shall not vote), of whom—

''(A) I shall be appointed by the Secretary of Agriculture to represent the Rural Utility Service; and

''(B) 1 shall be appointed by the Chairman of the Securities and Exchange Commission to represent that Commission.

''(b) STUDY AND REPORT.—

''(1) STUDY.—The task force shall perform a study and analysis of the protection and promotion of competition within the wholesale and retail market for electric energy in the United States.

''(2) REPORT.—

''(A) FINAL REPORT.—Not later than 1 year after the effective date of this subtitle, the task force shall submit a final report of its findings under paragraph (1) to the Congress.

''(B) PUBLIC COMMENT.—At least 60 days before submission of a final report to the Congress under subparagraph (A), the task force shall publish a draft report in the Federal Register to provide for public comment.

''(c) FOCUS.—The study required by this section shall examine—

''(1) the best means of protecting competition within the wholesale and retail electric market;

''(2) activities within the wholesale and retail electric market that may allow unfair and unjustified discriminatory and deceptive practices;

''(3) activities within the wholesale and retail electric market, including mergers and acquisitions, that deny market access or suppress competition;

''(4) cross-subsidization that may occur between regulated and nonregulated activities; and

''(5) the role of State public utility commissions in regulating competition in the wholesale and retail electric market.

''(d) CONSULTATION.—In performing the study required by this section, the task force shall consult with and solicit comments from its advisory members, the States, representatives of the electric power industry, and the public.

''SEC. 223. GAO STUDY ON IMPLEMENTATION.

''(a) STUDY.—The Comptroller General shall conduct a study of the success of the Federal Government and the States during the 18-month period following the effective date of this subtitle in—

''(1) the prevention of anticompetitive practices and other abuses by public utility holding companies, including cross-subsidization and other market power abuses; and

''(2) the promotion of competition and efficient energy markets to the benefit of consumers.

''(b) REPORT TO CONGRESS.—Not earlier than 18 months after the effective date of this subtitle or later than 24 months after

that effective date, the Comptroller General shall submit a report to the Congress on the results of the study conducted under subsection (a), including probable causes of its findings and recommendations to the Congress and the States for any necessary legislative changes.

"SEC. 224. EFFECTIVE DATE.

''This subtitle shall take effect 18 months after the date of enactment of this subtitle.

"SEC. 237. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

"SEC. 225. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

''(a) Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

''(b) Section 201(g) of the Federal Power Act (16 U.S.C. 824(g)) is amended by striking ''1935'' and inserting ''2002''.

''(c) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking ''1935'' and inserting ''2002''.

''Subtitle C—Amendments to the Public Utility Regulatory Policies Act of 1978

"SEC. 244. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

''(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

''(1) IN GENERAL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase or sell electric energy under this section.

''(2) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party with respect to the purchase or sale of electric energy or capacity from or to a facility under this section under any contract or obligation to purchase or to sell electric energy or capacity on the date of enactment of this subsection, including—

''(A) the right to recover costs of purchasing such electric energy or capacity; and

(B) in States without competition for retail electric supply, the obligation of a utility to provide, at just and reasonable rates for consumption by a qualifying small power production facility or a qualifying cogeneration facility, backup, standby, and maintenance power.

''(3) RECOVERY OF COSTS.—

''(A) REGULATION.—To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section before the date of enactment of this subsection, of all prudently incurred costs associated with the purchases, the Commission shall issue and enforce such regulations as may be required to ensure that the electric utility shall collect the prudently incurred costs associated with such purchases.

''(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).'

''(b) ELIMINATION OF OWNERSHIP LIMITATION.—

''(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows;

''(C) 'qualifying small power production facility' means a small power production facility that the commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.'.

''(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.''.

SA 3028. Mr. LOTT proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place, add the following:

"SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

(a) FINDINGS.—The Senate finds that—

(1) The Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 of the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

SA 3029. Mr. REID (for Mr. ALLARD) proposed an amendment to the bill S. 1372, to reauthorize the Export-Import Bank of the United States; as follows:

At the end of the bill, add the following:

SEC. 7. INSPECTOR GENERAL OF THE EXPORT-IMPORT BANK.

(a) ESTABLISHMENT OF POSITION.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking ''or the Board of Directors of the Tennessee Valley Authority;'' and inserting ''the Board of Directors of the Tennessee Valley Authority; or the President of the Export-Import Bank;''; and

(2) in paragraph (2), by striking ''or the Tennessee Valley Authority;'' and inserting ''the Tennessee Valley Authority, or the Export-Import Bank,''.

(b) SPECIAL PROVISIONS.—The Inspector General Act of 1978 is amended—

(1) by redesignating section 8I as section 8J and inserting after section 8H the following new section:

"§ 8I. Special Provisions Relating to the Export-Import Bank of the United States

''(a) IN GENERAL.—The Inspector General of the Export-Import Bank shall not prevent or prohibit the Audit Committee from initiating, carrying out, or completing any audit or investigation or undertaking any other activities in the performance of the duties and responsibilities of the Audit Committee, including auditing the financial statements of the Export-Import Bank, determining when it is appropriate to use independent external auditors, and selecting independent external auditors. In carrying out the duties and responsibilities of Inspector General, the Inspector General of the Export-Import Bank shall not be prevented or prohibited from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Audit Committee shall make available to the Inspector General of the Export-Import Bank the reports of all audits the Committee undertakes in the discharge of its duties and responsibilities.

''(b) AUDIT COMMITTEE.—For purposes of this section, the term 'Audit Committee' means the Audit Committee of the Board of Directors of the Export-Import Bank or any successor thereof.'';

(2) in section 8J (as redesignated), by striking ''or 8H of this Act'' and inserting ''8H, or 8I of this Act''.

(c) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General of the Environmental Protection Agency the following:

''Inspector General, Export-Import Bank.''.

(d) INITIAL IMPLEMENTATION.—Section 9(a)(2) of the Inspector General Act of 1978 is amended by inserting ''to the Office of the Inspector General,'' after ''(2)''.

(e) TECHNICAL CORRECTIONS.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1)—

(A) by striking the second semicolon after ''Community Service'';

(B) by striking ''and'' after ''Financial Institutions Fund;''; and

(C) by striking ''and'' after ''Trust Corporation;''; and

(2) in paragraph (2), by striking the second comma after ''Community Service''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2002.

SA 3030. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerhships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 186, strike line 9 and all that follows through page 205, line 8.

On page 236, strike lines 7 through 9 and insert the following:

is amended—

(1) by redesignating subsection (o) as subsection (p); and

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

''(o) ANALYSES OF MOTOR VEHICLE FUEL CHANGES.—

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 9:30 a.m., in open session to receive testimony on the atomic energy defense activities of the Department of Energy, in review of the Defense authorization request for fiscal year 2003.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 10 a.m., to conduct an oversight hearing on ''Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight of the Accounting Profession, Audit Quality and Independence, and Formulation of Accounting Principles.''

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 3 p.m., to conduct a hearing on the nominations of the Honorable Joann Johnson, of Iowa, to be a member of the National Credit Union Administration Board; and Ms. Deborah Matz, of New York, to be a member of the National Credit Union Administration Board.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on S. 1991, National Defense Interstate Rail Act on Thursday, March 14, 2002, at 9:30 a.m.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 10 a.m., to hear testimony on ''Reimbursement and Access to Prescription Drugs Under Medicare Part B.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 2 p.m., to hold a nomination hearing.

Agenda

Nominees: The Honorable Richard M. Miles, of South Carolina, to be Ambassador to Georgia; the Honorable James W. Pardew, of Arkansas, to be Ambassador to the Republic of Bulgaria; Mr. Peter Terpeluk, Jr., of Pennsylvania, to be Ambassador to Luxembourg; and Mr. Lawrence E. Butler, of Maine, to be Ambassador to The Former Yugoslav Republic Macedonia.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''The Future of American Steel: Ensuring the Viability of the Industry and the Health Care and Retirement Security for Its Workers,'' during the session of the Senate on Thursday, March 14, 2002, at 2:30 p.m.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, March 14, 2002, at 10 a.m., in room 485 of the Russell Senate Office Building to conduct on oversight hearing on the President's budget request for Indian programs for fiscal year 2003.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Competition, Innovation, and Public Policy in the Digital Age: Is the Marketplace Working To Protect Digital Creative Works?'' on Thursday, March 14, 2002, in Dirksen room 106, at 10 a.m.

Witness List: Mr. Richard D. Parsons, CEO Designate, AOL Time Warner, Inc.; Dr. Craig R. Barrett, President and CEO, Intel Corporation; Mr. Jonathan Taplin, CEO, Intertainer; Mr. Joe Kraus, Founder, Excite.com and DigitalConsumer.org; and Mr. Justin Hughes, Professor, UCLA Law School.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, March 14, 2002, at 2 p.m., in Dirksen Room 106.

Tentative Agenda

I. Nominations

Charles W. Pickering, Sr. to be U.S. Circuit Court Judge for the 5th Circuit.

To be United States Attorney: Jane J. Boyle for the Northern District of Texas; Matthew D. Orwig for the Eastern District of Texas; and Michael Taylor Shelby for the Southern District of Texas.

To be United States Marshal: Don Slazinik for the Southern District of Illinois and Kim Richard Widup for the Northern District of Illinois.

II. Bills

S. 1356, The Wartime Treatment of European Americans and Refugees Study Act. [Feingold/Grassley/Kennedy]

S. 924, Providing Reliable Officers, Technology, Education, Community Prosecutors, and Training In Our Neighborhoods (PROTECTION) Act of 2001. [Biden-Specter]

III. Resolutions

S. Res. 207, A Resolution to Designate March 31, 2002 as ''National Civilian Conservation Corps Day'' [Bingaman]

S. Res. 206, A resolution designating the week of March 17 through March 23, 2002 as ''National Inhalants and Poison Prevention Week''. [Murkowski]

S. Res. 221, A resolution to commemorate and acknowledge the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers. [Campbell]

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

COMMITTEE ON VETERAN'S AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 10 a.m., for a joint hearing with the House of Representatives' Committee on Veterans Affairs, to hear the legislative presentations of the Gold Star Wives of America, the Fleet Reserve Association, the Air Force Sergeants Association, and the Retired Enlisted Association. The hearing will take place in room 345 of the Cannon House Office Building.

I also ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 2 p.m., for a hearing on the nominations of Robert H. Roswell to be Under Secretary for Health of the Department Veterans Affairs and Daniel L. Cooper to be Under Secretary for Benefits of the Department of Veterans Affairs. The hearing will take place in room 418 of the Russell Senate Office Building.

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

SPECIAL COMMITTEE ON AGING

Mr. REID. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Thursday, March 14, 2002, from 9:30 a.m.-12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON AIRLAND

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee

on Airland of the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, March 14, 2002, at 2:30 p.m. in open session to receive testimony on Army Modernization and Transformation, in review of the Defense authorization request for fiscal year 2003.

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

PRIVILEGES OF THE FLOOR

Mr. THOMAS. Madam President, I ask unanimous consent that an intern from our office, Steve Ripley, be granted the privilege of the floor for today.

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

Mr. DAYTON. Mr. President, I ask unanimous consent that my staff, Jennifer Havrish, be granted the privilege of the floor during consideration of amendment No. 3008.

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

Mr. WYDEN. Mr. President, I also ask unanimous consent that Cindy Bethell, a fellow in my office, to be granted access to the Senate floor for the consideration of the energy bill.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that floor privileges be granted to Christopher Reed, a detailee of the Justice Department to my Judiciary Committee staff.

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

JOINT REFERRAL OF S. 2018

Mr. REID. Mr. President, I ask unanimous consent that S. 2018, the T'uf Sur Bein Preservation Trust Area Act, be jointly referred to the Committee on Energy and Natural Resources and Indian Affairs; that if one committee reports the bill, the other committee have 20 calendar days for review, excluding any period where the Senate is not in session for more than 3 days; provided further that if the second committee fails to report the measure within a 20-day period, then that committee is automatically discharged and the measure is placed on the Senate Calendar.

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

DISTRICT OF COLUMBIA COLLEGE ACCESS IMPROVEMENT ACT OF 2002

Mr. REID. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (H.R. 1499) to amend the District of Columbia College Access Act of 1999 to permit individuals who enroll in an institution of higher education more than 3 years after graduating from a secondary school and individuals who attend private historically black colleges and universities nationwide to participate in the tuition assistance programs under such Act, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the title and agree to the amendment of the Senate to the text to the bill (H.R. 1499) entitled ''An Act to amend the District of Columbia College Access Act of 1999 to permit individuals who graduated from a secondary school prior to 1998 and individuals who enroll in an institution of higher education more than 3 years after graduating from a secondary school to participate in the tuition assistance programs under such Act, and for other purposes'', with the following House amendment to Senate amendments:

In lieu of the matter proposed to be inserted by the amendment of the Senate, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''District of Columbia College Access Improvement Act of 2002''.

SEC. 2. PUBLIC SCHOOL PROGRAM.

Section 3(c)(2) of the District of Columbia College Access Act of 1999 (sec. 38–2702(c)(2), D.C. Official Code) is amended by striking subparagraphs (A) through (C) and inserting the following:

''(A)(i) in the case of an individual who begins an undergraduate course of study within 3 calendar years (excluding any period of service on active duty in the armed forces, or service under the Peace Corps Act (22 U.S.C. 2501 et seq.) or subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.)) of graduation from a secondary school, or obtaining the recognized equivalent of a secondary school diploma, was domiciled in the District of Columbia for not less than the 12 consecutive months preceding the commencement of the freshman year at an institution of higher education;

''(ii) in the case of an individual who graduated from a secondary school or received the recognized equivalent of a secondary school diploma before January 1, 1998, and is currently enrolled at an eligible institution as of the date of enactment of the District of Columbia College Access Improvement Act of 2002, was domiciled in the District of Columbia for not less than the 12 consecutive months preceding the commencement of the freshman year at an institution of higher education; or

''(iii) in the case of any other individual and an individual re-enrolling after more than a 3–year break in the individual's post-secondary education, has been domiciled in the District of Columbia for at least 5 consecutive years at the date of application;

''(B)(i) graduated from a secondary school or received the recognized equivalent of a secondary school diploma on or after January 1, 1998;

''(ii) in the case of an individual who did not graduate from a secondary school or receive a recognized equivalent of a secondary school diploma, is accepted for enrollment as a freshman at an eligible institution on or after January 1, 2002; or

''(iii) in the case of an individual who graduated from a secondary school or received the recognized equivalent of a secondary school diploma before January 1, 1998, is currently enrolled at an eligible institution as of the date of enactment of the District of Columbia College Access Improvement Act of 2002;

''(C) meets the citizenship and immigration status requirements described in section 484(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(5));''.

SEC. 3. PRIVATE SCHOOL PROGRAM.

Section 5(c)(1)(B) of the District of Columbia College Access Act of 1999 (sec. 38–2704(c)(1)(B), D.C. Official Code) is amended by striking ''the main campus of which is located in the State of Maryland or the Commonwealth of Virginia''.

SEC. 4. GENERAL REQUIREMENTS.

Section 6 of the District of Columbia College Access Act of 1999 (sec. 38–2705, D.C. Official Code) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—The Mayor of the District of Columbia may not use more than 7 percent of the total amount of Federal funds appropriated for the program, retroactive to the date of enactment of this Act (the District of Columbia College Access Act of 1999), for the administrative expenses of the program.

''(2) DEFINITION.—In this subsection, the term 'administrative expenses' means any expenses that are not directly used to pay the cost of tuition and fees for eligible students to attend eligible institutions.'';

(2) by redesignating subsections (e) and (f) as subsections (f) and (g);

(3) by inserting after subsection (d) the following:

''(e) LOCAL FUNDS.—It is the sense of Congress that the District of Columbia may appropriate such local funds as necessary for the programs under sections 3 and 5.''; and

(4) by adding at the end the following:

''(h) DEDICATED ACCOUNT FOR PROGRAMS.—

''(1) ESTABLISHMENT.—The District of Columbia government shall establish a dedicated account for the programs under sections 3 and 5 consisting of the following amounts:

''(A) The Federal funds appropriated to carry out such programs under this Act or any other Act.

''(B) Any District of Columbia funds appropriated by the District of Columbia to carry out such programs.

''(C) Any unobligated balances in amounts made available for such programs in previous fiscal years.

''(D) Interest earned on balances of the dedicated account.

''(2) USE OF FUNDS.—Amounts in the dedicated account shall be used solely to carry out the programs under sections 3 and 5.''.

SEC. 5. CONTINUATION OF CURRENT AGGREGATE LEVEL OF AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The District of Columbia College Access Act of 1999 (sec. 38–2701 et seq., D.C. Official Code) is amended by adding at the end the following new section:

''SEC. 7. LIMIT ON AGGREGATE AMOUNT OF FEDERAL FUNDS FOR PUBLIC SCHOOL AND PRIVATE SCHOOL PROGRAMS.

''The aggregate amount authorized to be appropriated to the District of Columbia for the programs under sections 3 and 5 for any fiscal year may not exceed—

''(1) $17,000,000, in the case of the aggregate amount for fiscal year 2003;

''(2) $17,000,000, in the case of the aggregate amount for fiscal year 2004; or

''(3) $17,000,000, in the case of the aggregate amount for fiscal year 2005.''.

(b) CONFORMING AMENDMENTS.—

(1) PUBLIC SCHOOL PROGRAM.—Section 3(i) of such Act (sec. 38–2702(i), D.C. Official Code) is amended by striking ''and such sums'' and inserting ''and (subject to section 7) such sums''.

(2) PRIVATE SCHOOL PROGRAM.—Section 5(f) of such Act (sec. 38–2704(f), D.C. Official Code) is amended by striking ''and such sums'' and inserting ''and (subject to section 7) such sums''.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment to the Senate amendments, and that the motion to reconsider be laid on the table.

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

EXTENDING AUTHORITY OF EXPORT-IMPORT BANK

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to S. 2019 introduced earlier today by Senator SARBANES.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2019) to extend the authority of the Export-Import Bank until April 30, 2002.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table, without intervening action or debate.

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

The bill (S. 2019) was read the third time and passed, as follows:

S. 2019

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

SECTION 1. EXTENSION OF EXPORT-IMPORT BANK.

Notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103–428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through April 30, 2002.

EXPORT-IMPORT BANK REAUTHORIZATION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 141, S. 1372, the Export-Import Bank reauthorization.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1372) to reauthorize the Export-Import Bank of the United States.

There being no objection, the Senate proceeded to consider the bill.

Mr. SARBANES. Mr. President, I rise in support of S. 1372, the Export-Import Bank Reauthorization Act. This legislation, which was reported out of the Committee on Banking, Housing, and Urban Affairs by a 21–0 vote, would reauthorize the Export-Import Bank through September 30, 2006.

The Export-Import Bank of the United States was created in 1934 and established under its present law in 1945 to aid in financing and promoting U.S. exports. The Bank operates under a renewable charter, the Export-Import Bank Act of 1945, and was last authorized in 1997 through September 30, 2001. A short-term extension through March 31, 2002 was contained in the Foreign Operations Appropriations bill enacted last year. It is thus urgent for the Congress to act on this reauthorization in order for the Eximbank to remain open and able to assist U.S. exporters to compete in international markets. In order to ensure that the Ex-Im Bank will be able to continue to function until this reauthorization bill is enacted, I am also seeking consent today on a short-term extension of the authorization of the Ex-Im Bank until April 30, 2002.

In my view, there are two compelling market-based reasons for the existence of the Ex-Im Bank. First, the Ex-Im Bank has a critical role to play in leveling the playing field for U.S. exporters by matching the public financing made available by foreign governments. In addition, the Ex-Im Bank provides leverage to U.S. negotiators seeking to achieve international agreements to limit the use of government export subsidies. U.S. exporters are able to compete effectively in international markets on the basis of price and quality. When foreign governments provide subsidized financing for their exporters, U.S. exporters are placed at a competitive disadvantage.

Second, emerging market economies can pose credit risks of such magnitude that commercial banks are reluctant to finance U.S. exports to those countries even though they may present extraordinary opportunities for U.S. exporters. The Ex-Im Bank has the difficult but important task of weighing the project in light of the country risk rating and determining if a guarantee should be provided for a commercial export loan that would make possible an export deal that otherwise would not occur.

For these reasons, the Export-Import Bank has traditionally enjoyed strong bipartisan support in the Congress. That support is reflected in the unanimous 21–0 vote in the Banking Committee in support of this legislation. I would like to thank Senator BAYH, Chairman of the International Trade and Finance Subcommittee, and Senator HAGEL, the Ranking Member of the Subcommittee, for their strong support and leadership on this legislation. I would also like to thank Senator GRAMM, the Ranking Member of the Banking Committee, for his cooperation in moving this important legislation forward.

There are four key issues addressed in this legislation: the term of the reauthorization of the Ex-Im Bank; the competitive challenge posed to the Bank by foreign market windows; Ex-Im Bank financing for small business; and the collection of information on the activities of foreign export credit agencies as part of the Ex-Im Bank's annual report. Following is a brief discussion of these issues, as well as a discussion of an amendment that will be offered on the floor by Senator ALLARD to establish an Inspector General for the Eximbank.

The legislation intentionally provided an authorization until September 30, 2006 in order to take the reauthorization of the Ex-Im Bank out of the Presidential election cycle. When the reauthorization of the Ex-Im Bank falls in the first year of a President's term, it runs the risk that a new President will be taking office, as occurred last year. In that case, a new Administration must struggle not only to put in place a new Chairman of the Ex-Im Bank but also cope with providing leadership for the reauthorization of the Ex-Im Bank as well. The Banking Committee believed that it makes more sense to put the reauthorization of the Ex-Im Bank in the second year of a President's term to assure that a new Ex-Im Bank Chairman has been put in place and has been on the job with sufficient time to provide leadership for the reauthorization of the Bank.

The second issue addressed in the legislation is the competitive challenge to the Ex-Im Bank posed by foreign market windows. In hearings held in the International Trade and Finance Subcommittee last year, witnesses from industry, academia, and the Administration commented on the growing challenges to U.S. exporters posed by foreign market windows.

Market windows are government-sponsored enterprises (for example, government owned or directed financial institutions) which provide export financing at below market rates. However, the foreign governments—notably Germany and Canada—which support them claim that these enterprises are not official export credit agencies, and thus not subject to the disciplines of the OECD Arrangement. Currently, two government entities operate very active market windows. They are the German market window KfW and the Canadian market window, the Export Development Corporation (EDC). The result is that these foreign market windows can provide subsidized export financing outside the OECD Arrangement and give their exporters a competitive advantage over U.S. exporters. Also, because these foreign market windows are not subject to the OECD disciplines, there is often a transparency problem—it is difficult to find out the terms of the financing they provide.

The Ex-Im Bank Act currently authorizes the Ex-Im Bank to ''provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with the United States.'' Since market windows are government-supported entities, the Ex-Im Bank views its current statute as providing Ex-Im Bank authority to match windows financing (but not to create its own market windows institutions). The Bank Committee agreed with that view. However, the Banking Committee believed it would be helpful to make this authority explicit so as to remove any question about Ex-Im Bank's authority and also to send a message to

the foreign market windows of U.S. concern about their operations.

As a result, the legislation contains two provisions which address market windows. The first provision directs the executive branch to seek increased transparency over the activities of market windows in the OECD Export Credit Arrangement. If it is determined that market windows are disadvantaging U.S. exporters, the U.S. would be directed to seek negotiations in the OECD for multilateral disciplines and transparency for market windows.

The second provision authorizes the Ex-Im Bank to provide financing on terms and conditions that are inconsistent with those permitted under the OECD Export Credit Arrangement to match financing terms and conditions that are being offered by market windows if such matching advances negotiations for multilateral disciplines and transparency within the OECD, or when market windows financing is being offered on terms that are more favorable than available from private financial markets. Ex-Im Bank could also match market window financing when the market window refuses to provide sufficient transparency to permit Ex-Im Bank to determine the terms and conditions of the market window financing. The Banking Committee understood that Ex-Im Bank has the authority to match market windows financing that is consistent with the terms of the OECD Arrangement.

In addition, the Banking Committee held the view that increased information was needed on the activities of foreign market windows. As a result, the bill specifies that the Bank's annual report to Congress on export credit competition should include information on export financing available to foreign competitors through market windows.

The Banking Committee believed that it was very important to make clear that Eximbank has the authority to match market windows financing in order to allow U.S. exporters to compete on a level playing field, and to direct the executive branch to seek negotiations in the OECD for multilateral disciplines and transparency for market windows financing.

The third issue is small business financing by the Eximbank. The Banking Committee has strongly supported the Ex-Im Bank's efforts to provide financing for small business. The Ex-Im Bank Act currently requires that ''the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports directly by small business concerns which shall not be less than 10 percent of such authority for each fiscal year.''

The legislation increases the requirements to 18 percent. According to the Ex-Im Bank, in FY 2000 small business comprised 18 percent of the total value of all Ex-Im Bank financing authorizations and 86 percent of all transactions supported by Ex-Im Bank. In FY 1999 these numbers were 16 percent and 86 percent respectively. In FY 1998 they were 21 percent and 85 percent respectively.

The Banking Committee believed that the requirement for Ex-Im Bank small business financing could reasonably be raised to a level of 18 percent without causing disruption to Ex-Im Bank's lending programs. Ex-Im Bank remains free to go above this level, as it has in the past, but the Committee was concerned the requiring a higher level could have the unwanted effect of tying up available Ex-Im Bank resources if the Ex-Im Bank could not achieve higher levels of small business financing in a given year.

The legislation makes a number of changes to Ex-Im Bank reporting requirements to ensure more timely and complete reporting of the activities of foreign export credit agencies.

The legislation requires the Ex-Im Bank to submit its annual competitiveness report to Congress not later than June 30 of each year. Currently, the annual competitiveness report comes to Congress in late summer/early autumn, too late to be used for any oversight or legislation in any given year. Also, with the current submission date, the Advisory Committee's annual recommendations, completed in December each year, are 8 to 9 months old. Finally, by moving the reporting date to June 30, the Ex-Im Bank will have ample time to include data on other export credit agencies, in light of the fact that the Berne Union reports on global export credit agency activity come in 45 days after the close of each quarter.

As previously mentioned, the legislation also specifies that the Bank's annual competitiveness report to Congress should include information on export financing available to foreign competitors through market windows. The legislation also requires the Ex-Im Bank to estimate the annual amount of export financing available from the government and government-related agencies and include that information in Ex-Im's annual competitiveness report.

Finally, during the Banking Committee markup on the legislation, Senator Allard offered an amendment that would have established an Inspector General for the Ex-Im Bank. Members of the Banking Committee agreed in principle that Ex-Im Bank could benefit from having an Inspector General, but concerns were raised about how an Inspector General provision should be structured. Senator Allard withdrew his amendment with the understanding that an effort would be made to reach an agreement so that this issue could be addressed on the Senate floor. An agreement has been reached on an amendment by Senator ALLARD, which he will offer on the floor, to establish an Inspector General for the Eximbank that is acceptable to the members of the Banking Committee.

I believe that S. 1372, the Export-Import Bank Reauthorization Act, is a very balanced piece of legislation which will assure that the Export-Import Bank will be able to continue to provide critically needed export financing to U.S. exporters to compete in foreign markets. I urge my colleagues to support this legislation.

Mr. BAYH. Mr. President, I rise today to offer my support for the charter reauthorization of the Export-Import Bank of the United States. The Ex-Im Bank was last reauthorized in 1997, and its charter expired in September of last year.

As Chairman of the Subcommittee on International Trade and Finance, I held two hearings last year in order to craft a bipartisan reauthorization bill that is both helpful to the Bank and to the export community. The present bill, which authorizes the Ex-Im Bank for 5 years, includes a number of important provisions that will help make the Bank more competitive with other export credit agencies.

Among other provisions, this bill requires Ex-Im to submit its Competitiveness Report to the Banking Committee by June 30 of each year. It will be more helpful to the Committee to receive that report earlier in order to be able to use its information during the reauthorization. The bill also requires Ex-Im to compile and analyze data regarding market windows and their effects on the Bank's competitiveness for the annual Competitiveness Report. This will give the Committee a clearer understanding of the amount of market window activity taking place around the world. Finally, the bill requires the Bank to estimate the annual amount of export financing available from the government and government-related agencies and to include that information in Ex-Im's Competitiveness Report. This provision would essentially require Ex-Im to rank itself against other export credit agencies.

Although the Ex-Im Bank has played an important role in increasing our country's exports, there have been a few instances in which the Bank has lent its support to exports that have helped foreign companies who are engaged in dumping products into our domestic market. For this reason, I offered an amendment to Bank's reauthorization that would prohibit the extension of a loan or guarantee to any entity subject to a countervailing or anti-dumping order. I will continue working with Senators SARBANES, DODD, GRAMM, and HAGEL to develop a compromise version of my amendment that will improve the Ex-Im Bank's adverse economic impact standards.

I understand that some people who favor a pure model of economics would view the Export-Import Bank as essentially a subsidy that would be unnecessary in the give and take of free markets and free economy. My own view is that while that model has some merit in terms of economic theory, we do not live in a theoretical world. We live in a real world. America is currently suffering from a significant balance of

trade deficit that will undoubtedly have an impact on our currency and overall economic health in years to come. It is essential that we work to provide a level playing field for American companies, particularly at a time when many of our foreign competitors receive financial support for their exports from their own governments. If our competitors offer their exporters assistance, so should we.

Since its creation in 1934, the Export Import Bank of America has contributed greatly to the welfare and well-being of America's economy. I hope that we will allow the Bank to continue its function, and I encourage my colleagues to support reauthorization of this important organization.

Mr. REID. Mr. President, I understand Senator ALLARD has an amendment at the desk. I ask unanimous consent the amendment be considered and agreed to, the motion to reconsider be laid on the table; that the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table, without intervening action or debate.

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

The amendment (No. 3029) was agreed to, as follows:

(Purpose: To establish an Inspector General at the Export-Import Bank of the United States)

At the end of the bill, add the following:

SEC. 7. INSPECTOR GENERAL OF THE EXPORT-IMPORT BANK.

(a) ESTABLISHMENT OF POSITION.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking ''or the Board of Directors of the Tennessee Valley Authority;'' and inserting ''the Board of Directors of the Tennessee Valley Authority; or the President of the Export-Import Bank;''; and

(2) in paragraph (2), by striking ''or the Tennessee Valley Authority;'' and inserting ''the Tennessee Valley Authority, or the Export-Import Bank,''.

(b) SPECIAL PROVISIONS.—The Inspector General Act of 1978 is amended—

(1) by redesignating section 8I as section 8J and inserting after section 8H the following new section:

''§ 8I. Special Provisions Relating to the Export-Import Bank of the United States

''(a) IN GENERAL.—The Inspector General of the Export-Import Bank shall not prevent or prohibit the Audit Committee from initiating, carrying out, or completing any audit or investigation or undertaking any other activities in the performance of the duties and responsibilities of the Audit Committee, including auditing the financial statements of the Export-Import Bank, determining when it is appropriate to use independent external auditors, and selecting independent external auditors. In carrying out the duties and responsibilities of Inspector General, the Inspector General of the Export-Import Bank shall not be prevented or prohibited from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Audit Committee shall make available to the Inspector General of the Export-Import Bank the reports of all audits the Committee undertakes in the discharge of its duties and responsibilities.

''(b) AUDIT COMMITTEE.—For purposes of this section, the term 'Audit Committee' means the Audit Committee of the Board of Directors of the Export-Import Bank or any successor thereof.'';

(2) in section 8J (as redesignated), by striking ''or 8H of this Act'' and inserting ''8H, or 8I of this Act''.

(c) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General of the Environmental Protection Agency the following:

''Inspector General, Export-Import Bank.''.

(d) INITIAL IMPLEMENTATION.—Section 9(a)(2) of the Inspector General Act of 1978 is amended by inserting ''to the Office of the Inspector General,'' after ''(2)''.

(e) TECHNICAL CORRECTIONS.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1)—

(A) by striking the second semicolon after ''Community Service'';

(B) by striking ''and'' after ''Financial Institutions Fund;''; and

(C) by striking ''and'' after ''Trust Corporation;''; and

(2) in paragraph (2), by striking the second comma after ''Community Service''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2002.

The bill (S. 1372), as amended, was read the third time and passed, as follows:

S. 1372

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 ''Export-Import Bank Reauthorization Act of 2001''.

SEC. 2. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2001'' and inserting ''2006''.

SEC. 3. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended to read as follows:

''(iii) The sub-Saharan Africa advisory committee shall terminate on September 30, 2006.''.

SEC. 4. GUARANTEES, INSURANCE, EXTENSION OF CREDIT.

Section 2(b)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(A)) is amended—

(1) in the fourth sentence, by striking ''on an annual basis'' and inserting ''not later than June 30 each year'';

(2) in the fifth sentence, by inserting ''(including through use of market windows)'' after ''United States exporters''; and

(3) by inserting after the fifth sentence, the following new sentence: ''With respect to the proceeding sentence, the Bank shall use all available information to estimate the annual amount of export financing available from other governments and government-related agencies.''.

SEC. 5. FINANCING FOR SMALL BUSINESS.

Section 2(b)(1)(E)(v) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(E)(v)) is amended by striking ''10'' and inserting ''18''.

SEC. 6. MARKET WINDOWS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end the following new section:

''SEC. 15. MARKET WINDOWS.

''(a) ENHANCED TRANSPARENCY.—To ensure that the Bank financing remains fully competitive, the United States should seek enhanced transparency over the activities of market windows in the OECD Export Credit Arrangement. If such transparency indicates that market windows are disadvantaging United States exporters, the United States should seek negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement.

''(b) AUTHORIZATION.—The Bank is authorized to provide financing on terms and conditions that are inconsistent with those permitted under the OECD Export Credit Arrangement—

''(1) to match financing terms and conditions that are being offered by market windows on terms that are inconsistent with those permitted under the OECD Export Credit Arrangement, if—

''(A) matching such terms and conditions advances the negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement; or

''(B) transparency verifies that the market window financing is being offered on terms that are more favorable than the terms and conditions that are available from private financial markets; and

''(2) when the foreign government-supported institution refuses to provide sufficient transparency to permit the Bank to make a determination under paragraph (1).

''(c) DEFINITION.—In this section, the term 'OECD' means the Organization for Economic Cooperation and Development.''.

SEC. 7. INSPECTOR GENERAL OF THE EXPORT-IMPORT BANK.

(a) ESTABLISHMENT OF POSITION.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking ''or the Board of Directors of the Tennessee Valley Authority;'' and inserting ''the Board of Directors of the Tennessee Valley Authority; or the President of the Export-Import Bank;''; and

(2) in paragraph (2), by striking ''or the Tennessee Valley Authority;'' and inserting ''the Tennessee Valley Authority, or the Export-Import Bank,''.

(b) SPECIAL PROVISIONS.—The Inspector General Act of 1978 is amended—

(1) by redesignating section 8I as section 8J and inserting after section 8H the following new section:

''§ 8I. Special Provisions Relating to the Export-Import Bank of the United States

''(a) IN GENERAL.—The Inspector General of the Export-Import Bank shall not prevent or prohibit the Audit Committee from initiating, carrying out, or completing any audit or investigation or undertaking any other activities in the performance of the duties and responsibilities of the Audit Committee, including auditing the financial statements of the Export-Import Bank, determining when it is appropriate to use independent external auditors, and selecting independent external auditors. In carrying out the duties and responsibilities of Inspector General, the Inspector General of the Export-Import Bank shall not be prevented or prohibited from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Audit Committee shall make available to the Inspector General of the Export-Import Bank the reports of all audits the Committee undertakes in the discharge of its duties and responsibilities.

''(b) AUDIT COMMITTEE.—For purposes of this section, the term 'Audit Committee' means the Audit Committee of the Board of Directors of the Export-Import Bank or any successor thereof.'';

(2) in section 8J (as redesignated), by striking ''or 8H of this Act'' and inserting ''8H, or 8I of this Act''.

(c) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General of the Environmental Protection Agency the following:

''Inspector General, Export-Import Bank.''.

(d) INITIAL IMPLEMENTATION.—Section 9(a)(2) of the Inspector General Act of 1978 is amended by inserting ''to the Office of the Inspector General,'' after ''(2)''.

(e) TECHNICAL CORRECTIONS.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1)—

(A) by striking the second semicolon after ''Community Service'';

(B) by striking ''and'' after ''Financial Institutions Fund;''; and

(C) by striking ''and'' after ''Trust Corporation;''; and

(2) in paragraph (2), by striking the second comma after ''Community Service''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2002.

ORDERS FOR FRIDAY, MARCH 15, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:15 a.m. tomorrow, Friday, March 15; that following the prayer and the pledge, the Journal of the proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day; that the Senate proceed to executive session to consider Calendar No. 704, and the Senate vote on the nomination, without intervening action or debate; further, that it be in order to request the yeas and nays on the nomination at this time.

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

Mr. REID. I therefore ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, I ask unanimous consent that following the disposition of the nomination, the motion to reconsider be laid upon the table, any statements thereon appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and the Senate return to legislative session.

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

Mr. REID. Mr. President, we certainly appreciate you today for being so courteous and patient and waiting for everybody to complete their work.

My only comment is, after all this debate for several hours today, it is interesting that tomorrow the Senate will be on a judicial nomination.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:23 p.m., adjourned until Friday, March 15, 2002, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate March 14, 2002:

DEPARTMENT OF AGRICULTURE

PHYLLIS K. FONG, OF MARYLAND, TO BE INSPECTOR GENERAL, DEPARTMENT OF AGRICULTURE, VICE ROGER C. VIADERO, RESIGNED.

FEDERAL MARITIME COMMISSION

STEVEN ROBERT BLUST, OF FLORIDA, TO BE A FEDERAL MARITIME COMMISSIONER FOR A TERM EXPIRING JUNE 30, 2006, VICE ANTONY M. MERCK, TERM EXPIRED.

DEPARTMENT OF LABOR

W. ROY GRIZZARD, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE JOHN MARTIN MANLEY, RESIGNED.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EVELYN DEE POTTER ROSE, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 2006, VICE RICHARD J. STERN, TERM EXPIRED.

CELESTE COLGAN, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2008, VICE JOHN N. MOLINE, TERM EXPIRED.

WILFRED M. MCCLAY, OF TENNESSEE, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2006, VICE BILL DUKE.