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Senate

The Senate met at 9:15 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

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

Dear God, our hearts are often restless; we long to rest in You. We feel an inner emptiness only You can fill, a hunger only You can satisfy, a thirst only You can quench. All our needs are small in comparison to our deepest need for You. No human love can fulfill our yearning for Your grace. No position can satisfy our quest for significance. No achievement can substitute for Your acceptance. Our relationship with You is ultimately all that counts. There is no joy greater than knowing You, no peace more lasting than Your shalom in our souls, no power more energizing than Your enabling Spirit empowering us. This is the day You have made for us to enjoy and to serve You. Grant us the greatness of seeking Your best for our Nation and working together as patriots. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

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

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 26, 2002.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

Mr. REED 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. Prior to the Chair announcing morning business time, I would advise the Senate that we are going to be in a period of morning business until 11:15. At that time, we will resume consideration of the Homeland Security Act. Cloture was filed on the Gramm-Miller amendment to homeland security. Senators have until 1 p.m. to file first-degree amendments.

Senator DASCHLE and I, in private conversations, have indicated to the minority that we would be willing to move this vote to today. Under the rules, it is tomorrow. We would be willing to have the vote today. We are concerned, I am concerned, and we have been told by Senators on the other side, they have 30 speakers on this amendment. As people who know how the Senate works, that is a big flag for ''we are stalling.''

As I indicated, we will at the appropriate time ask that the vote be moved up until today. If they are serious about this legislation, this should indicate their seriousness.

When the Chair moves to morning business today, I ask unanimous consent, on the Democratic side, Senator BINGAMAN be recognized for 10 minutes and Senator LEAHY for 15 minutes. Senator BINGAMAN, of course, is chairman of the Energy and Natural Resources Committee and Senator LEAHY is chairman of the Judiciary Committee. Next is Senator JOHNSON for 10 minutes and Senator DORGAN after that for 20 minutes. I ask unanimous consent for that order.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11:15 a.m., with Senators permitted to speak therein for up to 10 minutes each. Under the previous order, the first half of the time will be under the control of the majority leader or his designee. Pursuant to the order, the Senator from New Mexico is recognized.

THE ECONOMY AND IRAQ

Mr. BINGAMAN. Mr. President, I appreciate the opportunity to speak. I want to address a growing disconnect that I detect between what I am hearing in my home State of New Mexico and much of what I am hearing and reading here in Washington, DC. Frankly, I begin to worry when we are talking about one thing in Washington while the people we represent at home are talking about other things, or talking about them in different ways—in coffee klatsches, in barber shops, in various settings.

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

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What do I mean by that? I mean in Washington in recent weeks the drumbeat has been about how we need to prepare for and pursue an attack on Iraq, and how the United Nations had better get its act together to pursue this effort in weeks rather than months or we would unilaterally act in its place.

In my State, there is talk about Iraq. Frankly, there is a great deal of concern about what is being planned and what is being contemplated, on what timetable. But the main issue I hear from people in my State relates to the economy and what is happening in the economy. Why would the economy be a major issue in New Mexico, somebody might ask? One reason is the article that appeared in the Albuquerque Journal yesterday with a headline that says, ''New Mexico Tops U.S. for Poverty in 2001.''

It indicates the poverty rate for the U.S. was at 11.7 percent last year, and in my State it was 17.7 percent of our population living below the poverty line. The median income for the same period dropped over $700 between 2000 and 2001. Income levels fell for every group. This is according to the U.S. Census. This is not some group with an axe to grind. This was the U.S. Census that reported that income levels fell for every group except the very richest and the very poorest. So that is one reason people are concerned about the economy.

Another reason is because of what is happening to their pension plans, to their 401(k)s. I heard a discussion a week or so ago where I thought one of the commentators made a very good point. He said there will be an October surprise this year. As we approach elections in this country there is always a concern on the part of people who watch the political comings and goings that there will be an October surprise; something will be done in October to try to change the outcome of the election. In fact, this commentator said there will be an October surprise, but the surprise will be when each person opens their quarterly report showing where their retirement savings now stand, where they stand in their 401(k). They will see a dramatic decline in the amount of retirement savings that they have because of what is happening in the economy.

More and more people are worried that nobody in Washington—and this is what I begin to pick up in my State—there is a concern that no one in Washington seems concerned. No one seems concerned about the economy. There is no talk about any strategy to improve the economy. There is no plan to improve the economy.

To hear the pronouncements that have come out of the administration in recent weeks and months, you would think the economy is just fine, that everything is humming right along. At least we are no longer hearing from the Secretary of Treasury and others that we are on the cusp of a rebound in the economy. That talk has faded. But certainly there is no talk about any plan or any suggestion about how we are going to strengthen the U.S. economy. And the fact that we are not talking about it is of concern.

It is possible I am just reading the wrong newspapers, watching the wrong TV reports. Maybe there is something being planned. Maybe there is some strategy that is being developed in the administration. I have not seen it. I hope there is. My strong belief, though, is that the administration's basic position on the economy is: Stay the course.

The problem with staying the course is this is not a very good course for the average American. It is not a very good course for the average person in my State. So I hope we will begin to hear something here in Washington about this issue which is dominating the discussion in my home State.

Let me also say something about this threatened war in Iraq. Obviously, Americans want to deal with any imminent threat to our Nation's security. I think much more so are we ready to do that after the catastrophe of 9/11. If weapons of mass destruction have been developed or are being developed with the intent to use those against us or against our allies, then that is a threat that requires us to act. I think there is general agreement on it.

We all share the goal of wanting to eliminate the threat of these weapons. But the question we need to debate is the means for accomplishing the goal. So far the means that the administration has insisted upon and put forward is a so-called regime change. That is the means. We are going to pursue a regime change. That is an interesting phrase. That is a euphemism for attacking Iraq, killing or capturing Saddam Hussein and his cadre of leaders, and replacing them with the leadership of our choice. There are some potential problems with pursuing that particular means to deal with these weapons of mass destruction. Let me just mention a few of those problems which have been discussed by others but need to be discussed even more.

One is what is the precedent we are setting? This is not a normal course for our country to pursue, attacking and invading another country without some imminent threat being demonstrated.

Second, the implications: What are the implications of such action for our relations with other Arab countries?

Third, what is the cost to us in resources? One figure we heard from the administration was $100 billion. What is the cost? What is the cost in American lives we must anticipate?

The question is, who would constitute the successor government if we are going to displace this government and put in place a government more to our liking; who would that be?

The questions of how large and how prolonged a commitment do the American people want to make to the rebuilding of Iraq, to bringing reforms to Iraq, the effect of such an attack on world oil markets and the price of oil, the spikes in the price of oil that might occur and what that might do to our own economy, are legitimate.

They are questions people in my State are concerned about and they are questions we need to have fully considered in Washington.

We need to look at other possible means besides just the simple approach of regime change. One set of ideas that has been put forward recently, that I think deserves attention and I want to just call it to the attention of my colleagues today, is a paper prepared by Jessica Mathews, President of the Carnegie Endowment for International Peace, entitled, ''A New Approach, Coercive Inspections.''

This is a serious proposal and one that deserves serious attention. Essentially, the idea is that if our primary goal is to deal with weapons of mass destruction and the threat that those weapons pose when held by Iraq, then we need to consider, perhaps, a middle ground between the unacceptable status quo, which none of us like, and this idea of full-scale invasion of Iraq in order to change the regime. It proposes a third approach. It proposes a new regime of coercive international inspections where we would have a multinational military force created by the Security Council, which we would participate in, and which would be there to ensure that inspections take place as the U.N. has indicated they would. There would be several advantages if we were able to pursue that kind of option.

It would have the advantage of assuring our allies that we want to work with them and not go it alone. It would assure the world that our priority is what we say it is, and that is eliminating the threat of weapons of mass destruction, not just evening old scores with Saddam Hussein. It avoids military conflict, if the goal of weapons inspection and weapons destruction can be achieved without military conflict. It reserves the option of force being used.

Frankly, pursuing a course such as this on Iraq would allow us to tone down the saber rattling, to calm anxieties here at home and in the world community. I think there is a great benefit that can be achieved from that, not only in our relations with our allies but I believe the economy also would benefit from believing we are pursuing a more measured course such as is described in this paper.

This is not the only proposal for how we should proceed. Maybe it is not the best, but it is certainly a serious proposal and one we should consider before we rush to authorize the President to use any and all force to bring justice and peace to that region of the world.

In conclusion, people in my State want to know what is going to happen on the economy, what this Government is going to do to help them pursue a

better life and have greater economic opportunity in the future. They also, with regard to Iraq, expect us to think before we act. They hope—I hope—this President and this administration are not so committed to a single course of action that serious discussion and serious consideration of proposals such as this are precluded.

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

I ask unanimous consent the paper to which I referred be printed in the RECORD.

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

The papers in this collection grew out of discussions held at the Carnegie Endowment for International Peace from late April to late July of this year. The discussions included top regional and military experts, former inspectors with dozens of man-years' experience in Iraq, and individuals with intimate knowledge of the diplomatic situation at the United Nations.

A NEW APPROACH: COERCIVE INSPECTIONS

(By Jessica T. Matthews, President, Carnegie Endowment for International Peace)

The summary proposal that follows draws heavily on the expertise of all those who participated in the Carnegie discussions on Iraq and on the individually authored papers. Further explanation and greater detail on virtually every point, especially the proposal's military aspects, can be found therein.

With rising emphasis in recent months, the president has made clear that the United States' number one concern in Iraq is its pursuit of weapons of mass destruction (WMD). No link has yet been found between Baghdad's assertively secular regime and radical Islamist terrorists. There is much else about the Iraqi government that is fiercely objectionable but nothing that presents an imminent threat to the region, the United States, or the world. Thus, the United States' primary goal is, and should be, to deal with the WMD threat.

In light of what is now a four-year-long absence of international inspectors from the country, it has been widely assumed that the United States has only two options regarding that threat: continue to do nothing to find and destroy Iraq's nuclear, chemical, biological, and missile programs, or pursue covert action or a full-scale military operation to overthrow Saddam Hussein. At best, the latter would be a unilateral initiative with grudging partners.

This paper proposes a third approach, a middle ground between an unacceptable status quo that allows Iraqi WMD programs to continue and the enormous costs and risks of an invasion. It proposes a new regime of coercive international inspections. A powerful, multinational military force, created by the UN Security Council, would enable UN and International Atomic Energy Agency (IAEA) inspection teams to carry out ''comply or else'' inspections. The ''or else'' is overthrow of the regime. The burden of choosing war is placed squarely on Saddam Hussein. The middle-ground option is a radical change from the earlier international inspection effort in which the playing field was tilted steeply in Iraq's favor. It requires a military commitment sufficient to pose a credible threat to Iraq and would take a vigorous diplomatic initiative on Washington's part to launch. Long-term success would require sustained unity of purpose among the major powers. These difficulties make this approach attractive only in comparison to the alternatives, but in that light, its virtues emerge sharply.

Inspections backed by a force authorized by the UN Security Council would carry unimpeachable legitimacy and command broad international support. The effort would therefore strengthen, rather than undermine, the cooperation the United States needs for long-term success in the war against terrorism. It would avoid setting a dangerous precedent of a unilateral right to attack in ''preventive self-defense.'' Although not likely to be welcomed by Iraq's neighbors, it would be their clear choice over war. Regional assistance (basing, over-flight rights, and so on) should therefore be more forthcoming. If successful, it would reduce Iraq's WMD threat to negligible levels. If a failure, it would lay an operational and political basis for a transition to a war to oust Saddam. The United States would be seen to have worked through the United Nations with the rest of the world rather than alone, and Iraq's intent would have been cleanly tested and found wanting. Baghdad would be isolated. In these circumstances, the risks to the region of a war to overthrow Iraq's government-from domestic pressure on shaky governments (Pakistan) to government misreading U.S. intentions (Iran) to heightened Arab and Islamic anger toward the United States-would be sharply diminished.

Compared to a war aimed at regime change, the approach greatly reduces the risk of Saddam's using whatever WMD he has (probably against Israel) while a force aimed at his destruction is being assembled. On the political front, coercive inspections avoid the looming question of what regime would replace the current government. It would also avoid the risks of persistent instability in Iraq, its possible disintegration into Shia, Suni, and Kurdish regions, and the need to station tens of thousands of U.S. troops in the country for what could be a very long time.

A year ago, the approach would have been impossible. Since then, however, four factors have combined to make it achievable: Greatly increased concern about WMD in the wake of September 11; Iraq's continued lies and intransigence even after major reform of the UN sanctions regime; Russia's embrace of the United States after the September 11 attacks, and the Bush administration's threats of unilateral military action, which have opened a political space that did not exist before.

Together, these changes have restored a consensus among the Security Council's five permanent members (P–5) regarding the need for action on Iraq's WMD that has not existed for the past five years.

CORE PREMISES

Several key premises underlie the new approach.

Inspections can work. In their first five years, the United Nations Special Commission on Iraq (UNSCOM), which was responsible for inspecting and disarming Iraq's chemical, biological, and missile materials and capacities, and the IAEA Iraq Action Team, which did the same for Iraq's nuclear ones, achieved substantial successes. With sufficient human and technological resources, time, and political support, inspections can reduce Iraq's WMD threat, if not to zero, to a negligible level. (The term inspections encompasses a resumed discovery and disarmament phase and intrusive, ongoing monitoring and verification extending to dual-use facilities and the activities of key individuals.)

Saddam Hussein's overhelming priority is to stay in power. He will wilingly give up pursuit of WMD, but he will do so if convinced that the only alternative is his certain destruction and that of his regime.

A credible and continuing military threat involving substantial forces on Iraq's borders will be necessary both to get the inspectors back into Iraq and to enable them to do their job. The record from 1991 to the present makes clear that Iraq views UN WMD inspections as war by other means. There is no reason to expect this to change. Sanctions, inducements, negotiations, or periodic air strikes will not suffice to restore effective inspection. Negotiations in the present circumstances only serve Baghdad's goals of delay and diversion.

The UNSOM/IAEA successes also critically depended on unity of purpose within the UN Security Council. No amount of military force will be effective without unwavering political resolve behind it. Effective inspections cannot be reestablished until a way forward is found that the manor powers and key regional states can support under the UN Charter.

NEGOTIATING COERCIVE INSPECTIONS

From roughly 1997 until recently, determined Iraqi diplomacy succeeded in dividing the P–5. Today, principally due to Iraq's behavior, Russia's new geopolitical stance, and U.S.-led reform of the sanctions regime, a limited consensus has reemerged. There is now agreement that Iraq has not met its obligations under UN Resolution 687 (which created the inspections regime) and that there is a need for the return of inspectors to Iraq. There is also support behind the new, yet-to-be tested inspection team known as the UN Monitoring, Verification, and Inspection Commission (UNMOVIC, created in December 1999 under Resolution 1284). Because three members of the P–5 abstained on the vote to create UNMOVIC, this development is particularly noteworthy. The May 2002 adoption of a revised sanctions plan was further evidence of a still fragile but real and evolving convergence of view on the Security Council.

Perhaps paradoxically, U.S. threats to act unilaterally against Iraq have the potential to strengthen this limited consensus. France, Russia, and China strongly share the view that only the Security Council can authorize the use of a force—a view to which Great Britain is also sympathetic. All four know that after eleven years of the United Nations' handling of the issue, a U.S. decision to act unilaterally against Iraq would be a tremendous blow to the authority of the institution and the Security Council in particular. They want to avoid any further marginalization of the Council since that would translate into a diminution of their individual influence. Thus, U.S. threats provide these four countries with a shared interest in finding a formula for the use of force against Iraq that would be effective, acceptable to the United States, and able to be authorized by the Council as a whole. That formula could be found in a resolution authorizing multinational enforcement action to enable UNMOVIC to carry out its mandate.

Achieving such an outcome would require a tremendous diplomatic effort on Washington's part. That, however, should to be a seen as a serious deterrent. Achieving desired outcomes without resort to war is, in the first instance, what power is for. Launching the middle-ground approach would amount, in effect, to Washington and the rest of the P–5 re-seizing the diplomatic initiative from Baghdad.

The critical element will be that the United States makes clear that it forswears unilateral military action against Iraq for as long as international inspections are working. The United States would have to convince Iraq and others that this is not a perfunctory bow to international opinion preparatory to an invasion and that the United States' intent is to see inspections succeed, not a ruse to have them quickly fail. If Iraq

is not convinced, it would have no reason to comply; indeed, quite the reverse because Baghdad would need whatever WMD it has to deter or fight with a U.S. attack. Given the past history, many countries will be deeply skeptical. To succeed, Washington will have to be steady, unequivocal, and unambiguous on this point.

This does not mean that Washington need alter its declaratory policy favoring regime change in Iraq. Its stance would be that the United States continues to support regime change but will not take action to force it while Iraq is in full compliance with international inspections. There would be nothing unusual in such a position. The United States has, for example, had a declaratory policy for regime change in Cuba for more than forty years.

Beyond the Security Council, U.S. diplomacy will need to recognize the significant differences in strategic interests among the states in the region. Some want a strong Iraq to offset Iran. Others fear a prosperous, pro-West Iraq producing oil to its full potential. Many fear and oppose U.S. military dominance in the region. Virtually all, however, agree that Iraq should be free of WMD, and they universally fear the instability that is likely to accompany a violent overthrow of the Iraqi government.

Moreover, notwithstanding the substantial U.S. presence required for enforced inspections and what will be widely felt to be an unfair double standard (acting against Iraq's WMD but not against Israel's), public opinion throughout the region would certainly be less aroused by multlaellateral inspections than by a unilateral U.S. invasion.

Thus, if faced with a choice between a war to achieve regime change and an armed, multilateral effort to eradicate Iraq's WMD, all the region's governments are likely to share a clear preference for the latter.

IMPLEMENTING COERCIVE INSPECTIONS

Under the coercive inspections plan, the Security Council would authorize the creation of an Inspections Implementation Force (IIF) to act as the enforcement arm for UNMOVIC and the IAEA task force. Under the new resolution, the inspections process is transformed from a game of cat and mouse punctuated by diversions and manufactured crises, in which conditions heavily favor Iraqi obstruction, into a last chance, ''comply or else'' operation. The inspection teams would return to Iraq accompanied by a military arm strong enough to force immediate entry into any site at any time with complete security for the inspection team. No terms would be negotiated regarding the dates, duration, or modalities of inspection. If Iraq chose not to accept, or established a record of noncompliance, the U.S. regime-change option or, better, a UN authorization of ''use of all necessary means'' would come into play.

Overall control is vested in the civilian executive chairman of the inspection teams. He would determine what sites will be inspected, without interference for the Security Council, and whether military forces should accompany any particular inspection. Some inspections—for example, personnel interviews—may be better conducted without any accompanying force; others will require maximum insurance of prompt entry and protection. The size and composition of the accompanying force would be the decision of the IIF commander, and its employment would be under his command.

The IIF must be strong and mobile enough to support full inspection of any site, including socalled sensitive sites and those previously designated as off limits. ''No-fly'' and ''no-drive'' zones near to-be-inspected sites would be imposed with minimal advance notice to Baghdad. Violations of these bans would subject the opposing forces to attack. Robust operational and communications security would allow surprise inspections. In the event surprise fails and ''spontaneous'' gatherings of civilians attempt to impede inspections, rapid response riot control units must be available.

The IIF must be highly mobile, composed principally of air and armored cavalry units. It might include an armored cavalry regiment or equivalent on the Jordan-Iraq border, an air-mobile brigade in eastern Turkey, and two or more brigades and corps-sized infrastructure based in Saudi Arabia and Kuwait. Air support including fighter and fighterbomber aircraft and continuous air and ground surveillance, provided by AWACS and JSTARS, will be required. The IIF must have a highly sophisticated intelligence capability. Iraq has become quite experienced in concealment and in its ability to penetrate and mislead inspection teams. It has had four unimpeded years to construct new underground sites, build mobile facilities, alter records, and so on. To overcome that advantage and ensure military success, the force must be equipped with the full range of reconnaissance, surveillance, listening, encryption, and photo interpretation capabilities.

The bulk of the force will be U.S. For critical political reasons, however, the IIF must be as multinational as possible and as small as practicable. Its design and composition should strive to make clear that the IIF is not a U.S. invasion force in disguise, but a UN enforcement force. Optimally, it would include, at a minimum, elements from all of the P–5, Turkey, Saudi Arabia, and Jordan, as well as others in the region.

Consistent with the IIF's mandate and UN origin, Washington will have to rigorously resist the temptation to use the force's access and the information it collects for purposes unrelated to its job. Nothing will more quickly sow division within the Security Council than excesses in this regard.

Operationally, on the civilian front, experts disagree as to whether UNMOVIC's mandate contains disabling weaknesses. Although some provisions could certainly be improved, it would be unwise to attempt to renegotiate Resolution 1284. Some of its weaknesses can be overcome in practice by tacit agreement (some have already been), some will be met by the vastly greater technological capabilities conferred by the IIF, and some can be corrected through the language of the IIF resolution. Four factors are critical:

Adequate time. The inspection process must not be placed under any arbitrary deadline because that would provide Baghdad with an enormous incentive for delay. It is in everyone's interest to complete the disarmament phase of the job as quickly as possible, but timelines cannot be fixed in advance.

Experienced personnel. UNMOVIC must not be forced to climb a learning curve as UNSCOM did but must be ready to operate with maximum effectiveness from the outset. To do so, it must be able to take full advantage of individuals with irreplaceable, on-the-ground experience.

Provision for two-way intelligence sharing with national governments. UNSCOM experience proves that provision for intelligence sharing with national governments is indispensable. Inspectors need must information not available from open sources or commercial satellites and prompt, direct access to defectors. For their part, intelligence agencies will not provide a flow of information without feedback on its value and accuracy. It must be accepted by all governments that such interactions are necessary and that the dialogue between providers and users would be on a strictly confidential, bilateral basis, protected from other governemnts. The individual in charge of information collection and assessment on the inspection team should have an intelligence background and command the trust of those governments that provide the bulk of the intelligence.

Ability to track Iraqi procurement activities outside the country. UNSCOM discovered covert transactions between Iraq and more than 500 companies from more than 40 countries between 1993 and 1998. Successful inspections would absolutely depend, therefore, on the team's authority to track procurement efforts both inside and outside Iraq, including at Iraqi embassies abroad. Accordingly, UNMOVIC should include a staff of specially trained customs experts, and inspections would need to include relevant ministries, commercial banks, and trading companies. As with military intelligence, tracking Iraqi procurement must not be used to collect unrelated commercial and technical intelligence or impede legal trade.

CONCLUSION

War should never be undertaken until the alternatives have been exhausted. In this case that moral imperative is buttressed by the very real possibility that a war to overthrow Saddam Hussein, even if successful in doing so, could subtract more from U.S. security and long-term political interests that it adds.

Political chaos in Iraq or an equally bad successor regime committed to WMD to prevent an invasion from ever happening again, possibly horrible costs to Israel, greater enmity toward the United States among Arab and other Muslim publics, a severe blow to the authority of the United Nations and the Security Council, and a giant step by the United States toward-in Zbigniew Brzezinski's phrase-political self-isolation are just some of the costs, in addition to potentially severe economic impacts and the loss of American and innocent Iraqi lives, that must be weighed.

In this case alternative does exist. It blends the imperative for military threat against a regime that has learned how to divide and conquer the major powers with the legitimacy of UN sanction and multilateral action. Technically and operationally, it is less demanding than a war. Diplomatically, it requires a much greater effort for a greater gain. The message of an unswerving international determination to halt WMD proliferation will be heard far beyond Iraq. The only real question is can the major powers see their mutual interest, act together, and stay the course? Who is more determined—Iraq or the P–5?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I am fortunate to represent a State whose citizens have long been involved in international affairs. Whether through military or diplomatic service, volunteering for the Peace Corps, studying abroad, or because we live on a great international border, Vermonters have strong views about these issues.

I was in Vermont this past weekend, and as always I had the opportunity to speak to many Vermonters from all walks of life. I can say, beyond any doubt, that Vermonters across the political spectrum are very concerned about our policy toward Iraq.

They are worried that we are shifting our focus away from ending the violence in the Middle East, eliminating

al-Qaida, and rebuilding Afghanistan even though that Herculean task has barely begun.

The President has sent to Congress a proposed resolution for the use of military force against Iraq. It would permit the President to take any action whatsoever to ''defend the national security interests of the United States against the threat posed by Iraq, and restore international peace and security in the region.''

While I hope this is the beginning of a consultative, bipartisan process to produce a sensible resolution and to act on it at the appropriate time, the current proposal is an extraordinarily over-broad, open-ended resolution that would authorize the President to send American troops not only into war against Iraq, but also against any nation in the Gulf or Middle East region, however one defines it.

Declaring war, or providing the authority to wage war, is the single most important responsibility given to Congress under the Constitution. As history has shown, wars inevitably have unforeseen, terrible consequences, especially for innocent civilians.

Blank-check resolutions, such as the one the President proposes, can likewise be misinterpreted or used in ways that we do not intend or expect. It has happened before, in ways that many people, including Members of Congress, came to regret. That is why a thorough debate is so necessary. And that is also why this Vermonter will not vote for a blank check for this President or any President. My conscience and the Constitution do not allow it.

The timing of the debate is also important. Congress is being asked to send Americans into battle, even though diplomatic efforts have not yet been exhausted. Nor do we have a complete assessment by U.S. intelligence agencies of the threat that Iraq poses to the United States.

I will have more to say when the debate on the resolution occurs. But I do want to take a few minutes to share some initial thoughts as we begin to consider this difficult question.

The question we face is not whether Saddam Hussein is a menace to his people, to his neighbors and to our national security interests. The Iraqi regime has already invaded Iran and Kuwait, gassed members of its own population, and repeatedly flouted international conventions against armed aggression. It is clear that Iraq has tried to develop a range of weapons of mass destruction, including nuclear, chemical, and biological weapons, with which Iraq might threaten the entire Gulf region.

I would like to see Saddam Hussein gone as much as anyone. But the question is, how immediate is this threat and what is the best way to deal with it, without undercutting our principal goal of protecting the American people from terrorism, promoting peace in the Middle East, and other important U.S. national security priorities?

Some administration officials have suggested that to ask questions about going to war in Iraq is somehow unpatriotic, or indicative of a lack of concern about national security. That is nothing more than election year partisan politics at its worst. These questions are being asked by Americans in every State of the Union.

Until recently our focus has been, rightly so, on destroying al-Qaida and other terrorist networks. While that challenge has already cost billions of dollars and continues to occupy the attention and resources of the Department of Defense and the U.S. intelligence community, the administration has suddenly shifted gears and is now rushing headlong toward war with Iraq.

Some have argued that Congress must act now to strengthen the President's hand as the administration negotiates at the United Nations.

But what we would really be saying is that regardless of what the Security Council does, we have already decided to go our own way. I contrast that with the situation in 1990 when the United States successfully assembled a broad international coalition to fight the Gulf War. The Congress passed a resolution only after the U.N. acted.

President Bush deserves credit for focusing the world's attention on international terrorism and weapons of mass destruction. I have said this over and over again. But the process that has brought us to the brink of preparing for war with Iraq has been notable for its confusion.

The statements of administration officials have been fraught with inconsistencies. They claim to speak for the American people, but average Americans are urging the administration to proceed cautiously on Iraq and to work with the United Nations and the Congress. Our allies are confused and angry about the way this has been handled. Our friends in the Middle East are fearful of what lies ahead.

Fortunately, the President heeded calls to go to the United Nations, and in his speech to the General Assembly he described in great detail Saddam Hussein's long history of deception and defiance of U.N. resolutions. I commended that speech. I am also pleased that it focused on enforcing those resolutions, especially concerning weapons of mass destruction.

But the American people need to hear more than generalized accusations and threatening ultimatums. They need to know the scope and urgency of the problem, Saddam's current and future capabilities, the options for solving the problem, and the short and long-term implications of each course of action, including the very real dangers of unintended consequences.

I agree with the President when he says that Saddam Hussein cannot be trusted and that disarming Iraq is the goal. But the first way to try to accomplish this is not through precipitous, unilateral military action. Rather, it is by building an alliance and working through the United Nations.

Earlier this week, the former Chairman of the Joint Chiefs of Staff, General John Shalikashvili, warned the administration of the dangers of attacking Iraq without the backing of the United Nations:

> We are a global nation with global interests, and undermining the credibility of the United Nations does very little to help provide stability and security and safety to the rest of the world, where we have to operate for economic reasons and political reasons.

Working through the United Nations to readmit the weapons inspectors could be effective in disarming Iraq. Rolf Ekeus the former executive chairman of UNSCOM, has stated:

> International weapons inspectors, if properly backed up by international force, can unearth Saddam Hussein's weapons programs. If we believe that Iraq would be much less of a threat without such weapons, the obvious thing is to focus on getting rid of the weapons. Doing that through an inspection team is not only the most effective way, but would cost less in lives and destruction than an invasion.

A study by the Carnegie Endowment, co-authored by former U.S. military and United Nations officials, supports this view: ''With sufficient human and technological resources, time, and political support, inspections can reduce Iraq's [weapons of mass destruction] threat, if not to zero, to a negligible level.''

There are distinct advantages to this approach. For one, if Iraq again refuses to comply with U.N. demands, there will be a much stronger case for more forceful action.

It would also help mitigate potential damage to our relations with other nations whose support we need to achieve other important U.S. goals, such as capturing terrorists or promoting peace in the Middle East.

Diplomacy is often tedious. It does not usually make the headlines or the evening news, and much has been made of our past diplomatic failures. But history has shown over and over that diplomacy can not only protect our national interests, it can also enhance the effectiveness of military force when force becomes necessary.

Many experts believe that, despite deception by the Iraqis, the U.N. inspection process destroyed much of the Iraqi weapons program, and new inspections could succeed in substantially disarming Saddam. However, the U.N. regime broke down when Saddam Hussein starting blocking the inspections and the Security Council was divided on how to respond.

I support the unconditional return of inspectors backed up by an international military force. But, the world must not repeat the mistakes of 1998. We have already seen some troubling signs of diplomatic double talk from the Iraqis, particularly on the issue of unimpeded access for the inspectors. The international community cannot tolerate deception and defiance on the part of the Iraqis, and Secretary Powell is right to push for a new U.N. resolution.

Other members of the Security Council should join United States and British efforts to craft a strong new resolution with a deadline for Iraqi compliance. The U.N. has a responsibility to enforce its demands. If the U.N. does not act to ensure that the inspection regime is effectively structured, we will end up back where we were in 1998. Saddam will play the same cat and mouse game, the U.N. will look toothless, and we will be not be able to destroy the Iraqi weapons program.

We need a strengthened inspection regime that has preexisting authority from the Security Council to deploy military force to back up the inspectors if there is resistance from Iraq. I hope that the Administration works with the United Nations, not so much the other way around, to make this happen.

If Iraq resists the inspections, and the President decides to use military force, then the procedure is clear. He can seek a declaration of war from the Congress, and the Congress can vote. But voting on such a resolution at this time would be premature.

A decision to invade Iraq to topple Saddam Hussein should be based on a complete assessment of Iraq's arsenal of weapons of mass destruction, and the threat Iraq poses to the United States. What is the evidence—as opposed to assertions and assumptions—that Iraq is close to acquiring a nuclear weapon? What is the evidence that Iraq is capable of launching, or has any intention of launching, an attack against us or one of our allies?

And there are more questions that are as yet unanswered. What is the evidence that Saddam Hussein wants to commit suicide, which such an attack would guarantee? Why is containment, a strategy which kept the Soviet Union with its thousands of nuclear warheads and chemical and biological weapons at bay for 40 years, not valid for Saddam Hussein, a cold, calculating tyrant who cares above all about staying in power?

I am not sure how these questions can be answered without an updated National Intelligence Estimate. As the Washington Post has reported, there are conflicting views within the intelligence community on Iraq, and without this estimate, which pulls together the different assessments by various parts of the intelligence community, Congress is being asked to give a blank check without all of the facts. I am not going to write a blank check under any circumstances and I am certainly not going to do it with less than all of the facts.

We also must assess whether an attack could spin out of control and draw the entire Middle East into war. As Secretary Rumsfeld acknowledged, an Iraqi attack on Israel could spark a deadly spiral of escalation in which Israeli retaliation prompts responses from other Arab states. Israel has a right of self-defense, and Prime Minister Sharon has said that Israel would retaliate. At the very least, it would further inflame Arab populations whose governments are key to bringing lasting peace to the Middle East and reducing the breeding grounds for extremist Islamic fundamentalism and international terrorism. Some of those breeding grounds are within the borders of some of our closest friends in the region and we should not lose sight of that.

We also must fully assess the costs of a war. The Gulf War cost tens of billions of dollars, but ultimately other nations helped to defray those costs. The President's Economic Adviser said that this war could cost as much as two hundred billion dollars, and that assumes it does not spread beyond Iraq.

As the combat in Afghanistan showed, once again, we have the finest fighting forces in the world. We can be confident that we would win a war with Iraq, but there would be American lives lost, especially if Iraq lures U.S. troops into urban combat.

We have to remember that it is one thing to topple a regime, but it is equally important, and sometimes far more difficult, to rebuild a country to prevent it from becoming engulfed by factional fighting. If these nations cannot successfully rebuild, then they will once again become havens for terrorists.

The President would need to show that a post-Saddam Iraq would not be a continual source of instability and conflict in the region. While Iraq has a strong civil society that might be able to become a democracy, in the chaos of a post-Saddam Iraq another dictator could rise to the top or the country could splinter into ethnic or religious conflict.

To ensure that this does not happen, does the administration foresee basing thousands of U.S. troops in Iraq after the war, and if so, for how many years and for how many billions of dollars at a time when the U.S. economy is weakening, the Federal deficit is growing, and poverty is increasing here at home?

Is the administration committed to investing the resources it is going to take to rebuild Iraq, even when we are falling short of what is needed in Afghanistan?

In Afghanistan, the Taliban was vanquished with a minimum of U.S. casualties, but destroying al-Qaida, which is the primary goal of our efforts in Afghanistan, is proving far more difficult. We are told that while al-Qaida's leadership has been badly disrupted, its members have dispersed widely. Although there is a growing belief that Osama bin Laden is dead, we have no proof.

In addition, the humanitarian situation in Afghanistan is critical. There are thousands of homeless Afghans and a real threat of widespread hunger or famine this winter. There are families who lost loved ones or their homes were destroyed in the violence perpetrated by the Taliban, years of civil war, or from mistakes made during military operations by U.S. and coalition forces.

Yet the administration, despite calls by President Bush for a Marshall plan, did not ask for a single cent for Afghanistan for fiscal year 2003. In addition, $94 million for humanitarian, refugee, and reconstruction assistance to Afghanistan, which Congress added in the supplemental appropriations bill, was not deemed an emergency by the President.

Some relief organizations have already been told that they may have to shut down programs for lack of funds. This is happening in a country that so desperately needs the most basic staples such as water, education and medical help. Afghans who have returned to their homes from outside the country may become refugees once again.

Many other nations have yet to fulfill pledges of assistance to Afghanistan, but if the President is serious about a Marshall Plan, and I believe he is right, then we need to do much more to help rebuild that country.

Yet, as we continue to face difficult challenges in Afghanistan and hunting down members of al-Qaida, not to mention a number of challenges here at home such as the economy, we are suddenly being thrust into a debate about Iraq. It is a debate that will have lasting consequences for our standing in the world as a country that recognizes the importance of multilateral solutions to global problems and that respects international law.

General Wesley Clark, who headed the successful U.S. and NATO military campaign in Kosovo, recently addressed this problem directly, when he wrote:

> The longer this war [on terrorism] goes on—and by all accounts, it will go on for years—the more our success will depend on the willing cooperation and active participation of our allies to root out terrorist cells in Europe and Asia, to cut off funding and support of terrorists and to deal with Saddam Hussein and other threats. We are far more likely to gain the support we need by working through international institutions than outside of them.

The world cannot ignore Saddam Hussein. I can envision circumstances which would cause me to support the use of force against Iraq, if we cannot obtain unimpeded access for U.N. inspectors or the United States is threatened with imminent harm.

But like many Vermonters, based on what I know today, I believe that in order to solve this problem without potentially creating more enemies over the long run, we must act deliberately, not precipitously.

The President has taken the first step, by seeking support from the United Nations. Let us give that process time. If it fails, then we can cross that bridge when we come to it.

But I am reminded of my first year as a U.S. Senator. The year was 1975, and there were still 60 or 70 Senators here who had voted for the Tonkin Gulf resolution a decade earlier. That vote was 88–2, and many of those Senators,

Democrats and Republicans, spoke of that vote as the greatest mistake of their careers.

That resolution was adopted hastily after reports of a minor incident which may, in fact, not have occurred at all. It was interpreted by both the Johnson and Nixon administrations as carte blanche to wage war in Vietnam for over a decade, ultimately involving over half a million American troops and resulting in the deaths of over 58,000 Americans.

I am not suggesting that the administration is trying to deceive Congress or the American people, and I recognize that the situation in Iraq today is very different from Vietnam in 1964. But we learned some painful and important lessons back then. And one that is as relevant today as it was 38 years ago, is that the Senate should never give up its constitutional rights, responsibilities, and authority to the executive branch. It should never shrink from its Constitutional responsibilities, especially when the lives of American servicemen and women are at stake.

So when we consider the resolution on Iraq, I hope we will remember those lessons, because under no circumstances should the Congress pass a blank check and let the administration fill in the amount later. The Constitution does not allow that, and I will not do that.

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized.

IRAQ

Mr. JOHNSON. Mr. President, I rise today to state my intention to vote in favor of a resolution to authorize the use of military force against Iraq. At this point, final resolution language is begin arrived at, and I believe this effort will lead to a resolution which will gain broad, bipartisan support. I support the President, and as a member of the Appropriations Committee, look forward to working with him to ensure that our Armed Forces remain the best–equipped, best-trained fighting force in the world.

Simply put, the world would be a far safer place without Saddam Hussein. As long as he remains in power in Iraq, he will be a threat to the United States, to his neighbors, and to his own people. Over the past decade, he has systematically reneged on his commitments to the international community. He has refused to halt his weapons of mass destruction program, to renounce his support for international terrorism, and to stop threatening peace and stability in the region. The threat that Saddam Hussein continues to pose to our national security interests, and his failure to abide by previous United Nation's Security Council resolutions, provides sufficient justification should military action become necessary.

I am pleased that President Bush has come to the Congress to ask for authorization for the use of force in Iraq, and that the White House is continuing to work with us to develop the appropriate language for a congressional resolution. It is important for the people's representatives in Congress to have the opportunity to fully debate and vote on a matter of this importance. I hope we will move to this vote in an expeditious manner.

In addition, I back the administration's efforts to build support for our policy in Iraq with our allies and with the international community as a whole. Secretary of State Colin Powell has been particularly effective in making the case that Iraq has not complied with the relevant Security Council resolutions and that he remains a threat. Make no mistake, I believe the United States is within its rights to act alone militarily to protect our vital national security interests. I we are required by circumstances to act alone, I will support that decision. U.S. action should not be contingent upon the decisions made by other nations or organizations. My expectation, however, is that this resolution will strengthen the hand of the President at securing United Nations or other forms of international support and cooperation, and I encourage his on-going effort in that regard.

I believe that there is value in building an international coalition of nations and in having the full support of our allies. International support brings practical benefits, such as basing rights for U.S. soldiers and equipment in the region and authorization to use the airspace of neighboring countries to execute military strikes against Iraq. In addition, international support will increase the likelihood of success for our long-term strategy in Iraq and for the ongoing war on global terrorism. I encourage the President to continue his efforts to build a strong coalition of nations to support our Iraq policy.

Mr. President, this issue has particular significance for me—my son Brooks is on active duty in the Army and is a member of one of the three units that General Franks has identified as likely to prosecute this war. There is a strong possibility that I may be voting to send my own son into combat, and that give me special empathy for the families of other American servicemen and women whose own sons and daughters may also be sent to Iraq. Nevertheless, I am willing to cast this vote—one of the most important in my career both as a Senator and certainly as a father—because I recognize the threat that Saddam Hussein represents to world peace. It is my hope that we can move forward quickly, in a bipartisan manner, to approve a resolution that will give the President the authority he needs to defend our Nation.

The PRESIDING OFFICER (Mr. NELSON of Florida). Under the previous order, the Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, this is called the greatest deliberative body in the world. I have always been enormously proud to be a part of it. There are times I think we treat the light too seriously and then the serious too lightly, but in this time and place, the issue of national security is something all of us understand is serious.

This is a deadly serious business. The question of war with Iraq, the question of homeland security, are very important issues. I know there was some controversy yesterday beginning with stories in the newspaper and in the Senate Chamber about statements by the President.

I don't think there is a context in which it is ever appropriate for us to suggest or the President to suggest the opposing political party or members of the opposing political party do not support this country's national security. You will never, ever, hear me suggest a group of my colleagues don't care about this country's national security. I will never do that. It is not the appropriate thing to do.

When you read the President's statements at fundraisers about these matters and hear his suggestion, no matter the context, that the U.S. Senate doesn't seem to care about national security, or places special interests ahead of the Nation's interests with respect to security, that is wrong.

National security is deadly serious business. The issue has to do with the country of Iraq, but much more than that—a very troubled region of the world—the question of whether a tyrant, an international outlaw of sorts, is going to acquire nuclear weapons and threaten his region and the rest of the world, and what we might be considering doing about that, what we should do about it, and what the United Nations considers we should do about it. That is serious business.

Any discussion ever about sending our sons and daughters to war is serious business. It has no place in political fundraisers or in the normal routine of American political partisan activity leading up to an election.

Yesterday I attended a top secret briefing with Vice President CHENEY at his invitation. I happen to think we are all on the same side. We have a single relentless interest, and that is the interests of this country and its security.

Yesterday it was said some of this dispute relates to the discussions about homeland security and the position taken by some Members of the Senate with respect to homeland security. There is no right or wrong way to do homeland security. There are a lot of ideas on how one might address homeland security.

I happen to believe port security is very important. We have 5.7 million containers coming in on container ships every single year; 100,000 of them are inspected, and 5.6 million are not. If a terrorist were to want to introduce a weapon of mass destruction into this country, do you think they would not consider putting it in a container on a ship that is going to come up to a dock

at 2 miles an hour and dock at one of our major ports, to be taken off and put on 18 wheels, driven across the country to its target?

No, we will spend $7 or $8 billion this year believing a rogue nation or terrorist will acquire an intercontinental ballistic missile, put a nuclear bomb on top of it; so we will spend $7 to $8 billion on national missile defense. Is that the smart thing to do, at a time when 5.6 million containers will show up at our docks and are uninspected? That is a decision this Congress ought to take a hard look at.

We have differences on the homeland security bill. It is not that one side believes in supporting this country's defense and this country's security and the other side doesn't. There are differences about it. Is putting 170,000 people into one agency, moving all these boxes around into one agency, is that going to make us better, more fit, more capable of defeating terrorism? Maybe. But big, slow, and bureaucratic is not the way to address terrorism. These 170,000 people will not include the CIA and the FBI. Just read the papers in the last couple of months and ask yourself, where have the problems been in the gathering and the interpretation of intelligence and information about prospective terrorists? They are not even a part of this.

Some say if the President doesn't have flexibility to deal with all of these workers in any appropriate way he thinks necessary, somehow it affects our country's security. It is as if taking 170,000 workers and putting them into one agency and providing some basic security, the kind of basic security they have had with respect to jobs, is counter to this Nation's security. I don't believe that at all.

Go back 100 years and ask yourself what happens in a country such as ours when you decide the Federal workforce shall become a part of patronage, Federal workers will have no security, but can be used at the whim of an executive agency. I am not talking about this one; I am talking about any executive agency or any administration. This country has been best served by making sure we have a Federal workforce that we can trust, that works hard, that is honest, that serves this country well, and that doesn't serve any partisan interest ever.

Some say let's get rid of all the worker protections, that is the way to handle homeland security. That doesn't make any sense to me. There is not a Republican or a Democratic way to develop the issue of security for this country. This is not about political parties. It is about trying to figure out what is the best approach to protect this country's interests, what is the best approach to do that.

Those who want to use this politically do no service to this country's interest. It is not about politics. It is, indeed, about security.

Let me make the next point. Yes, security with respect to people such as Saddam Hussein, and I hope at the end of the day we can find a way to pass a resolution in this Senate that has broad bipartisan support. I hope that is what happens. I believe that is what should happen. I hope at the end of the day we will have passed a homeland security bill that works, one that is effective, one that gives us confidence about defeating prospective terrorists and those prospective terrorists' acts against the American people.

Also, there is another issue with respect to security, and that is the security of our country with respect to the economy and what is happening inside our country. Take a look at the stock market these days. The stock market has collapsed like a pancake. Why? Because investors are nervous. There is no predictability, consistency, security. They are nervous.

We have had a circumstance in recent years where big budget surpluses that were projected for 10 years have turned to big budget deficits. We have had a recession. We have had a terrorist attack on our country that was the worst terrorist attack in the history of our country. We have had, in addition to that, a war against terrorists and a collapse of the technology bubble and a collapse of the stock market. We have had a corporate scandal unparalleled in the history of this country. It shakes the faith of the American people in this economic system of ours.

Even as we discuss all of these security issues, let's understand there is one additional security issue, and that is the economic security of the people in this country, an economy that, hopefully, grows and provides opportunities and jobs once again. This economy is in trouble, and it would serve this President and this Congress well to decide we ought to work together to do something about that as well.

More and more people are out of work. What does that mean? Is that a statistic? No, it is not just a statistic; it is someone who comes home from work one day and says: Honey, I have lost my job, a man or woman who is well trained and worked hard, and because the economy runs into some whitewater rapids and some trouble, they are laid off. Hundreds of thousands of Americans are losing their jobs. It is a big problem.

For those who lose their jobs, their statistic is 100-percent unemployment. They wonder whether there are people around here who care about that. Will there be people who care about economic security issues, trying to put the pieces back together in an economy that is troubled?

We are told the average 401(k) retirement savings account has lost about a third of its value. A North Dakotan who worked for the Enron Corporation for many years wrote to me and said: I had $330,000 in my 401(k) account. It was my life savings—$330,000. It is now worth $1,700.

Do you think that family cares about whether we try to do something to fix what is wrong with this economy? That also deals with security—economic security.

We have all across the central heartland of this Nation family farmers, in my judgment the economic all-stars of America. They raise the food that a hungry world so desperately needs. But a massive drought has occurred across much of this country. Many of those farmers and ranchers have produced nothing.

In my home area of southwestern North Dakota, the landscape looks like scorched earth. It looks like the moonscape, in fact, with no vegetation.

The question is: What about economic security for people who have suffered a natural disaster of a drought? This Senate answered that. The Senate said: Let's provide some emergency help, just as we do when tornadoes, earthquakes, fires, and floods happen. When these natural disasters occur, this country says to people affected: You are not alone; we are here with you; we want to help. So this Senate, with 79 votes, said: We want to help you; we want to help provide some economic security during a tough time, during a disaster. The drought was not your fault, we say to farmers and ranchers.

But the House of Representatives and the President do not support the bill we passed in the Senate that also deals with economic security.

Nobody in this Chamber has a farm someplace 15, 25 miles from town and has invested virtually everything they have in seeds to plant in the ground in the spring and then discovered it did not rain and those seeds are gone, there is no crop, and they do not have the money for family expenses to continue, so they are going to have to have an auction sale. No one in this Chamber suffers that fate—no one.

No one in this Chamber gets up to do chores in the morning—milk cows, feed the cattle, service farm machinery. Nobody does that. But this Chamber understands because 79 Members of the Senate voted for a disaster package to help family farmers during this disaster.

We hope that when we have all of this talk about security, which I think is deadly important and deadly serious—we hope security includes a discussion about economic security, and part of that economic security is providing a disaster bill and disaster help to family farmers when they need it. I ask the House of Representatives and the President to stop blocking that disaster bill.

Another part of this issue of economic security is fixing what is wrong with respect to corporate governance in dealing with corporate scandals. We passed a bill in the Senate dealing with that, but it is not quite enough. We must do more.

Senator SARBANES, in my judgment, deserves the hero's award for being able to put together the bill he did. I

was proud to vote for it. One amendment, to give an example of the unfinished business, I tried to offer and which was blocked for 3 or 4 days by my colleague, Senator GRAMM from Texas, dealt with bankruptcy. That amendment is not now law. Let me give an example of what I was trying to do and why it is unfinished business if we are really going to provide economic security.

The Financial Times did a study of the 25 largest bankruptcies in America. Here is what they discovered: Of the 25 largest corporate bankruptcies in America, the year and a half before bankruptcy, 208 executives of those corporations took $3.3 billion out of the company. Then they went bankrupt.

My belief is, when executives are taking a company to bankruptcy and filling their pockets with gold, there is something fundamentally wrong. Investors lose their savings, employees lose their jobs, everybody else loses their shirt, and the top executives of the largest bankrupt companies in the country walk away to their homes behind gated walls someplace and count their money. They walked off with $3.3 billion in the 25 largest bankruptcies. Shame on them.

I wanted to offer an amendment that recaptures and disgorges those ill-gotten gains. Does anybody here believe that anybody, as they take a company into bankruptcy, the year before it goes to bankruptcy should be getting incentive payments and bonus payments for a company that is going down the tubes? Does anybody believe that? That is unfinished business, and there are other pieces dealing with this corporate issue to which we must respond.

The other unfinished business deals with health care, for example, and prescription drugs. We have not passed a prescription drug bill and put a prescription drug benefit in the Medicare Program despite all of our best efforts. That also deals with economic security because when someone needs lifesaving medicine and cannot afford it, it means that medicine saves no lives.

We have people in this country who desperately need prescription drugs to provide the miracle cures and the opportunities for a better life and cannot afford them. We believe putting a prescription drug benefit in the Medicare Program is the right thing to do. No, not some shell, not some phony gimmick by saying, as the House did, just cobbling up a little effort: By the way, let's call this a prescription drug benefit and let the managed care organizations handle it. That does not make any sense. They know it. We know it. They are just trying to create a defensive position to say they did something when, in fact, they did nothing.

We are going to do something, and we should, with respect to prescription drugs for senior citizens. We ought to do it right and do it well. That is another piece of unfinished business that deals with security—economic security and family security.

In Dickinson, ND, a woman went to her doctor with breast cancer and had surgery for breast cancer, and the doctor said to the woman on Medicare: In order to prevent a recurrence of breast cancer, the best chance to prevent a recurrence, you need to take these prescription drugs I am going to prescribe for you.

She said: Doctor, what does it cost? And he told her.

She said: Doctor, there is no way I can afford to buy those prescription drugs. I am just going to have to take my chances.

That is how the doctor testified at a forum I held at home in North Dakota. That is why it is important to complete the undone business dealing with economic security, security for American seniors, to put a prescription drug benefit in the Medicare Program that really works. We have not been able to do that because we are blocked by people who do not want that to happen.

Mr. REID. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. REID. The Senator has served in the House of Representatives and now in the Senate and understands, as well as anyone, the procedures that take place in both bodies. We have been on homeland security for the 4th week. I was told yesterday they had 30 people who wanted to speak on this amendment. As I mentioned earlier this morning, that is a code ward for ''filibuster.''

Is it not unusual that a President, who says he wants this bill so badly, has not helped move the bill in 4 weeks, and now the majority leader has arranged a procedure where they can have a vote on the so-called Gramm amendment and they are not taking yes for an answer? Do you think they are really serious about moving homeland security?

Mr. DORGAN. There is no evidence of that in the last 3 or 4 weeks. If ever you have seen an example of slow walking, this has been it.

We can, should, and will pass a homeland security bill. We are going to need help to do it. Those who say they want to pass this bill but have their heels dug in and are preventing action by the Senate, in my judgment, are delaying the inevitable. We will pass homeland security because we should.

We have an amendment on which we ought to vote. We do not need 40 speakers after 4 weeks. Have a vote on the amendment. That is the way to deal with this. I understand there are people who oppose the amendment. The opposition comes from people who either want it their way or they do not want it at all. They think, If we cannot get our way, we do not want legislation to move.

Mr. REID. If the Senator will yield, I have learned a lot from the Senator from North Dakota on agricultural matters because the State of North Dakota depends heavily on its agricultural base for everything in the State. As a result of that, I was 1 of 79 Senators who supported—because the case was made so clearly—farmers all over America who were in desperate need of help because of the drought that has struck the country. We have in the Interior appropriations bill, which is also part of what we have been doing for 4 weeks, a provision to give that aid.

I ask the Senator, would it not be better to do that now than to have this legislation hung up on how money will be distributed to fight fires?

Mr. DORGAN. There is an urgent need to get this bill completed. The Interior bill, as well, has been on the floor. For those who are listening to this discussion, we are working on two issues simultaneously. They call it dual tracking. We have homeland security and the Interior appropriations bill. Both have been on the floor for weeks.

With respect to the Interior bill, the 79 votes cast for the issue of providing disaster aid for family farmers demonstrates the strong support of this Senate for doing that. Yet it is part of an Interior bill that is being held up.

There is an urgent need to get this done. We have family farmers, and the families are sitting around their supper tables talking about their hopes and dreams, whether they are going to have to have an auction sale. Will they be able to make it? Or get through the winter? Or raise cattle in the spring? Or plant seed in the spring? They do not know. If we provide disaster help, they will. If we do not, many will not make it.

I have been pleased, and will always be pleased as a Member of this body, to support, in every circumstance, those around this country who suffer disasters. When Florida is hit by a devastating hurricane, or California by a devastating earthquake, or a dozen other natural disasters I could name, I am the first to say we ought to help. I always want to vote for it. I always want our country to say to those people affected by the disasters, you are not alone; the rest of the country is with you.

That is why I was so pleased with what the Senate did, by 79 votes, saying we need a disaster bill to deal with the devastating drought. In some areas it is as bad as it has been since the 1930s.

In answer to the question, there is urgent business in the Interior bill. We ought to get it done. Those who are blocking it ought to stop blocking it.

Mr. REID. Finally, because of the need to pass homeland security and certainly this drought assistance, and we are spending so much unnecessary time on it, I have said this is an effort to divert attention from all the issues of the economy, and I have heard the Senator from North Dakota ask on many occasions: Why are we not doing something about passing appropriations bills? Why are we not doing something to stimulate the economy? Why are we not doing something with bankruptcy reform? Election reform? Why

aren't we doing something with generic drugs? The Senator talked about the Patients' Bill of Rights, terrorism insurance—on all the domestic issues, we have heard not a word and are getting no help from the majority in the House or the minority in the Senate, and certainly not from the White House.

Does the Senator acknowledge we are not spending much time on economic issues?

Mr. DORGAN. I talked about the issue of security and I said it is deadly serious business, national security, homeland security. But there is another area very important for the country. That is economic security. We are spending virtually no time on that. We ought to. The American people deserve to have a Congress that, yes, is concerned about national security, concerned about homeland security, but that is willing to tackle during tough economic times the economic security issues as well. This Congress has not been willing to do that.

Let me end as I began, because this is important. I will never minimize the importance of the security issues. In my judgment, the President and the Congress need to act and speak as one when we talk about the security of this country. No one will never, ever hear me say any Member in this Chamber does not believe in the security of this country or does not act to support the security of this country. I will never say that. I don't want to hear the President say it. I don't want to hear anyone else say it. I believe every Republican, Democrat, conservative and liberal, believes in their heart that whatever they are doing represents the security interests of this country. They love this country and believe in the country, and that goes for everyone serving this country. I don't want anyone to suggest in any way under any context there are those who believe in security more than others. We all love this country. We all want to do what is right and best for this country. I will strongly support the security of this country. It is national security. It is homeland security. It is economic security.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the second half of the time shall be under the control of the Republican leader or his designee.

The Senator from Pennsylvania.

HOMELAND SECURITY

Mr. SPECTER. Mr. President, I have sought recognition to encourage my Senate colleagues to pass legislation on homeland security and to send it to conference. There are many more agreements, much more agreement than disagreement, and the disagreements are relatively minor.

Last week, I said the Senate was dysfunctional because we had not passed a budget resolution. For the first time since the Budget Act was passed in 1974, the Congress has not passed a budget resolution. The Senate has not passed a budget resolution. Thirteen appropriations bills have not been passed. We have been on the Interior bill for weeks now and homeland security for weeks. Long speeches. Not getting to the point. Not voting. Not moving ahead with the legislation.

Last week, it was an accurate characterization to say the Senate was dysfunctional. This week, the Senate has become a chamber of rancor. It is plain that President Bush did not intend to impugn anyone's patriotism. He was commenting on two provisions of the homeland security bill related to labor-management relations. Even on those matters, the differences are relatively minor. The relationship between Republicans and Democrats is better characterized by the embrace between President Bush and the majority leader at the joint session of Congress shortly after September 11, 2001.

The current controversy may well be giving encouragement, aid, and comfort to Osama bin Laden, deep in some cave, and Saddam Hussein, in the bowels of some bomb shelter. However, we know who the enemies are. The enemies are the terrorists and the enemies are those who pose the risk of using weapons of mass destruction.

I believe it is vital to move ahead with the homeland security bill to correct major deficiencies which have been disclosed in the intelligence agencies in the United States. We had a veritable blueprint, prior to September 11, 2001, and if we had connected all of the dots, I think the chances were good that we could have avoided September 11. The Congress of the United States and the administration have a duty, a solemn duty, to do everything in our power to prevent another terrorist attack. We lost thousands of Americans and the official word from the administration, articulated by a number of ranking executive department officials, is that there will be another terrorist attack. It is not a matter of if, it is not a matter of whether, it is a matter of where or when.

I am not prepared to accept that conclusion. I believe the United States has the intelligence resources and can muster the intelligence resources to prevent another September 11.

When I served as chairman of the Intelligence Committee in the 104th Congress, I introduced legislation which would have brought all of the intelligence agencies under one umbrella. There have been repeated efforts to accomplish that, not just the legislation I introduced in 1996. There is on the President's desk a plan submitted by former National Security Adviser, General Scowcroft, to accomplish a coordination of all intelligence agencies. However, it has not been done because of the turf battles between the various intelligence agencies. Those turf battles regrettably are endemic and epidemic in Washington, DC. They have to come to a conclusion.

We have the mechanism now, the homeland security bill, to make those corrections. We knew prior to September 11, from the FBI Phoenix memorandum, about men taking flight training who had big pictures of Osama bin Laden. The report was disregarded. We knew prior to September 11 that there were two terrorists in Kuala Lumpur. The CIA knew about it, but did not tell the FBI or INS, and they turned out to be two of the pilots on September 11.

We know from the efforts made by the Minneapolis Office of the FBI to get a warrant under the Foreign Intelligence Surveillance Act as to Zacarias Moussaoui, which would have given us a veritable blueprint of al-Qaida's intention, that certainly it would have led us to the trail and could have prevented September 11.

Then we have the famous, or infamous, report coming to the National Security Agency on September 10 about an attack the very next day, which was not translated.

There is much more I could comment about, but the time is limited.

Mr. REID. Will the Senator yield for a question?

Mr. SPECTER. OK, on your time.

Mr. REID. We don't have any time, but I am sure if we need any time——

Mr. SPECTER. Senator DOMENICI, who is the only Senator waiting, says it is OK, so I will be glad to respond to the question.

Mr. REID. The reason I want to have an exchange with the Senator is I think maybe what the Senator said here today could resolve this homeland security matter.

I believe, as the Senator from Pennsylvania does, that if there are differences we have here in the Senate version of the bill, it will go to conference with the House. The House and the Senate will sit down, the White House people will be involved, as they always are in important conferences, and we will come up with a product. I think instead of scrumming, as we are here, I think we would be better off, as the Senator has suggested, to get a bill out of here, get it to conference, and get something to the President's desk.

So I fully support, as I heard him, the Senator from Pennsylvania. I think that is the way to resolve this matter. Get a bill out of here, get it to the conference, and, as the Senator said—how much difference is there between the two versions of this amendment that is creating so much controversy? There are differences, but I am not sure they are as big as some think.

The labor-management issue, which seems to be a big problem, if that matter is as close as what the Senator from Pennsylvania said, I think it could be resolved in conference.

Mr. SPECTER. I thank the distinguished Senator from Nevada for that question, and I am glad to respond. I had intended to talk a little later about the differences. Let me take them up now to emphasize the point that the Senator from Nevada has made, that the differences are not very big.

I agree with the Senator from Nevada that we ought to send the bill to conference. When we had prescription drugs on the Senate floor, I voted for the Republican measure, Grassley-Snowe, and then I voted for the bill put up by the Democrats, by Senator GRAHAM of Florida. It seemed to me the important thing was to get the matter to conference so that the issue could be resolved with finality.

The two pending issues which are outstanding on labor relations, the difference between the bill offered by Senator GRAMM and the bill offered by Senator LIEBERMAN, with the Breaux amendment, boil down to this: It is the President's authority to waive the provisions on collective bargaining in the event of a national emergency.

Now, listen closely to what the President must do under existing law:

> The President may issue an order excluding any agency or subdivision thereof for coverage under this chapter, collective bargaining, if the President determines that, A, the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work; and the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

This is what Senator BREAUX wishes to add:

> The President could not use his authority without showing that, No. 1, the mission and responsibilities of the agencies or subdivision materially changed and, No. 2, a majority of such employees within such agencies or subdivision have as their primary duty: Intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

It is true the Breaux amendment does add a requirement for the President to exercise his authority. It is true that there is an additional requirement, and the President does lose a little power. However, the requirements of existing law which relate to intelligence, counterintelligence, and investigation are very similar to the provisions of the Breaux amendment which again relate to intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

The President must make an additional showing. However, it is a showing which is very much in line with what the President has to show under existing law.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. SPECTER. Mr. President, I ask unanimous consent for an additional 5 minutes.

Mr. DOMENICI. Reserving the right to object, what is the order following the distinguished Senator from Pennsylvania?

The PRESIDING OFFICER. There is no order of speakers.

Mr. DOMENICI. I ask unanimous consent that I follow him for up to 15 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOMENICI. I thank the Chair.

Mr. SPECTER. I thank my colleague from New Mexico.

Mr. President, the other provision which is in controversy relates to the flexibility which the President is seeking on six categories. The Breaux amendment would allow the President to have the flexibility under four of the categories, and then in the event of disagreement between management and the union, the controversy would go to the Federal Services Impasse Panel.

There are seven members of that panel and all have been appointed by President Bush. It is customary for that panel to change when the administration changes. The four categories which are in the Breaux bill allow for performance appraisal, classification, pay raise system, and labor-management relations, all of which the President wants, and only the limitation going before the impasse panel, which should not be an obstacle, and then the other two are adverse actions and appeals.

So that if you boil it all down, our area of disagreement is really very minor. The bill which is going to come out of conference is obviously going to take up these issues. We know as a matter of practice when there is a Presidential veto or a firm statement about a Presidential veto, invariably the Congress relents on an individual point.

So it would be my hope that we could yet resolve this controversy. I talked to Senator BREAUX, Senator GRAMM of Texas, and Senator LIEBERMAN, and the parties are very close. I have not yet stated a preference for either position. I am being lobbied on both sides. It is a very major matter for my constituency on both sides, a very large labor constituency in Pennsylvania, and very grave concern on my part that the President's powers not be diminished in a way which would impede his efforts on a Department of Homeland Security.

When you take a look at where we are with the various problems of lapses in security—there have been a parade of witnesses before the joint intelligence committees of the House and Senate. We counted some of these, not all. In view of the limited time, Mr. President, I ask that there be added at the conclusion of my comments a recitation of a number of other warnings which were given, which could have provided a veritable blueprint.

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

(See exhibit 1.)

Mr. SPECTER. Our job is plain, it seems to me, and that is to move ahead, to have a reconciliation, a rapprochement. Let us not have this as a chamber of rancor. Let us not have a dysfunctional Senate. We have many bills which are now pending in the conference committees, which have not been acted upon—the energy bill, the Patients' Bill of Rights, the voting machine correction bill, the terrorism reinsurance bill, the bankruptcy bill, and others, which are awaiting conference. We have a very heavy duty to the American people to complete the people's business, and we need to finish the appropriations bills and not have a continuing resolution.

I think it is becoming apparent to the American people that we have a dysfunctional Senate. We have to move away from that. We have to let our enemies—the terrorists and Saddam Hussein—know that the Democrat and Republican Party system is better characterized by that famous embrace between the President and Senate majority leader at the Joint Session of Congress shortly after September 11.

I intend to return to the floor to talk in more detail about the Breaux amendment, but I think it is plain by an analysis of what the Breaux amendment does that it ought to be resolved and it ought not to stop this Congress in legislating. It would be a travesty and a tragedy if we were to go over into next year without having a homeland security bill so that we can correct the major problems in the intelligence function of this country.

I again thank my colleague from New Mexico and yield the floor.

EXHIBIT 1

A VIRTUAL BLUEPRINT

NSA INTERCEPTS

The NSA intercepted two messages on the eve of September 11 attacks on the world Trade Center and the Pentagon warning that something was going to happen the next day, but the messages were not translated until September 12. The Arabic-language messages said, ''the match is about to begin,'' and ''Tomorrow is zero-hour.'' They came from sources—a location or phone number—that were of high enough priority to translate them within two days but were not put in the top priority category, which included communications from Usama bin Laden or his senior al Qaeda assistants.

MURAD

In January 1995, the Philippine National Police discovered Ramzi Yousef's bomb making lab in Manila and arrested an accomplice named Abdul Hakim Murad. Captured materials and interrogations of Murad revealed Yousef's plot to kill the Pope, bomb U.S. and Israeli embassies in Manila, blow up 12 U.S.-owned airliners over the Pacific Ocean, and crash a plane into CIA headquarters. Murad is a promoter of the same radical interpretation of Sunni Islam ideology as Usama bin Laden, who emerged during this time frame as promoting this radical ideology.

NOTE: This provided a data point on a terrorist group discussing a plan to use an aircraft as a weapon in the possession of the Intelligence Community.

PHOENIX MEMORANDUM

The FBI paid too little attention to a July 10, 2001 memorandum written by an FBI agent in Phoenix urging bureau headquarters to investigate Middle Eastern men enrolled in American flight schools. The ''Phoenix Memo'' cited Usama bin Laden by name and suggested that his followers could use the schools to train for terror operations.

Federal authorities have been aware for years that a small number of suspected terrorists with ties to bin Laden had received flight training at schools in the United States and abroad.

Pakistani terrorist plotter Murad, who had planned to blow up airliners over the Pacific,

trained at four U.S. schools in the early 1990s.

CRAWFORD BRIEFING

President Bush and his top advisers were informed by the CIA in early August 2001 that terrorists associated with Usama bin Laden had discussed the possibility of hijacking airplanes. The top-secret briefing memo presented to President Bush on August 6 carried the headline, ''Bin Laden Determined to Strike in US,'' and was primarily focused on recounting al Qaeda's past efforts to attack and infiltrate the United States.

MOUSSAOUI & MINNEAPOLIS FBI

Minneapolis FBI agents investigating terror suspect Zacarias Moussaoui last August were severely hampered by officials at FBI headquarters, who resisted seeking FISA surveillance and physical search warrants, applied erroneous probable cause standards, and admonished agents for seeking help from the CIA.

KUALA LUMPUR

The CIA tracked two of the Flight 77 (Pentagon) terrorists to a Qaeda summit in Malaysia in January 2000, then did not share the information as the terrorists reentered America and began preparations for September 11. The CIA tracked one of the terrorists, Nawaf Alhazami, as he flew from the meeting to Los Angeles, and discovered that another of the men, Khalid Almihdhar, had already obtained a multiple-entry visa that allowed him to enter and leave the United Stats as he pleased. The CIA did nothing with this information. Instead, during the year and nine months after the CIA identified them as terrorists, Alhazami and Almihdhar lived openly in the United States, using their real name, obtaining drivers licenses, opening bank accounts and enrolling in flight schools—until the morning of September 11, when they boarded American Airlines Flight 77 and crashed into the Pentagon.

BIN LADEN

On February 26, 1993, a bomb was detonated in the parking garage of the World Trade Center in New York City. On June 24, 1993, the FBI arrested eight individuals for plotting to bomb a number of New York City landmarks, including the United Nations building and the Lincoln and Holland tunnels. The central figures in these plots were Ramzi Yousef and Shaykh Omar Abd al-Rahman—both of whom have been linked to Usama Bin Laden and are now serving prison sentences.

Following the August 1998, bombings of two U.S. Embassies in East Africa, Intelligence Community leadership recognized how dangerous Bin Laden's network was and that he intended to strike in the United States. In December 1998 DCI George Tenet provided written guidance to his deputies at the CIA, declaring, in effect, ''war'' with Bin Laden.

Concern about Bin Laden continued to grow over time and reached peak levels in the spring and summer of 2001, as the Intelligence Community faced increasing numbers of reports of imminent al Qaeda attacks against U.S. interests. In July and August 2001, that rise in intelligence reporting began to decrease, just as three additional developments occurred in the United States: the Phoenix memo; the detention of Zacarias Moussaoui; and the Intelligence Community's realization that two individuals with ties to Usama Bin Laden's network—Nawaf Alhazami and Khalid Almihdhar—were possibly in the United States.

In June 1998, the Intelligence Community learned that Usama Bin Laden was considering attacks in the U.S., including Washington, DC, and New York. This information was provided to senior U.S. Government officials in July 1998.

In August 1998, the Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center. The FBI's New York office took no action on the information. The Intelligence Community has acquired additional information since then indicating links between this Arab group and al Qaeda.

In September 1998, the Intelligence Community obtained information that Usama Bin Laden's next operation could involve flying an aircraft loaded with explosives into a U.S. airport and detonating it; this information was provided to senior U.S. Government officials in late 1998.

In October 1998, the Intelligence Community obtained information that al Qaeda was trying to establish an operative cell within the United States. This information indicated there might be an effort underway to recruit U.S. citizen Islamists and U.S.-based expatriates from the Middle East and North Africa;

In the fall of 1998, the Intelligence Community received additional information concerning a Bin-Laden plot involving aircraft in the New York and Washington, DC, areas;

In November 1998, the Intelligence Community learned that a Bin Laden was attempting to recruit a group of five to seven young men from the United States to strike U.S. domestic targets.

In the spring of 1999, the Intelligence Community learned about a planned Bin Laden attack on a U.S. Government facility in Washington, DC. Additionally, in 1999, the threat of an explosive-laden aircraft being used in a suicide attack against the Pentagon, CIA headquarters, or the White House, was noted in a Library of Congress report to the National Intelligence Council.

In late 1999, the Intelligence Community learned of Bin Laden's possible plans to attack targets in Washington, DC, and New York City during the New Year's Millennium celebrations.

On December 14, 1999, an individual named Ahmed Ressam was arrested as he attempted to enter the United States from Canada with detonator materials in his car. Ressam's intended target was Los Angeles International Airport. Ressam, who has links to Usama Bin Laden's terrorist network, has not been formally sentenced yet.

In March 2000, the Intelligence Community obtained information regarding the types of targets that operatives in Bin Laden's network might strike. The Statue of Liberty was specifically mentioned, as were skyscrapers, ports, and airports, and nuclear power plants;

Between late March and September 2001, the Intelligence Community detected numerous indicators of an impeding terrorist attack, some of which pointed specifically to the United States as a possible target. Among these are:

Between May and July, the National Security Agency reported at least 33 communications indicating a possible, imminent terrorist attack—none of which were specific as to where, when, or how an attack might occur, nor was it clear that any of the individuals involved in these intercepted communications had any first-hand knowledge of where, when, or how an attack might occur. These reports were widely disseminated within the Intelligence Community.

In May 2001, the Intelligence Community obtained information that supporters of Usama Bin Laden were reportedly planning to infiltrate the United States via Canada in order to carry out a terrorist operation. This report mentioned an attack within the United States, though it did not say where in the U.S., or when, or how an attack might occur. In July 2001, this information was shared with the FBI, the Immigration and Naturalization Service (INS), U.S. Customs Service, and the State Department and was included in a closely held intelligence report for senior government officials in August 2001.

In May 2001, the Intelligence Community received information that seven individuals associated with Usama Bin Laden departed various locations for the United States;

In June 2001, the DCI's Counter Terrorism Center (CTC) had information that key operatives in Usama Bin Laden's organization were disappearing while others were preparing for martyrdom;

In July 2001, the DCI's CTC was aware of an individual who had recently been in Afghanistan who had reported, ''Everyone is talking about an impending attack.'' The Intelligence Community was also aware that Bin Laden had stepped up his propaganda efforts in the preceding months;

In the late summer 2001, the Intelligence Community obtained information that an individual associated with al Qaeda was considering mounting terrorist operations in the United States. There was no information available as to the timing of possible attacks or on the alleged targets in the United States.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I say to Senator SPECTER, I am sure you had some more to say and I apologize, but it seems like the harder I try to get time here the worse it works out for me.

Mr. SPECTER. It is the Senator's turn, and I am anxious to hear what the Senator has to say.

Mr. DOMENICI. I thank the Senator.

THE BUDGET

Mr. DOMENICI. Mr. President, I made a few remarks 3 or 4 days ago talking about where we are and what we are doing, and I would like to finish those remarks today, perhaps start on a discussion of the American economy.

First, in less than 5 days the new fiscal year begins. That means if you are a businessman, no matter how small or how large, you would be closing down your books, you would be adding everything up, you would be doing a couple of additions and subtractions, and you would find out how well or how poorly you did—a very important event in the life of an ongoing business.

The United States is similar except it is much bigger. Frankly, it does not keep its books nearly as well as the small businesspeople of America, who must keep them much better than we do because of the Internal Revenue Service if nothing else. We are not audited by anybody. We do ours in some strange ways.

The truth is that the year ends October 1. I think both the occupant of the Chair and the Senator from New Mexico can remember when it was July. We found out that was too soon in the year. If you started a year in January, you started work, it was too quick to have everything done in July. So we had a completed year, since I have been

a Senator, when we went to October. We had to fix that up. And now October was thought to be ample time to get our work done.

Not a single appropriations bill has been sent to the President. The last time this situation occurred, excluding last year after the attacks, was in 1995 during the infamous Government shutdown. You remember that, the shutdown period.

I come to the Senate because there has been a lot of talk about who is to blame for what. Frankly, I would like to suggest that the majority party and the majority leader bear the burden of running the Senate. They can run it with all the laments they can put forth and all the blame they can shed upon the situation, but the truth is, as difficult as it is, it is their job and the first and most important thing is that they are supposed to prepare and have a vote on a budget resolution. While it is not everything, to many things that transpire after it, it is a very big issue, a very big instrument.

So we find ourselves, as I indicated, where we are 5 days from the end of the year. All of those appropriations bills that are coming along that have not been finished pick up October 1 as the starting date because the other ones that we put in run out. So if we do not do something by October 1, most parts of Government will shut down.

We found that out in 1995 when there was a cleavage between the Congress and the President. The President would not sign some bills because he did not like certain items, and clearly he pinned the blame on Congress for sending those bills up to him in a manner that he would not sign and closed down the Government, one piece after another. So it was a job that we had to get done.

I believe my friend—the new chairman of the Budget Committee who took over in the middle of a 2-year cycle because the Democrats got one additional Member to vote with them, so everything went to them—went their way. I believe the answer was it was just too hard to get a budget.

The occupant of the chair knows how difficult it was. He sat there for days on end. But that wasn't anything new. Senators before him and Senators after him, if we still keep a budget, will sit there for hours on end trying to get it done. It should have been done. A budget resolution is an important issue upon which we should focus.

It is important we in the Senate understand we did not get a budget resolution because some thought it was not necessary. They were wrong. Some thought we would get along without it, but they were wrong. The American people are the ones suffering because we can't get our work done.

I don't believe there is any room to lay blame for that on this side of the aisle. It is that side of the aisle—the majority party of the Senate now, this particular month—that has to bear the blame.

Back in May, the majority leader blamed the lack of a budget on an evenly divided membership in the Senate. Early this month, the chairman of the Democratic National Committee—who has a propensity, because he speaks well, to put his nose in legislative business as if he were one of us—said on the Sunday show, ''Face the Nation'':

> We couldn't do it because we need 60 votes and we couldn't get 60 votes.

Wrong, wrong, wrong. A budget resolution needs 50 votes—not 60.

The occupant of the chair, as a valued member of the Budget Committee, knows that. Every Senator knows that. There are many votes that are 60 votes because you did not get a budget resolution—because the law says you are punished in some instances. Some things can't get passed with a majority, even though we require a majority. That the budget laws say without the budget, you have to have 60 votes, but not to pass it.

The budget should have been passed. We should have gone back to it on a number of occasions, and it should have been done.

Finally, just last week the chairman of the Senate Budget Committee, referring to an amendment that was voted on by the Senate on June 20, clearly implying it was the Senate budget, literally said here on the floor, and I quote:

> We got 59 votes for that proposal on a bipartisan basis. We needed a supermajority of 60.

That is wrong. You needed 60 votes. Because you didn't have a budget which did not permit you to do what he was suggesting, we didn't get 60 votes.

So that ought to be corrected. Everybody should know the fact we did not have a budget caused it; not that we were voting on a budget that needed 60 votes.

I want to be very clear. We have not voted on a budget resolution in the Senate this year. This will be the first time the Budget Act in its life—which, incidentally, is not a very long life. It is only 27 years old. That means Senator DOMENICI could have been here for its entire life. I have been. I could have been on the committee for its entire life. I was. I could have been the chairman for ½ of its time in existence. I was—maybe 2 years less than ½.

In any event, we split it when we were controlling the Senate. That is who deemed that.

There has not been a budget resolution brought before the Senate to be debated on the floor this year. The chairman of the Budget Committee knows this, and he knows the majority leader knows this, and to even hint we would have considered a budget but didn't pass it is not so.

We have now learned—and I hope they have learned—that if the Democrats are still in control next year, which I doubt—but if they are, we should have learned you had better bring it up, even if you are one or two votes short. And you had better spend 2 weeks debating and see what happens. At least you will have tried, and you might be surprised. Somebody around who would rather there not be a budget would say I will vote to report it out.

I have been, as I indicated, on the Budget Committee since its beginning in the 94th Congress. I have been honored to serve on it. I am very embarrassed by what is happening to it because it is getting very close to becoming something we use as an instrument to require 60 votes for certain things we do and don't do. But as far as it being the policy determiner we expected, it is beginning to fall apart as we speak and as we vote. I know what a budget is. I think I know what we should have done.

Just last week the Chairman of the Senate Budget Committee, referring to an amendment that was voted on in the Senate on June 20, clearly implying that it was a Senate budget, literally said here on the floor and I quote: ''. . . we got 59 votes for that proposal on a bipartisan basis. We needed a supermajority, which is 60.''

Mr. President, let me be as clear as I can possibly be—we have not voted on a budget resolution in the Senate this year. This will be the first time in the Budget Act's nearly 27 year history that the Senate has not adopted a budget blueprint.

No budget resolution has ever been brought to the Senate floor to be debated and voted on this year. The Chairman of the Budget Committee knows this, the Majority Leader knows this, and to even hint that we have considered a budget, is an absolute insult to those of us that have worked to make the budget process a functioning part of the fiscal decisionmaking mechanism here in the Senate.

I think I know what a budget is, and let me assure those who may care, it does not take 60 votes to adopt a budget in the Senate. Despite what the Majority Leader, the current Chairman, or the Democratic National Committee Chairman says.

In fact, of those nearly 32 budget conference resolutions the Senate has adopted over the years, almost half, fourteen, were adopted with less than 60 votes.

And last year, as Chairman of the Budget Committee, in an evenly divided Senate, I had considered and we adopted a budget resolution for FY 2002. It was tough but we worked hard and in that evenly divided Senate, the Senate passed its budget blueprint by a vote of 65–35.

So let us be clear, it does not take 60 votes to adopt a budget.

So what other excuse is given for not adopting a congressional budget this year?

Unbelievable, the Chairman of the Budget Committee comes to the floor and says because the House of Representatives adopted a budget that used OMB assumptions or did not make 10 year estimates, that it was impossible for the Senate to adopt a budget.

Mr. President, to blame somehow the House of Representatives for adopting their own budget resolution as the reason why the Senate did not consider its own, simply defies logic.

That is why the Budget Act created a concurrent resolution, that is why the Budget Act established a conference on a House-passed and Senate-passed budget resolution. I have been in many conferences on budget resolutions, and they were tough, but the fact that I knew they were going to be tough, never stopped me from doing my job as Chairman of the Budget Committee, and again the Senate has always adopted a budget resolution.

So what other excuse is made for the Senate not acting on a budget? The President's budget submitted way back in February is the other excuse for us not acting here in the Senate.

This has to be the weakest of all excuses. This is not the President's budget we are expected to adopt. This is not the President's budget resolution. This is the ''congressional budget.''

We are an equal branch of government in this balancing act between the Executive and the Legislative over fiscal policy.

I have never been shy about expressing differences with Presidents of either party over the years when I though their budget proposals needed modifications. The same holds true for President Bush's executive budget plan transmitted to Congress last February.

But I have always guarded the congressional prerogative to produce a ''congressional budget.'' This is our responsibility under the Budget Act and I would also go so far as to say, under the Constitution. Because the President has a budget plan that might differ from one that Congress might produce, is certainly no reason for the Congress not to act. In fact, I would argue it is a reason for the Congress to act.

I do not think it should be any surprise that we begin a new fiscal year with no appropriation bills at the President's desk to sign. The failure of this Senate to consider and act on a budget blueprint, to sit down and tough it out back in the spring, has made the appropriation process stumble and fall this year.

Last year in the aftermath of the September 11 attacks, Congress also did not have any regular appropriation bills enacted before the beginning of this fiscal year. This was understandable under the circumstances.

But I contend the major reason the appropriation process has failed this year, is because we were not willing to adopt a budget resolution. You have to go back to 1996 to find the last time no appropriations were enacted before the beginning of the fiscal year. A time under President Clinton and the infamous 26 days of government shut-down and 14 continuing resolutions.

No, there is no other way to say it and it is tough. This Majority Leader and this Chairman of the Budget Committee and this Senate failed in their one basic responsibility under the Budget Act—produce a budget resolution. And now everybody else is to blame but ourselves. I think those who take the time to understand what is going on here can see the hypocrisy of the Majority Leader and Chairman's statements.

THE ECONOMY

Mr. DOMENICI. Mr. President, I have a statement I want to start and then put the remainder in the RECORD, and if we get time in the next 2 weeks, I will come back a couple of times.

The economy is much in the air now. It is not as much as perhaps the Iraq situation. But the Democratic Party and their leaders want to make it the important issue and put the war in the backseat.

I don't think that is going to happen because the people of this country know the war is an imminent problem. And, if we have a war, the amount of money we plan to spend in the budget will probably get changed in a mammoth way to accommodate the needs of the war.

When we had the war in the gulf the last time, our allies paid most of the bill. I recall looking at the formula that was drawn by the OMB. Actually, our allies just took the formula and said we are bound by the formula, and wrote the checks. Some of those paid as much as $13 billion for that war. That was our friend we were all arguing about which has a little oil. Here is our share. Japan didn't enter that war. They wrote a big check. We didn't pay much for that war. We don't have such an agreement now. Maybe somebody will start thinking about it.

Let me talk about the economy.

Federal Reserve Board Chairman Alan Greenspan said recently the U.S. economy has confronted very significant challenges over the past year: Major declines in the equity markets, which none of us thought would ever happen. Many Americans thought it would go on forever. The equity market had ballooned out of all proportion, and people such as Alan Greenspan were giving us warnings. It did begin its downward trend and it still is continuing on that path.

To date, Dr. Greenspan said the economy appears to have withstood this set of blows very well—the blows being the investment spending, the retrenchment, the tragic terrorist attacks of last September. The Federal budget has been able to withstand that, and the economy has been able to withstand that.

The economy is not in great shape right now. But not in great shape either at this time are many individual problems in this country. Consumption is strong. Unemployment gains are creeping back up.

But to blame President Bush is pure unadulterated, partisan politics. For those who talk about it being his problem, the issue would be what would they do to fix it? Some would raise taxes by an enormous amount; or by repealing the cuts that were made. Nobody with their right mind about the economy would suggest that.

But when you say it is not in very good shape today, what would you do about it? We will blame the President. What would you do positive about it? A large group would say raise taxes.

I find it hard to believe if we had to do that and came to that point, very many people would vote for it when they finally understood the negative consequences of that.

I want to mention every now and then I look to a Democratic economist who is of renown, and is of the other party, and everybody knows who he is; that is, Democratic economist Joe Stiglitz. He was Vice Chairman of the Federal Reserve under President Clinton. He has written many articles and books on the economy.

He has indicated, and I quote:

> This economy was slipping, and it was slipping into a recession even before Bush took office as President and before the corporate scandals—

That we haven't yet determined the breadth and number of them, but even before they started—

> were rocking America.

That was earlier yet than when the President took office.

He says we were moving into a recession. What we did were the right things to get out of the recession. We cut taxes, and we increased spending of things that would spend quickly.

We also at the same time, working with the Federal Reserve Chairman, got interest rates to come down. You remember how many times he cut them. And so you had the triad that would help a recession.

I wonder how bad it would be if we had not done that. I wonder how bad the economy would be if we had not cut taxes at the right time and if, in fact, we did not have the Federal Reserve working in harmony reducing the interest rates, and if we had not spent some additional money, some which came because of the war costs.

So the economic growth has started slowing down. It started in mid-2000, well before the President took office. In 1997, more than 3 years before he was elected, you could begin to see, as you analyze corporate profits, they were coming down. This is 3 years before he went out on the steps and took the oath and became President of the United States.

Rather than call this a Bush recession, we ought to call it a Clinton hangover. If you want to use another word for each one so there is nothing negative about it, that would be all right.

In the late 1990s, we had a stock market boom and an investment boom.

Much of the rise in the stock market and investment was sustainable, but some of it was not.

We are now making up for the excesses of that period. We are finally

coming to grips with the need to make sure companies are honest when they account for their profits.

It seems as though for a few years there in the late-90s, some CEOs forgot about ethics and morals. They could say just about anything about their profits and no one was there to check. As long as the stock market was going up, no one seemed to care ethics and morals, and laws were not enforced.

But now we're checking. Now the SEC is doing its job of making sure shareholders aren't getting ripped-off. Now we're going after the corporate criminals.

A few years ago, the federal government looked the other way. Now, thanks in large part to President Bush, that's not happening any more.

Having said that, I believe that when the economic history of this era is written, what will strike people is not that we had a recession but that things were not worse.

In early 2000 the NASDAQ hit 5000. If you had told people that two years later the NASDAQ would be treading water at about 1200, as it is now, they might have assumed we had gone through some sort of Depression. Well, as bad as things got last year, we did not have a Depression.

The policies we enacted over the past two years have made the economy better, not worse. If it weren't for those policies who knows how weak the economy would be now.

Over and over again we hear that our policies are bad for the economy because they turned surpluses into deficits. That is just not true.

I have staked a large part of my career arguing for fiscal discipline, much of it when it was unpopular, even with many members of my own party. But now is not the time quibble about the budget deficit.

The deficit this year will be about 1.6 percent of GDP. But look at the same point in previous business cycles. Back in the 1976 recovery, the deficit was 4.2 percent of GDP. In the 1980s it peaked at 6 percent. In the early 1990s it peaked at 4.7 percent. So 1.6 percent is not large considering we are in the early stages of a recovery and in a war.

If fiscal mismanagement were hurting the economy we would see rising interest rates. But interest rates are going down, not up. The rate on 10-year Treasury Notes is the lowest in 40 years. Homeowners are refinancing their mortgages at a record rate. Notice that those who claimed the Bush tax cut would lead to higher interest rates have been very quiet of late regarding that key point in their argument.

Yes, things could be better. But long term, our economic fundamentals are strong. Productivity is growing at about a 5 percent rate and new innovations continue.

Cutting taxes was the right thing to do and we did it just in the nick of time. I am proud of the work we did this year and last year in cutting taxes and my fellow Republicans and a few Democrats should be proud too.

I thank the Senate for yielding time to me, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I listened to my distinguished colleague with great interest. If my colleague wishes to speak for a few more minutes, I will follow my colleague. I say to the Senator, I was very interested in what you were saying.

Does my colleague wish to take some additional time?

Mr. DOMENICI. I say to the Senator, that is very nice of you to offer. When you want to speak on the floor, you take the gamble. I have some other things to do. I had to wait a little longer for my position. You can rest assured that since I think it is pretty good, the Senate will hear more before we go out. And they will hear another one on two subjects that have to do with who is to blame for what, suggesting we ought to get on with doing things rather than blaming, which is what I think the American people would like.

Thank you very much, I say to the Senator.

Mr. WARNER. Mr. President, I thank my colleague. He is clearly one of the elder statesmen of this institution, with some almost 30 years of service in the Senate.

THE GRAMM-MILLER AMENDMENT TO THE HOMELAND SECURITY BILL

Mr. WARNER. Mr. President, I rise today, with other colleagues, to support the Gramm-Miller amendment. I wish to address very specifically some provisions.

The overall amendment addresses the concerns which I had very early on and are outlined in a letter to the Governmental Affairs Committee. At that time, I said to the then-chairman, in writing, I had specific concerns. This particular amendment by GRAMM and MILLER has taken care of those concerns. It is for that reason I lend my support.

It provides the President with the authority he needs to organize our Government at this critical time to deal with these most unusual threats that are confronting our Nation today.

The Presiding Officer and I are privileged to serve together on the Armed Services Committee, and he full well appreciates the diversity and the unprecedented threats that face this Nation today.

I think Senators GRAMM and MILLER have gone about this in a very balanced way. I specifically thank the Senator from Texas and the Senator from Georgia because I approached them, asking that they include a provision in their bill which I had devised with the help of my colleague from Tennessee, Mr. THOMPSON, my colleague from Utah, who is in the Chamber, and my colleague from Virginia, Senator ALLEN. Senator ALLEN and Senator BENNETT have taken the lead in the high-tech caucus.

In the course of one of our periodic meetings on this subject, the group brought to our attention the need to have this type of indemnity legislation, and once Senator BENNETT, Senator ALLEN, and I approached the Gramm-Miller team, they accepted this amendment. I wish to talk about it today and the importance of that amendment within the amendment that is on the floor now.

The legislation I am proposing with others would authorize the President to apply basically the same indemnification authorities now available to the Secretary of Defense, such that it can be applied to a much larger number of the departments and agencies of the Federal Government, as well as State and local—as well as State and local—governments so these entities of the Federal and State government can go about the business of contracting with our private sector and enable the contractors to have certain protections regarding the products which are the subject of the contract or the services, which products and services are directly contributing to the war on terrorism and the protection of our Nation.

It is quite interesting, I find there is an urgent need for this authority. It has existed in the Department of Defense for so many years. I was privileged to serve in the Department of Defense from 1969 through 1974 as Secretary and Under Secretary of the Navy. The Presiding Officer, I think, was on active duty at that time and had an exemplary career in the military.

But, for example, contractors today would not sell the chemical and biological detectors to a wider range of Federal agencies and departments, and State and local, but they can take the same product and sell it to the Department of Defense. So we are kind of caught up in interpretations of a Presidential directive, the existing law. I think we do not have the time to sort it out in the courts, and it is best to clarify it here in Congress.

This is a bipartisan effort, I assure the Presiding Officer and others.

Some of our Nation's top defense contractors simply cannot sell these products to the other agencies, State and Federal, today. In the meantime, our vulnerability here in the United States, in my own experience, is of great concern to me.

We should give the President the option that he currently does not have of deciding whether other departments and agencies, Federal and State, should have this authority.

The liability risk has been a longstanding deterrent to the private sector, freely contracting with the Department of Defense, but now wishes to broaden its contracting with other departments and agencies.

Congress has acted in the past to authorize the indemnification of contracts. I find this history fascinating. For example, on December 18, 1941, just a short time after the tragic Pearl Harbor experience—2 weeks—the Congress enacted title II of the First War Powers Act of 1941. By providing authority to the President to indemnify contracts, this legislation and its successor pieces of legislation have enabled the private sector to enter into contracts that involve a substantial liability risk occasioned by their services and products.

Administrations since President Franklin Roosevelt's day have used these authorities to indemnify or share the risk with defense contractors. This was required to jump-start the ''arsenal of democracy,'' as described by the President in 1941.

It was true again in 1958, when the nuclear and missile programs were facilitated by the indemnification of risk associated with the use of nuclear power and highly volatile missile fuels.

It is true today for technology solutions required by agencies engaged in the war against terrorism. And that is the purpose of this legislation.

This war is going to be different in many ways—many ways—we cannot envision at this moment or in the future. For one, much of the Nation's homeland defense activities are going to be conducted by State and local governments. It is, thus, imperative to ensure that State and local governments can access vital antiterrorism technologies and not let the contractor be subjected to undue risk.

To facilitate this, my amendment would require the establishment of a Federal contracting vehicle to which State and local governments could turn to rapidly buy antiterrorism solutions from the Federal Government. The President would also be authorized, if he deemed it necessary, to indemnify these purchases. Again, discretion rests with the President, and he, in turn, has delegated this authority to the Secretary of Defense. I presume if this legislation becomes law, he will delegate it to other heads of departments and agencies.

Again, I wish to emphasize two points: One, that this authority is discretionary. The President, on a case-by-case basis, may decide whether to indemnify contracts.

I expect the President will use the authority much as it has been used at the Department of Defense, carefully and thoughtfully, and only for those products the Government cannot obtain without the use of this authority.

The second point I want to emphasize is that indemnification is not in conflict with any efforts to limit or cap liability. My legislation should not be seen as an alternative for tort reform, but merely as one tool that can be used by the President to ensure that vitally needed technologies necessary for homeland defense are placed into the hands of those who need them.

During World War II and all subsequent wars, conflicts and emergencies in which the U.S. has been involved, we have needed domestic contractors to be innovative, resourceful and ready to support efforts at home and abroad. In 1941, the Congress wanted contractors to know that if they were willing to engage in unusually hazardous activities for the national defense, then the U.S. Government would address the potential liability exposure associated with the conduct of such activities. Our position should be no different now.

I conclude with remarks about another matter connected with the Gramm-Miller amendment. There are many aspects in the creation of this new department of homeland defense that are unprecedented. Contentious civil service issues have largely driven the debate on homeland security in this Chamber in the past days and weeks. Over 170,000 employees from 22 agencies will be transferred to the new Department of Homeland Security, including an estimated 43,000 Federal employees represented by 18 different unions.

Since President Bush proposed the creation of homeland security, I have been involved in discussions with a number of my colleagues on both sides of the aisle and with the Federal employee unions and their members about the potential consequences to Federal employees. In order to successfully achieve this complex collaboration, I recognize the importance of the President's request for increased flexibility in managing the new Department.

The uncertainty, however, of the administration's intentions with additional labor and management flexibility has fostered mistrust, understandably so, among these Federal employees. The administration in no way should put into question basic labor rights and civil service protections for these employees.

The administration cannot ignore the impact this is having on morale, not only on the employees being transferred, but throughout the Federal workforce. With no firm commitment from the administration that collective bargaining rights will not be weakened outside of reasons directly related to national security, I cannot blame these Federal employees for being anxious.

I can personally attest to the dedication of civil service employees throughout the Federal Government. There has never been reason to question that during a national crisis, Federal employees perform their duties first, setting aside personal grievances. Federal employees have been relocated, reassigned and worked long hours under strenuous circumstances with no complaints since the September 11 attacks. Their loyalty is first and foremost to their country. Federal employees have proven this time and again.

I have carefully considered several compromise proposals on the civil service provisions in the homeland security legislation. I am strongly concerned about initiatives that would weaken or interfere with the President's authority under current law to exclude Federal employees from collective bargaining if those employees are primarily involved in national security work. Every President, since it became law in 1978, has exercised this authority in the interest of national security. There can be no argument that this new department's primary purpose and focus is protecting our national security interests.

That said, I would strongly encourage the administration to engage in further discussions with the Federal employee unions and assuage some of their concerns. Information should be available on an ongoing basis concerning the administration's actions and intentions regarding creation and management of the new department.

It is my hope that before the House of Representatives and Senate vote on the final version of homeland security legislation, some provisions can be agreed upon to lessen the tension, the fear that exists in the civil service ranks.

I have been privileged to have lived my life in Virginia, the greater metropolitan area, and have had the opportunity to be in the civil service in a number of positions, all the way from a letter carrier and forest firefighter, in 1943–1944, and service in the military to Secretary of the Navy, where I was privileged to have, as a part of my department, several hundred thousand Federal service employees.

I guarantee you, the ranks of the Federal civil service employees are no less patriotic than the ranks of the military. They are fine, loyal, hard-working Americans. I am hopeful the distinguished manager of the bill and others can listen and take into consideration their concerns and somehow put into this bill those provisions which will lessen the fear and the concern among these brave citizens in our country.

Mr. GRAMM. Will the Senator yield?

Mr. WARNER. Yes.

Mr. GRAMM. Mr. President, no one has been clearer or more effective or more concerned about trying to protect the rights of people who work for the Federal Government than the Senator from Virginia. It would have been easy for the Senator from Virginia to simply look the other way, forget about the terrorist threat, and be on the other side of this issue. It has not escaped my attention many people who are Government employees work in the Senator's State.

I thank the Senator for making this bill, supported by the President, better by his input. I thank him for looking at the big picture. If we could keep everything the way it is and provide for the national security of the country, there would not be much of a debate. But, unfortunately, in real life, it is not black and white, right or wrong; it is tough choices.

Maybe it is because the Senator has the background of having been involved in defending the Nation himself,

having been Secretary of the Navy, or maybe it is simply because he just has the big picture. I thank him for his leadership on this issue.

I assure him, if there is any way we can work out an agreement on a bipartisan basis to find a solution, I want to do that.

There is one constraint: We cannot give the President a law that won't get the job done. If he says he needs a pickup truck, we can't give him this beautiful, shiny pickup truck with no steering wheel.

I look forward to working with the Senator. I appreciate his leadership and, quite frankly, his courage on this issue.

Mr. WARNER. Mr. President, I thank my colleague for his very thoughtful remarks. If I may say, in conversations in the presence of the President of the United States on this subject and the importance of homeland security—and I have attended several meetings along with other colleagues—this matter has been raised. I detect in the President no concern that Government employees are secondhand citizens, but they are entitled to their rights.

That is the purpose of this legislative body, to bridge the gaps to the extent we can and protect all the people.

I thank my colleague and yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. EDWARDS). Morning business is closed.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Gramm/Miller amendment No. 4738 (to amendment No. 4471), of a perfecting nature, to prevent terrorist attacks within the United States.

Nelson (NE.) amendment No. 4740 (to amendment No. 4738), to modify certain personnel provisions.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that at 3:45 p.m. today the motion to proceed to the motion to reconsider be agreed to, the motion to reconsider be agreed to, and without further intervening action or debate, the Senate proceed to vote on a motion to invoke cloture on the Lieberman substitute amendment, for H.R. 5005, the Homeland Security legislation.

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

Mr. REID. Mr. President, we are in a parliamentary posture where we will have a vote tomorrow at such time as may be determined, either that or an hour after we come in. The majority leader has said privately and has authorized me to say publicly that we would be willing to have that vote today, the reason being, of course, we have been told by the minority that we are not going to get cloture. It is hard to comprehend that, but that is what they said. It would seem to me it would be in everyone's best interest to see if that, in fact, is the case today, if, in fact, we did get cloture, and the 30 hours could run and it would not interfere with the duties of the other Senators, except those who wish to speak. Postcloture, a Senator has up to 1 hour.

There are lots of things going on at home. This is election time, as we know. It appears to me, as I said earlier today, we have had so many code words. This is a filibuster. We were told yesterday there were 30 speakers on this amendment. Realistically, what amendment ever had 30 speakers? There won't be 30 speakers on this amendment, but there will be a lot of people moving around, stalling for time, which has happened now for 4 weeks on this bill.

I said yesterday, and I am beginning to believe more all the time, and it appears clear to me, that there does not seem to be any intention of either the White House or the Republican majority in the House or the minority in the Senate, of wanting to move this bill forward.

There is general agreement that the bill the Senators from Connecticut and Tennessee came up with is a bill we should have passed very quickly. There are problems that could have been resolved in the House and the Senate conference. For every day we spend talking about Iraq—and I think we should spend some time every day talking about Iraq and homeland security—it is 1 day we do not have to deal with the stumbling, staggering, faltering economy.

If we spend each day on issues focusing away from the economy and what needs to be done in the Senate, including doing something about terrorism insurance, doing something about a Patients' Bill of Rights, which the Presiding Officer worked very hard on—we need to do something on a generic drug bill. There was the fiasco that took place in Florida. Again, 2 years after the fiasco of all time with the elections, still nothing can be done because the House will not let us do anything. The energy conference is moving forward by tiny steps, but it is one of the few things happening.

It is obvious to me there is an effort to do everything that can be done so we do not focus on the economy. It is too bad. We can either formally come in later and offer the vote on the cloture motion set for tomorrow or do it today. But the offer is there.

For all the Senators worried about what is going to happen tomorrow, they should understand—and I understand there are some on the other side who do not even care if they are here or not because they really do not need them on a vote because we have to try to get 60 votes. But that is OK; we will still do everything we can. On this side we are going to move forward on this bill. We will, as the leader indicated, work weekends, we will work nights, whatever it takes, to try to move forward on this bill. I am disappointed we are being told there will not be cloture on this until tomorrow.

That is, I repeat, only an effort to stall moving forward on this legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will respond to the distinguished Democratic floor leader by simply going back and reviewing the facts and setting out the obvious blueprint that will solve our problems. I remind my colleagues we have been on this bill for over 4 weeks largely because of the debate on the Byrd amendment, and not a minute of that time was wasted because we were convinced by the major premise of the Byrd amendment. In the Gramm-Miller substitute we deal with that problem by maintaining the power of the purse, which is the fundamental constitutional power of the Congress.

I am not complaining about the fact that we have spent the bulk of our time on an amendment that is still pending because the plain truth is we learned something ''we'' being Senator MILLER and I. We learned something. We concluded that Senator BYRD was right on and we changed our substitute. By the way, we have never voted on the Byrd amendment.

The plain truth is the great bulk of the time we have been on this bill we have been debating that amendment, and it is yet to be resolved.

I remind my colleagues that Senator THOMPSON, the ranking Republican on the committee, offered a simple amendment that said we ought not tell the President how to set up the White House. This amendment was partly controversial in terms of the President's National Security Adviser and his terrorism adviser. That amendment was, sure enough, adopted. But only after 6 days of delay on the part of our Democrat colleagues. And then there were other delays before it was ever added to the bill.

The problem is, they have delayed this bill, and not us. Everybody is entitled to their own opinion. They are just not entitled to their own facts. The weakness our colleagues on the other side of this issue have is that the facts are against them. What is the old deal in law? When the facts are against you, argue the law.

What is the current holdup? The President of the United States, working with a Democrat and a Republican, has spent 4 weeks listening to things that have been said and concerns that have been raised, starting with Senator

BYRD. We have made 25 major changes in the President's proposal. In terms of the President's personnel flexibility, we have limited his power to eliminate exactly the concerns that have been raised by every opponent of the President who has spoken out on this issue.

Does the fact that we have eliminated the ability to discriminate while preserving basic workers' rights in terms of being judged on merit change the rhetoric of the debate? No. When people are debating, they still act as if the President could be arbitrary or capricious. But the point is he cannot be under our bipartisan substitute that the President supports.

We are at war. We were attacked on September 11. Thousands of our people were killed. The President has asked us to bring together 170,000 people in the Federal Government to help him prosecute this war and protect American lives.

After listening to many concerns, changing the President's proposal, and adopting 95 percent of the Lieberman proposal Senator LIEBERMAN says: You have taken 95 percent of my bill. What is wrong with it, if you are for 95 percent of it?

It is like a nice, shiny, fancy red truck—I remember our ranking member drove one in the campaign—still legendary—but it is only missing a steering wheel. What Senator MILLER and I have done, working with some 45 of our colleagues, is we have taken that truck and we have put a steering wheel in it.

In wartime, with American lives at risk, the President of the United States, asks only one thing: Give him a vote on his homeland security bill. Some people may view that as an extraordinarily extreme request. But I submit that there is not a State in the Union, whether it is Connecticut or Nebraska, Tennessee, New Jersey, or North Carolina, where you could go into any coffee bar in any drugstore or restaurant, and sit down and gather a group of people around and ask them the following question: When the President has asked for powers to defend American lives during wartime, should we give him these powers that he says that he needs? My guess is you would have a hard time finding somebody in Nebraska who would say no.

All we are asking is something very different. We would like him to be given the tools to do the job. We are simply asking that we have a vote on his proposal.

Our Democrat colleagues say: No, we are not going to give you an up-or-down vote on the President's proposal. We are going to make you vote on it the way we want to write it, before we let you vote on it the way the President wants it. Under the rules of the Senate, they can do that. Under the rules of the Senate, if they have the votes, they can do whatever they want to do. The Democrats have the right to deny the President an up-or-down vote. They have the right to do it under the Senate rules. We know at this very moment that terrorists are plotting the murder of our citizens, we know this and worry about it every day. Under these extraordinary circumstances, the question is not what they have a right to do, but rather it is what is right to do.

Let me say this. We have this little gimmick going on. It is too cute by half. The gimmick is that by using the parliamentary procedure of cloture, they are going to put the President's proposal into a straitjacket where they get to change it before it is voted on.

Look, I have used parliamentary procedure myself. Every Member has a right to do it. But do you think the American people are stupid? Do you think the American people are not going to figure out what the game is here? Do you think the American people are not going to get it straight, that not only are you not with the man and do not support the President's request for the tools he wants, but you won't even give him a vote on the tools? You have the power to do it under the rules of the Senate, but you have to have the votes, and you don't have the votes. So we are going to play this game.

I hope everybody is watching this—I hope a lot of people are watching it. I can tell you one thing. I used to think, before I got old, that I had reasonable political abilities. But I could not defend the position of the opposition. There is no city in my State that I could go into and take the position of the opponents of the President and walk out of there with my hat, much less with my head.

The bottom line is we are going to go through a little parliamentary gimmick tomorrow where we are going to vote on cloture to try to put the President into a parliamentary straitjacket where he never gets a vote on his proposal. But there is a problem. It takes 60 votes to get cloture, and our Democrat colleagues do not have 60 votes, and they are not going to get 60 votes.

So, rather than playing all these games while American lives are in jeopardy, the obvious thing to do is to give us a vote. I would be happy to propound a unanimous consent request to have a vote at 11 o'clock on Tuesday, up or down, on the President's proposal. We want a vote on the President's proposal. Look, I know people back home. They are trying to pay the bills. They are trying to figure out how to get Sarah off to school. They are not quite paying attention. But I do not think they are going to believe that the President does not want his own proposal to be voted on. Again, they may be confused. They are not paying attention. They are busy. They are counting on us to do the right thing. But they are not stupid.

The way to solve this thing and get on with this bill is to do something you are going to end up doing anyway, and that is, give the President a vote.

Let me reiterate that no one has proposed a compromise that I have not set down and talked to him about. It continues to dumbfound me that we have had an issue of life and death for American citizens become a partisan issue. I think every person in the Chamber who has been involved in this debate will have to grudgingly say that this is true.

Now before somebody comes out here and starts screaming let me tell you what partisan issue is. It is an issue where you draw the line right down the middle of the Senate and almost everybody on the left side of the Senate is on one side and almost everybody on the right side of the Senate is on the other side. That is how we define issues becoming partisan.

How did it ever happen, when you saw the way we all felt after 9/11?

Let me tell you how it happened. It happened because it is not easy to provide for homeland security. The vote on Iraq is an easy vote because, so far as I know, there is no organized, active political constituency for Saddam Hussein. He doesn't have an organized political group in America that is actively lobbying on his behalf, of which I am aware.

There are some people who believe we ought to turn over American security to the U.N. I understand that view. I reject it. When the lives of my people are at stake, it is my responsibility and it is the responsibility of our Government. It is not the responsibility of our allies, not the responsibility of the U.N. I am not willing to delegate it to anybody else. But I respect differences of opinion.

But that is an easy issue compared to this issue. The reason it is an easy issue compared to this issue is that you cannot promote homeland security without having to make tradeoffs.

That is why we are here. We all want to protect Americans. I would never say—and I don't believe that my Democrat colleagues are—we are not concerned about national security. The problem concerns that it is not free. The problem concerns that there are tradeoffs. And the tradeoff is, if we are going to give the President the power to hire the right person, put them in the right place, and at the right time, if we are going to allow the President to have the tools to fight an enemy that did show up anywhere and could kill thousands of our people, we have to be willing to change the way we do business in a Federal bureaucracy.

The Federal bureaucracy does not want to change the way we do business. Unlike Iraq, this is an issue where there are strong political forces that are against giving the President this power because they do not want to change the way they run their business.

Look, I am not going to stand up here and state that the position that the rights of public employees is morally inferior to the position that lives are more important than ''workers' rights.'' I believe it is a law of order. But that is a moral judgment somebody else has to make.

All I am saying is the reason this has become such a contentious issue is that we have one of the most powerful political forces in America—the public employee labor unions and the Federal bureaucracy—and to have an effective homeland security system, you cannot have the horse-and-buggy civil service that we have today.

Interestingly enough, there are only 20,000 members of the union who would be among the 170,000 people who will be brought together in this agency. And only 20,000 of them are members of unions. Yet, remarkably, we have an amendment pending that would give unions that represent 20,000 workers veto power over the President's decision with regard to 170,000 workers.

I don't think that would make a whole lot of sense where I am from, and I don't think it makes sense where you are from. But that is why we have a battle.

Let me also say that I think part of our problem was, when this bill was written in committee, and when it was being debated early on, nobody was paying much attention to it except organized special interests in Washington, DC. As a result, this was written as sort of a business-as-usual bill. But business is not usual. When workers' rights interfere with people's right to their life and their freedom, then I think there has to be some flexibility.

I am going to talk more in a moment about the bill. Maybe I should let other people talk before I do. But let me just sum up by saying we have been on this bill for over 4 weeks because the opponents of the bill have taken that tack. We have been on this bill for 4 weeks because it took 6 days to get a vote on the amendment offered by Senator THOMPSON, and even then it was 3 more days before it was added to the bill.

All we want is to have a vote on the President's proposal. We are going to get it. We can go through all kinds of games. We can fill up the tree, as they say. We can use parliamentary procedure. We can try to get cloture and put the President in a box. But the American people are not going to be deceived because they are not stupid. In the end, they want the President to have the tools he needs. But they are never, ever going to accept not even giving him a vote.

Maybe you can justify this. Maybe this makes sense where you are from. But there are a lot of things at night when I get down to say my prayers for which I thank God. One of them is, I don't have to defend a position of the people on the other side of this issue, because I am totally incapable of doing it. I don't think it is defensible.

I want to urge them once again, let us work out a compromise.

I am going to in a moment—this is the last point I will make because others are getting ready to speak—outline why this amendment by Senator NELSON is anything but a compromise. I am going to outline for only a moment how this totally destroys the ability of the President to get the job done. I think most people, when they listen to that, and who are objecting, will understand what the issue is about.

But I have given the Senator in writing the changes he would have to make for the President to be able to accept it. In the previous offer that was brought forward, we gave one simple change—preserving the supremacy of the President on national security. Every President since Jimmy Carter has had the ability in the name of national security to make personnel changes. But, remarkably, the Senator's amendment and the underlying bill take away from President Bush powers that he had the day before the terrorist attacks.

How many Americans would be absolutely stunned to know that in the name of homeland security we are debating a bill that takes away power from the President to use national security powers?

Somewhere, somehow, somebody's priorities have gotten way off base. Either the President and those of us who support him are completely lost in terms of any weighting of the reality of the world we are in, or the people who oppose the President have gotten badly off base and out of tune with the reality we face.

Obviously, I don't make the judgment about which side is lost in the wilderness. But I would have to say I believe the American people are going to reach the conclusion that the President is right and reasonable and the people who oppose him are wrong and unreasonable.

There is a way out of this mess. But the President can't do it alone.

I urge my colleagues to end this charade, reach an agreement, and let us have a bipartisan bill. And, if you are not willing to do that, you are going to have to give the President an up-or-down vote. There is no other way you are going to be able to do it without it. We can go through the process. We can vote on cloture tomorrow. We are not going to get cloture. We can do it next week. But in the end, the President is going to get a vote. But what the President wants is not a vote but a compromise with one constraint—the President has only got one constraint: Give me something that can work. Give me the tools to finish the job. But don't give me tools that won't work. He has a little bit harder time than his opponents because their proposals don't have to work. His proposals do.

That is my plea.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, after the exchanges that were heard on the floor yesterday, I must say I hope we can come back to this debate on homeland security and focus more directly on all the common ground we have with a spirit of compromise and clearheaded perceptions that can bring us together so we can get this done.

I find the comments of the Senator from Texas, who is about to leave the floor, so full of misunderstandings or misperceptions and so full of inflexibility that I must respond to them.

The Senator talks about delay.

Let me just recite some history on this bill. It was in October of last year—almost a year ago—that Senator ARLEN SPECTER, our distinguished Republican colleague from Pennsylvania, and I introduced a bill, a piece of legislation, to create a Department of Homeland Security. That measure came from work our committee had done.

But these special interests that Mr. GRAMM, the Senator from Texas, invokes, throws around, they were not involved in the construction of that legislation. That legislation came from public hearings we had, and primarily and largely from a nonpartisan citizens commission created according to legislation sponsored by the former Speaker of the House, Newt Gingrich, chaired by two distinguished former Senators, Republican Warren Rudman of New Hampshire and Democrat Gary Hart of Colorado, who suggested a Department of Homeland Security.

That was October. Talk about delay. The President of the United States took the position then that the executive office he had created with Governor Ridge could handle the urgent and enormous new responsibility post-September 11 of homeland security. We respectfully disagreed.

I must say, just to harken back to the debate of yesterday, that was a disagreement on substance. I never would have thought to suggest that the President of the United States was putting the bureaucratic opposition to the new Department of Homeland Security ahead of the national security interests of the United States, which was suggested earlier this week by the President himself in referring to this marginal dispute—significant but marginal dispute—that we are having over how best or whether to protect the rights of homeland security workers.

So that was October, November, December, January, February, March, April, May. In May, the Senate Governmental Affairs Committee reported out a bill, based on the one Senator SPECTER and I put in, on a 9-to-7 vote, creating a Department of Homeland Security.

President Bush and most of my Republican colleagues—the seven Republicans on the committee who voted on that—were opposed to the Department at that point.

Because we are talking about delay, the truth is, if we had all gotten together last fall, this Department would be up and protecting us today. But we had a difference of opinion about it.

On June 6, President Bush announced that he endorsed the idea of a Department of Homeland Security. That was the turning point that led us to what I thought was the inevitability that we

would create such a Department because of the urgent need to do so post-September 11, 2001.

We worked together on a bipartisan basis with the White House. We accepted some of the changes that the White House had in our legislation. We worked with colleagues on the committee and outside—Republican and Democrat—to improve our bill.

At the end of July, after 2 days in markup, the committee reported out the bill. I said at that point that 90 percent of our committee bill was in concert, was in agreement, with what President Bush had in his bill—90 percent.

Senator GRAMM, after his considerable work on the Gramm-Miller substitute, said that—he raised me 5—95 percent of his substitute was the same as our bill.

So can't we agree on that 5 or 10 percent on which we have disagreement? Can't we come together in the interests of the urgent national need for homeland security?

No one is delaying on this side. Right now, the reality is that the Senator from Texas is leading an effective filibuster against moving ahead on this bill. And why? Because we have achieved a compromise on the major outstanding point of division, which is, how do you protect the rights of homeland security workers? It is a bipartisan compromise because one Senator, the courageous Senator from Rhode Island, has decided that he is going to find common ground in the interest of preserving the national security authority of the President while giving a little bit of due process to Federal workers. That is all this does.

I think there may be some others of our colleagues on the Republican side who would support this compromise because it is reasonable and it meets the test that the White House set up that they did not want any diminution of the President's authority. Under this compromise, there is none. Senator NELSON of Nebraska will speak about this in a moment. He is an architect of this proposal.

So the fact is, my friend from Texas does not have the votes. We have at least 51 on our side. And for that reason, he is not going to let us go ahead and vote. He asks that there be an up-or-down vote on the President's proposal, but what he is asking for is something that is pretty much unheard of around here: Don't allow any amendments.

The President is a good man. The Senator from Texas is a good man. But they are not infallible. None of us is infallible. The Senate has a right to amend. In fact, we are asking here for one amendment.

I wish the Senator from Texas were on the floor because I would ask him, wasn't he aware that the President's proposal in the House—the Republican-controlled House—didn't get voted on without amendment? There were amendments offered. They improved it. The Gramm-Miller substitute changes the proposal the President initially made because that is the way this process works.

So if there is any inflexibility here, I say, respectfully, it is on the side of the Senator from Texas and those who stand with him. We are so close to having a reasonable compromise and a good bill to create a Department of Homeland Security. And he is right; the terrorists are out there. They are planning right now to do us damage. And we remain dangerously disorganized in the Federal Government.

One of the things our bill will do is to plug the gaps, close the inconsistencies, break down the walls that the investigation of the Joint Intelligence Committee has shown us contributed, I believe measurably, to the vulnerability that the terrorists took advantage of in September of 2001—September 11.

So I am sorry we are back to this futile, foolish debate. This is a good compromise, the Nelson-Chafee-Breaux compromise. Senator NELSON will speak to it in more detail in a moment. We agree on 90 to 95 percent of the underlying bill. We have the same departments. Let's get this done and stop this inflexibility.

Mr. President, as a show of good will, I want to offer here on the floor now what we informally offered to the Senator from Texas yesterday off the floor. He asks for something that usually does not happen around here, which is an up-or-down vote in the sense of without the right to amend.

But just to show how anxious we are to move forward, Mr. President, I ask unanimous consent that immediately upon the disposition of Senator NELSON's amendment, Senator GRAMM be recognized to offer a further second-degree amendment, which is the text of the President's proposal as contained in amendment No. 4738, and that the Senate then vote immediately on his amendment.

The PRESIDING OFFICER (Mr. JOHNSON). Is there objection?

Mr. THOMPSON. Mr. President, reserving the right to object, I have not had an opportunity to either consider the suggested unanimous consent request or to talk to my other colleagues, some of whom are not on the floor, who are directly involved in these negotiations. So for that reason, at this time, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LIEBERMAN. Mr. President, that offer remains pending. I hope Senator GRAMM will consider it. It says that the Nelson-Chafee-Breaux amendment, compromise, would be voted on first, and then we give Senator GRAMM the opportunity to have the President's proposal voted on.

Now, is he worried that that means he might not have the votes for the President's proposal without the Nelson-Chafee-Breaux amendment on it?

I ask him to consider that because it would both give him what he asks for and it would allow the Senate to move forward and complete our business, pass this legislation, get it to conference with the House, and create a Department of Homeland Security to protect the American people.

There has been too much nonsense in this debate, too much irrelevancy, and not enough appreciation in this hour of urgent vulnerability for our country about how critically important it is for us not to do business as usual but to rise above the normal nonsense and do what we are supposed to do on foreign and defense policy, which is to forget our party labels, to leave our ideological rigidity at the door, and come here and reason together in the interest of the beloved country we are privileged to serve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to be here today and speak in favor of the amendment which, together with Senators CHAFEE and BREAUX, I have submitted for consideration to the homeland security debate.

I wish my good friend and colleague from Texas was in the Chamber because I have hunted with him. He is an excellent hunter. He is a great sharpshooter. Today his shots miss the target. The truth is, he is right on one point: The people of America are smart. They are smart enough to know that you are not entitled to your own set of facts, but it is pretty easy for somebody to mischaracterize or restate the facts in a way that will make their case.

That is what happened on the floor this morning. If you want to attack an amendment, then refer to those who support the amendment as opponents of the President. Everybody knows Senator CHAFEE, Senator BREAUX, and I are not opponents of the President. This is an area where I thought we had agreement with the White House.

Let me characterize the facts not as I see them but as they have been stated by others. I refer, first, to the letter from Governor Ridge, dated September 5, to Senator LIEBERMAN. I quote:

> The President seeks for this new department the same prerogatives that Congress has provided other departments and agencies throughout the executive branch.

Then there are several examples set forth as bullets. The third bullet point reads:

> Personnel flexibility as currently enjoyed by the Federal Aviation Administration.

He also adds the Internal Revenue Service and the Transportation Security Administration.

This proposal adopts the language of the Internal Revenue Service in connection with the reorganization of that Department. I thought we were in the position to offer exactly what was being requested. I am a little bit confused about this because I happened to be presiding the day my good friend from Texas appeared on the floor and

said, with regard to providing Presidential authority: We have done the same thing in the past with the Federal Aviation Administration. But interestingly enough, in one area we have granted a tremendous amount of flexibility, when we decided to reform the Internal Revenue Service. We gave the executive branch of Government tremendous flexibility in hiring, firing, pay, and promotion because we were so concerned about the inefficiency and the potential corruption in the Internal Revenue Service.

He went on to ask his colleagues, if we believed it worked there, then why do we not believe it can work here?

That is exactly what we have offered. Now we find that is not acceptable.

I have already referred to the concern I have; that is, when the goalposts are moved and the rules change in the middle of the game or the circumstances around you continue to be in flux, how in the world can you ever meet the expectations of the other side?

What my colleagues and I have tried to do is offer a compromise that will bridge the gap to bring together that last 5 percent Senator LIEBERMAN and Senator GRAMM referred to, to close the gap, fill the last 5 percent, end the debate, and do what we need to do—vote to pass a homeland security bill so it can go to conference and we can have national security.

It has been suggested that perhaps we are not as interested in national security as we are in other interests. National security is not only the primary interest, it is the driving force behind the homeland security bill. It has been suggested that there is another interest, as though that is going to take away from national security.

That is not going to take away from national security because this amendment provides enough support for the President's powers, the President's authority to do what the President needs to do. It is consistent with what Governor Ridge has suggested, and it is consistent with what our good friend and colleague from Texas asked for on the floor of the Senate over a week ago.

Characterization is important. But the important thing the American people understand is that on the floor of the Senate sometimes losing becomes winning. While the same set of facts are stated there, they can be characterized in different ways. You have seen a characterization today that is different than what the facts truly are.

It is hard to find another interpretation from what my good friend, the Senator from Texas, has said on the floor of the Senate or what Governor Ridge has written very clearly in his letter.

It seems to me we can, in fact, close the gap, stop the debate, and move forward and pass this legislation.

Senator LIEBERMAN made a good point: In the Congress of the United States, it is rare that a bill that is introduced in one form is in that same form by the time it has completed its process. There are amendments. There are amendments because there are different ideas in which we try to approach these very important issues, to find legislation that will solve the problems we face.

This bill is different now than it was at the very beginning. I can tell you today that, if we can accept this amendment, we can, in fact, close the gap.

I have met with Senator GRAMM. He is absolutely right. He has always offered to meet to discuss this or any other issue to see if we can close the gap. We are continuing to have discussions. I hope we are able to close the gap. But if the conditions change, it is very difficult to close the gap.

I hope we will be able to move beyond what appear to be partisan remarks this morning to what will be American remarks about how we can find a solution—not to characterize it as Republican or Democrat, but to characterize it as an American solution to an American problem facing the American people. And it is the American way to debate, compromise, and ultimately come up with a solution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I would like to directly respond to the Senator from Nebraska. As I understand his point, it is that his compromise, which is looked upon as the bipartisan compromise because a Republican has joined in it—what Senator GRAMM's efforts have done, along with Senator MILLER, apparently is not looked upon as a bipartisan compromise, even though a Democrat has joined in that; that is just a matter of terminology—the Nelson compromise purports to give the President flexibility because it gives the President flexibility that the IRS has.

He is absolutely right. The IRS has been mentioned in conjunction with this debate as one of those agencies where we have given the President flexibility.

What the Senator fails to point out is that also a part of that debate has been the discussion of other agencies where we have given the President much more flexibility than we have given the IRS.

The flexibility we gave the IRS was hotly contested and hotly debated, but the IRS had so many problems. They had spent billions of dollars trying to get their computers to talk to each other. We had hearings about their problems. This is one agency now. This is just one organization. Because of all the difficulties they had, we decided to give them flexibility with regard to pay, hiring, and some other items. But as a part of that, there was a procedure that required negotiation with the employees union. It required, I believe, a written agreement, and it required, if an agreement was not reached, it had to go before the Federal Services Impasses Panel.

The Senator adopted those provisions and put it in the compromise and said: OK, we have given you what the IRS has.

The only problem with that is we have given flexibility to the FAA, we have given flexibility to the Transportation Security Agency, we have given flexibility to the GAO, none of which require the head of those agencies to go before the Federal Services Impasses Panel.

It is only with regard to the IRS and a hotly contested compromise that we placed that burden on the leadership of IRS. In these other agencies where we gave additional flexibility, we did not put the impasses panel as a part of that. So our friends on the other side find one area where the people running the Department have to go through additional hurdles to interject any flexibility, and they adopt that one instead of the example we have given in other agencies.

What about that? Maybe we made the right decision with regard to the IRS and the wrong decision with the GAO, the wrong decision on FAA, the wrong decision on TSA. What is the right decision?

Let's forget about the fact that it is 3 to 1. Let's ask ourselves, what is the right decision?

I point out that we are not trying to fix one dysfunctional agency. Goodness knows, the Government is full of them. Instead of addressing them in a general fashion, what we have done is when they get so bad, they come before us and we give them something, some flexibility of one kind or another. But we are not trying to do that here.

What the President is trying to do and what the Gramm-Miller substitute amendment is trying to do is to pull together 170,000 Federal employees, requiring the coordination of 17 different unions, 77 existing collective bargaining agreements—77 existing collective bargaining agreements—7 payroll systems, 80 different personnel management systems, an overwhelming task under any circumstances.

Are we to equate that with the IRS, especially in light of the fact we impose these same requirements on these other agencies to which we gave flexibility? The IRS example should not be the high water mark. The IRS example is the low water mark. That is the least flexibility we can give, less than what we gave to these other agencies and certainly less than what we should give the President when we are reorganizing an entire major section of the Government involving 77 different collective bargaining agreements, 7 payroll systems, and 80 different personnel management systems.

We are comparing elephants to peanuts. With what are we left? We are left with a system that takes the crux of the labor-management difficulties we have seen in times past where we spend months and years negotiating

items in these collective bargaining agreements, such as color of uniforms, whether or not the smoking area should be lit and heated, whether or not the cancellation of the annual picnic was in violation of the collective bargaining agreement. It took 6 years on an army base in St. Louis to resolve that one.

With regard to issues such as those, collective bargaining and the myriad levels of appeals and the indefinite amount of time it takes, all the way to the Supreme Court of the United States, if they can get that far, this compromise so-called takes that totally off the table—totally off the table. This compromise does not allow the new Homeland Security Department to make any changes with regard to labor-management relations under chapter 71 or with regard to appeals under chapter 77.

If one looks at page 3, at least in the copy I have, of the amendment, chapter 97, Department of Homeland Security, my friend from Nebraska and his colleagues establish a human resources management system. OK, sounds good so far because, goodness knows, we need to establish a new system. We have seen the failures of the past, the creations of the 1920s and the 1940s that some would insist we bring over lock, stock, and barrel into the 21st century.

Then it says: Any new system established under this subsection shall, one, be flexible; two, be contemporary but not waive, modify, or otherwise affect a whole list of items, including labor-management relations, chapter 71, and the appeals section under chapter 77.

There are many other issues that are taken off the table, too: chapter 41, chapter 45, chapter 47, chapter 55, chapter 57, chapter 59, chapter 72, chapter 73, chapter 79. This bill takes all of those off the table and says you cannot touch them in your new system.

Mr. SPECTER. Mr. President, will the Senator from Tennessee yield for a question?

Mr. THOMPSON. I will be happy to yield.

Mr. SPECTER. I have been trying to determine whether the provisions of the Nelson-Chafee-Breaux amendment supplements the provisions to title 5 of 7103(b)(1) which says:

> The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—
>
> (A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and
>
> (B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

The language submitted by the Nelson amendment says: The President could not use his authority without showing that the mission and responsibilities of the agency or subdivision materially changed and, two, a majority of such employees within such agency or subdivision have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorist investigation.

If I might have the attention also of the Senator from Connecticut, I had raised this question with the Senator from Connecticut and also the Senator from Nebraska, or talked to their staff, and have been told that the provisions of the Nelson amendment supplement which is now in existing law.

I have been advised by people from the administration personnel department that the Nelson provision replaces existing law which then would leave out the language of national security requirements.

My question to one of the managers of the bill, the Senator from Tennessee who has the floor, is whether this is a replacement for or an addition to?

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. Let me address it first, if I may.

I don't know whether you would call it a replacement, total replacement, or an addition to. The significant thing, in answer to the Senator's question, under any definition it is a diminution of the President's authority from existing law. It is a diminution in this way: Under existing law, the President can make a determination that an agency or a subdivision of an agency is primarily involved in intelligence, counterintelligence, investigative, or national security work, and he can set aside the collective bargaining agreement.

Under the Nelson amendment, there is an additional requirement for the President. He must also go through the requirement of determining the mission and responsibility of the agency materially changed.

If you have a situation where a person was, in times past, doing a certain thing, and he is going to be brought into the new agency—and perhaps he is doing pretty much the same job; his job has not changed that much. What has changed is the rest of the world. September 11 changed it. Our heightened requirement in security changed.

That whole job where the President has not exercised his authority in times past might take on a different dimension, although he is doing the same job. In the first place, the President might not be able to make this finding. In the second instance, he would be setting himself up for another hurdle, for someone to challenge him in court.

I believe the Senator will agree there has been one instance under current law where people have gone to court to challenge the President, and the President and persons got an arbitrary and capricious standard overcome. It is a tough challenge for a plaintiff to overcome, but the President has to go in there and made a determination as to how much he says. We are talking about national security. How much do you divulge? How much can you get in camera and all of that business? That is current law.

Under this, he has an additional establishment that he has to make that there is a material change, not with regard to the work of the agency, as in current law, but with regard to the majority of the employees working in that agency.

Mr. SPECTER. Mr. President, I agree with the Senator from Tennessee that there is an additional requirement. I might differ with him as to how substantial it is.

Mr. THOMPSON. If I could add to my answer, under present law the President has the authority to make that determination based on the primary function of an agency involving national security. Under this, national security does not appear. It says primary duty: intelligence, counterintelligence, or investigative work. It does not say national security.

What it does say is that it must be directly related to terrorism. Terrorism is important. But there are national security concerns that do not necessarily have to do with terrorism. It is a limiting of the circumstances under which a President can make a determination.

Mr. SPECTER. Mr. President, if the international security consideration is stricken, there is an enormous difference. But that goes to the basic question as to whether this is in place of or in addition to. If there is a national security consideration, it is nonjustifiable. You cannot take appeals.

All the President has to do is come to court and say it is national security. If national security is not in the requirement, then you get into the arbitrary capriciousness, et cetera, on administering appeals.

Perhaps, if I might have the attention of the Senator from Tennessee, I think in listening to the Senator and looking at this, in regard to what you are talking about, it is clearly a replacement. It would be clearly redundant if it were not. It says: No agency shall be excluded as a result of the President's authority unless the President establishes these things.

I don't see how it could be more clear. I don't see how it could rest side by side with current law.

If it is a ''replacement,'' it makes an enormous difference.

I was on the floor earlier in morning business saying if it is in addition to, it is a diminution of the President's power but not very much because of the similarity. But if it is a substitute for—Senator NELSON is on the floor. If I might have leave of the Senator from Tennessee to direct the question to Senator NELSON or Senator LIEBERMAN, is it a substitute for or in addition to?

Mr. THOMPSON. If I may do so without yielding my right to the floor.

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

Mr. LIEBERMAN. Mr. President, responding to the Senator from Pennsylvania, I will begin and still leave the floor with Senator THOMPSON. I think Senator NELSON may want to respond also.

It is my understanding that it is the clear intention of the sponsors of what

I call the Morella-Nelson-Chafee-Breaux amendment that it supplement, not replace, existing language.

I say to the Senator from Pennsylvania, this concern he expresses is real. This is a concern that does not go to the intentions of the sponsors of the amendment. I have not talked to him, but let us reason together how we can make clear in this legislation, in this amendment, what the intentions are. It is not to alter this.

If I were to describe—and I stand to be corrected by the sponsors of the amendment—if I were to describe what the amendment does in this regard, regarding collective bargaining rights, it says to the approximately 43,000 to 47,000 currently unionized employees of various departments that will be moved to the new Department of Homeland Security—and remember, some of these people have worked for decades; some have worked for a few years—while the existing authority that this President, the previous President, all Presidents back to President Carter have had, to suspend collective bargaining rights in the interest of national security, these folks have continued to keep their jobs and be in unions because no previous President has believed that national security was inconsistent with their jobs being unionized.

All we are saying in this compromise amendment is to now, simply because they have been moved from where they are—Border Patrol, Customs agents, FEMA, Coast Guard, civilian employees, whatever—they have been moved to the Department of Homeland Security, to take their right to belong to a union away, you have to show their job has changed.

The President has to declare it and that is it. There is no appeal.

That is my understanding of the intention of the amendment. But on the question, Is the amendment supplementary or does it replace, it is intended to be supplementary. We will work with the Senator from Pennsylvania to make that clear.

I wonder if the Senator from Tennessee would mind if the cosponsor of the amendment spoke.

Mr. THOMPSON. Without losing my right.

Mr. NELSON of Nebraska. If I might respond, I agree with my friend and colleague from Connecticut. It is our intent this be additional authority, an additional opportunity for the President to make a decision about national security. I agree also that were it to be appealed, the national security would just simply eliminate the appeal. I am confident.

If it is not as clear as it needs to be, we will certainly, with our good friend from Pennsylvania, help make it clear. Perhaps this will resolve the concern the White House has about this language. Our goal is to make it supplemental.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. I am happy to yield to the Senator from Louisiana.

Mr. BREAUX. I think it is very clear it is a supplement to the existing language in section 7103. If you read our amendment it says that:

> No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1).

Section 7103(b)(1) is the existing language setting out what the President has to do. Ours is added to that. So it doesn't replace the original 7103(b)(1). That is still intact. This is a supplement to that and is to be read in connection with both of them together. The President makes that determination and it is his decision. It is like a teacher giving a test and the teacher is grading the test. The President in this case is the teacher and he grades his own test. He makes that determination and they are both to be read together, so national security is still a part of it.

Mr. SPECTER. Mr. President, I have one additional question, if I might.

Mr. THOMPSON. Before we get off that point, it doesn't matter if you call it in addition or supplement to. It places requirements on the President and the hurdles before the President that are not in existing law.

Do you or do you not, in this amendment, require the President to establish the mission and responsibilities of the agency have materially changed?

Mr. BREAUX. Will the Senator yield for a response to that?

Mr. THOMPSON. Yes.

Mr. BREAUX. The answer is yes. But I would also say, the point you made earlier, if you have the same agency today that, somehow, because things have changed in this country, is in fact moved to a different location, they are doing the same type of work, but instead of doing it with regard to domestic security they are doing it because of an outside threat by terrorists, for instance, that mission has substantially changed. Their mission is no longer to stop, perhaps, Mexicans from crossing the U.S. border into Texas. Their mission is now to stop terrorists from entering the United States. That mission has substantially changed. That meets the test. Who gives the test? The President. Who grades the test? The President. So that mission has changed if the enemy has changed. That is very clear. It is a decision the President would make.

Mr. THOMPSON. If I may respond to that, the ultimate arbiter is not the President in this case. It is some Federal district judge. If the Senator from Louisiana was making this determination, I would be satisfied and happy and content the right conclusion would come. But the Senator has just given a scenario of his opinion as to what would constitute material change. Others may or may not agree with that. But there can be no dispute there is an additional requirement placed on the President.

You can argue it is justified, that we didn't place that requirement on Jimmy Carter or Bill Clinton or the former President Bush or Ronald Reagan, but we are going to place it on this President at this time. You can make that argument. But I must say I have difficulty in seeing how one can argue this does not place additional requirements on this President to make additional determinations, on the one hand, and with regard to a more narrow area of things, that is terrorism, on the other.

Mr. BREAUX. Will the Senator yield on that point?

Mr. THOMPSON. Yes.

Mr. BREAUX. The point is it is for the last 30 years under the existing law the President having to make this decision, that it has always been possible to go to Federal court under Federal law if someone thought the President hadn't met the existing standard. They could take him to court. We are not changing that at all. In the last 30 years there has been one case. The one case ultimately said the President was within his authority to do exactly what he wanted to do—one case in 30 years.

The existing law says the standard the President has to meet is always subject to going to court saying he didn't meet the standard. We are not changing that at all.

Mr. THOMPSON. I may say in response, the issue is not jurisdiction of the court, whether you go to court. I agree with that. The issue is what happens once you get there. Under the current law, all the President has to establish is as an agency it is primarily involved in national security.

Under this amendment, the President would have to establish something similar to that, and, in addition, the primary purpose of most of the employees within that agency had changed. That is a factual determination that is a colossal headache. It is a hurdle.

Again, you can say the President ought to have that additional hurdle at this time. But again I hardly see how one can make the argument this is not a change in existing law and we are opening up, not just one but at least two, avenues for Federal district court recommendations.

Mr. BREAUX. May I make one final point and then I will sit down.

Mr. THOMPSON. I am happy to yield for that purpose.

Mr. BREAUX. I think we are probably not going to agree on this. I suggest to the distinguished ranking member, what we need around here is a little law and order, and perhaps we could go ahead and vote on it. We could resolve it very quickly. Let's just vote on it and then move on to the next step.

Mr. THOMPSON. I agree with that.

Mr. SPECTER. One additional question.

Mr. THOMPSON. I am happy to yield to the Senator from Pennsylvania.

Mr. SPECTER. Senator GRAMM had made the comment in his earlier presentation that every President since President Carter has had the power to

make personnel decisions on national security grounds. We have just had a discussion with some of the people from the personnel department. We have been cited to no authority as to the personnel decisions under chapter 43, chapter 51, chapter 53, chapter 75 and chapter 77. These are all provisions of the Gramm bill. The only exception for national security is one on labor relations—labor-management relations in chapter 71.

The question I have for the manager of the bill, the distinguished Senator from Tennessee, is whether he knows of any provision, statutory provision or other provision, which will give the President the authority to make personnel decisions on national security grounds?

Mr. THOMPSON. I know of no other. Obviously, if I am proven incorrect on that, we will supplement this record. But this is clearly the area—which points out the importance of it, which points out the whole personnel issue—getting the right people in the right place at the right time with the right pay and the right responsibilities and the right accountability is what this is all about. Therefore, Congress—many years ago, President Kennedy signed the bill—decided that the President should have the right, in personnel, with regard to matters of national security. And even broader than that: Intelligence, counterintelligence, and investigative, which is something I know my friend from Pennsylvania knows a great deal about—investigative.

I do not know whether that has ever been exercised, that particular provision, but it is a pretty broad provision. Every President since Jimmy Carter has exercised that provision. As far as I know, it has not been controversial.

This President Bush exercised it not too long ago with regard to the U.S. attorneys. There was a hue and cry that went up. It was said they may be prosecuting terrorists and we may have to move them around somewhat and all that. Well and good, but you included the secretaries.

Mr. SPECTER. That was on collective bargaining, was it not, as opposed to personnel?

Mr. THOMPSON. I beg your pardon?

Mr. SPECTER. The President exercised his authority under national security grounds on a collective bargaining issue as opposed to a personnel issue?

Mr. THOMPSON. You could say that, but it was under this (B)(3) authority on national security grounds.

Mr. SPECTER. Correct.

Mr. THOMPSON. The secretaries were a part of the unit and the assistant U.S. attorneys wanted to be organized. I am not familiar with that concept. When I was assistant U.S. attorney, when I was brought in. I stayed as long as they wanted me or I wanted to stay. When they elected another President, I was gone. Nowadays we have a civil service system and folks there were trying to take it one step further and unionize.

In light of what is going on in the world, the determination was made it is not a good idea to have people prosecuting terrorists, bogged down with negotiating some of these things, some of which are quite foolish, we have been describing. For better or for worse, that decision was made.

The secretaries were incorporated because the President's authority only goes to taking action with regard to agencies or subdivisions of the agencies. So the suggestion was made to the union representatives at that time, as I understand it, in talking to the OPM people, let's change the law so we can carve out secretaries. And they said: Oh, no, no, no. We don't want to do that.

We do not like the issue framed just the way it is. That created some controversy with regard to the only time this President has exercised authority there. But as far as I know, historically, all Presidents have exercised it. It happens to be controversial.

I simply do not understand. If we are going to debate whether or not this is merely supplemental, and we don't want to really do anything with regard to the President's authority, why in the world can't we go back to the traditional authority that every President has had?

What is the message we are sending to the American people? Do some of our colleagues distrust this President who seems to have the trust of the American people with regard to matters of life and death? From all the polls I can read, I think he is doing the best he can. I think all Presidents always do the best they can. We rally around them in times of war and in times of great national issues.

Do we really want to be fighting for days on end as to whether or not you can say it is significant or you can say it is insignificant? You can say it is in addition to, you can say it is a modification, and you can say it is supplemental. But do we really want to change that now for the sake of—if it is not 40,000 union employees, it is 20,000—those who are in bargaining units? Only 20,000 are union members out of 170,000.

My colleagues who support the Nelson amendment would suggest that we put up these additional hurdles with regard to the President's national security authority only with regard to homeland security. The area where he needs the authority the most is the only waiver area which they would take away. The Labor Department is not affected by this. The Energy Department is not affected by this. It is only the homeland security area. I have great difficulty in understanding the wisdom behind doing that at this time.

Mr. BENNETT. Mr. President, will the Senator yield for a further question?

Mr. THOMPSON. I would be happy to yield.

Mr. BENNETT. Mr. President, I have heard this debate. It reminds me of why I didn't go to law school. It is easier to hire people with the expertise of the Senators here who have gone to law school to try to explain this than it is to understand it yourself.

I have a very simple question coming from a more simple attitude about this whole thing. Is it not true that the President of the United States has said he will veto this bill if it has this in it? If that is the fact, it doesn't matter if we have 99.400-percent agreement on everything else. The legislation is not going to go forward.

I ask the Senator from Tennessee, who is in closer touch with the White House than I am, if it is not true that the President said he will veto this bill if this is in it?

Mr. THOMPSON. That is my understanding. I think it is important to understand the rationale behind that.

Mr. BENNETT. I am not challenging that. I don't want to trigger another discussion of all the rationality. I want to cut to the question that the Senator from Connecticut asked: Why can't we come together, as we always do with legislation, and get this thing moving forward? I ask the Senator from Tennessee, Should we be aware of the fact that, right or wrong, the President, as is his right under the Constitution, has made his intentions very clear? And shouldn't we be paying attention to that as we make our negotiations as well as all the other issues that have been discussed on the floor?

Mr. THOMPSON. Yes. Indeed. I do not think any of us want to spend all this time and effort on something that basically we think ought to happen in terms of reorganization of an important part of Government for naught and go before the American people and say we have failed because we insist on the status quo with regard to managing this thing but not the status quo with regard to the President's national security authority.

I can't read the President's mind. We learned that our CIA Director declared war to his people some time ago, and he is taking a lot of criticism and abuse, quite frankly, from some of our people who are our allies—one, in particular, I think in a particularly shameless fashion, in order to get reelected in Germany, has said some things which I think is going to haunt the relationship between the United States and Germany for a while. In the midst of all that—albeit he was talking about the Iraq issue and not this one—I think it put the President in a difficult position when we are spending all this time debating.

Again, this is the one area where we do not like status quo. Whether it is small, whether it is large, whether you slice it thin or you slice it thick, any way you cut it, it is additional steps that the President has to make, and additional opportunities for somebody to take into court, and things of that nature.

I don't think it says there is no basis for a President saying he is going to

veto something and I wouldn't support him just because he threatened a veto. I am sure that I have opposed Presidents who threatened vetoes before. My attitude was to let them veto it because I didn't think it was sound, or I didn't think there was a rationale for it.

I am not afraid to say that one should look past that. I think it is going to be extremely difficult to go before the American people to explain why we insist on passing something that the President says he won't sign. But it is even more important that we look at the underlying rationale.

I have been on the Governmental Affairs Committee ever since I have been in the Senate. The thing I leave the Senate with—the sentiment, the idea, the notion, the feeling—is how difficult it is to make even a little change in the way Government works.

We have seen from Department to Department to Department overlap, duplication, billions of dollars wasted, $20 billion in 1 year, dysfunction, inability to incorporate information technology systems that private industry has been able to do for years, and human capital crises. We are going to be losing 45 percent of our workforce in about 5 years. We are keeping the wrong people and losing the right people. And we can't pay people what we ought to be paying them. We have seen all of that happen in the operation of government services, money, and so forth. It will hurt us if we incorporate all of that into this new homeland security bill.

You take all of that history, all those GAO reports, all of those IG reports we have seen year after year saying the Government is a mess in many respects, and it cannot pass an audit. It is a management mess. People say ''Tut, tut.'' And you see an article in the paper every once in a while.

We bring them down and chastise them. They go back for another year. The next year they come back, they are still on the high-risk list and nothing has changed.

Take that in context then to the President. We are at war. We now perceive the need to organize our Government—at least a part of our Government—in a different way. We see that old systems in many respects simply need to be redone.

We have a President who the American people are behind and support, and we still can't make any change in our system in terms of how we manage this new Department, in terms of a civil service system that Paul Volcker down at Brookings—it is not a conservative, liberal thing—Paul Volcker and everybody agrees is a broken system that underwhelms itself at every task it takes. And we still, at long last, even in light of this history of failure, even with the loss of thousands of Americans, even if we agreed on the need to reorganize, can't make any changes in a system that is at the heart of the changes that need to be made.

The right people with the right pay and the right motivation and right accountability at the right place at the right time is what it is all about. Yet we are endangering—as we endanger as we speak—not being able to pass a bill to do one thing at long last.

I fear for my country. Once this issue is over, I fear that it will be so difficult to make any changes in the way the Government operates that it is going to collapse administratively of its own weight. There is enough fault to go around. There are a lot of years. This did not happen overnight. But that is the only way, apparently, that we can change anything around here. We cannot come together and agree on changes that need to be made, apparently.

I fear for my Government because if we cannot administer these departments, and we cannot make them run, we cannot get the right kind of people in the right places, none of this other stuff will work.

It all gets back to personnel. You say: Well, we're OK 90, 95 percent. That 5 percent is the nut that holds the propeller on the airplane. It is just a little nut—bolt, let's say—it is very small in weight in comparison to the weight of the airplane, but it is just what holds everything together.

It is a depressing situation when, in light of all this, at long last, we are hung up on some of these issues. The other side says: Well, you shouldn't be hung up. You ought to agree with us. And we are saying the same thing. But I will just pass on the merits of the case for a moment.

We are not making much progress on doing things differently than we have done before, except with regard to the President's national security authority—we ought to diminish that somewhat.

Mr. LIEBERMAN. Will the Senator yield the floor without losing his right to the floor for a moment?

Mr. THOMPSON. Yes.

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

Mr. LIEBERMAN. I thank my friend from Tennessee.

I want to take a moment to try to answer the very good question the Senator from Utah has asked which is, regardless of what our positions are on this particular amendment—Nelson-Chafee-Breaux, a bipartisan amendment—hasn't the President said he would veto the bill if it was attached? I have not heard that specifically with regard to this amendment. Maybe I missed it. And I am glad I have not heard it because of the history I want to recite now.

The President, or somebody in the White House—maybe the President himself—said if the bill, as it came out of our committee, had the provisions with regard to Federal employees, homeland security workers, in it, that the President probably would veto the bill.

I must say when that was said and the media asked me about it. I said: I can't believe the President would veto this bill based on that difference because we agree on 90 to 95 percent of the components of the bill. It is creating a new Department. We all agree it is urgent. Let's get it done. We can argue about this.

As a matter of fact, Governor Ridge was good and honorable enough to say to me at a meeting about this subject a week or 2 ago: I do remember at the beginning you, Senator LIEBERMAN, said to me, Please, let's not get into a fight over civil service. Let's pass the bill. And then we can come back in 6 months—in fact, our committee bill requires the new Secretary to come back in 6 months.

OK. We went ahead. We adopted the Voinovich-Akaka bipartisan reform on civil service in our committee bill. But we did not give the President any of the waivers he asked for and other provisions of civil service.

On the question of this extraordinary authority that Presidents have had since President Carter to remove collective bargaining rights, we set up essentially an appeals process to a Federal board, the FLRA, of which the President appoints two of the three members. That is the one the President made clear he believed would be a cut in his national security authority and said he would veto.

We came to the floor in a spirit of compromise, with my full encouragement. Senator NELSON and Senator BREAUX began to see if we could find some common ground with the White House and the folks on the other side of the aisle. And there was substantial movement. In fact, I think we have been quite flexible in that regard. We may disagree, but one thing I want to say is, at least as I interpret it, we have ended up with a compromise amendment which does not at all diminish the national security authority of this President or any future President if it is passed.

With regard to civil service, it gives the President new authority to change civil service law. It asks that, as we have done quite successfully with the IRS—and it is done in the public sector all the time—the best way to get changes in work rules is to not shove them down the throats of workers; try to negotiate them.

So this bill says: Try to negotiate them with your workers. And if that does not work, send it to the Federal Services Impasses Panel, which has seven members, all appointed by the current President. So it is not a hostile board.

In regard to the collective bargaining rights, we say now—and there is no appeal to the board I mentioned before. The compromise says the President has to make his case, incidentally, not just job by job; the order is he simply has to claim that the mission and responsibilities of the agency or subdivision have materially changed, as Senator BREAUX

said, and the majority of the employees within the agency are involved in national security work. That is final.

Incidentally, there has been one court case, as Senator BREAUX said—we are going to get it, look at it, and maybe enter it in the Record—which said the substantive determination on a question of national security is not reviewable by a court.

Mr. BREAUX. Will the Senator yield?

Mr. LIEBERMAN. I will.

Mr. BREAUX. I didn't know we had the floor.

Mr. LIEBERMAN. Through the courtesy of the Senator from Tennessee.

Mr. THOMPSON. The Senator does not have the floor. That is OK. I will be happy to yield to the Senator from Louisiana.

Mr. BREAUX. I don't want to belabor this any longer. But I say to the ranking member, there is only one case out of the 30 years where the President's authority was ever challenged to do what he did in moving employees around. And in that case, which was a case in the U.S. Court of Appeals for the District of Columbia, on the question of whether the President had proved the reason for making the decision that he made, the court said—I will have it printed in the Record—

The executive order under review cited accurately the statutory source of authority therefor, and purported to amend an earlier order that indubitably was . . . proper. . . .The act does not itself require or even suggest that any finding be reproduced in the order.

I would say, in layman's language, that basically said: Look, once the President says I am doing this because the mission and responsibilities have materially changed, he does not have to make a finding. That statement in itself is a declaration that the court looks to only. It does not require any supporting findings or any other determination other than the President citing the statute by which he has made that decision. And that is the only decision we had on this issue by a court of appeals.

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

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, INTERNATIONAL COUNCIL OF U.S. MARSHALS SERVICE LOCALS, 210 ET AL. V. RONALD REAGAN, PRESIDENT OF THE UNITED STATES, ET AL., APPELLANTS

No. 87–5335

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

(276 U.S. App. D.C. 309; 870 F.2d 723; 1989 U.S. App. LEXIS 3700; 130 L.R.R.M. 3031)

April 8, 1988, Argued

March 24, 1989, Decided

Prior History: [**1] Appeal from the United States District Court for the District of Columbia, Civil Action No. 86–01587.

Counsel: Randy L. Levine, Associate Deputy Attorney General, with whom John R. Bolton, Assistant Attorney General, Richard K. Willard, Assistant Attorney General, Jay P. Stephens, United States Attorney, Joseph E. diGenova, United States Attorney, Douglas N. Letter and Jay S. Bybee, Attorneys, Department of Justice, were on the briefs, for Appellants. John Facciola and Michael J. * * * assistant United States Attorneys, also entered * * * for Appellants.

Joe Goldberg, with whom Mark D. Roth and Charles A. Hobbie were on the briefs, for Appellees.

Judges: Wald, Chief Judge, and Robinson and Starr, Circuit Judges. Opinion for the Court filed by Circuit Judge Robinson.

Opinion by: Robinson.

Opinion: [*724] Robinson, Circuit Judge

This appeal summons us to decide whether a presidential executive order purportedly exerting a statutorily-conferred power is legally ineffective because it does not show facially and affirmately that the President made the determines upon which exercise of the power is conditioned. We hold that the challenged order is entitled [**2] to a rebuttable presumption of regularity, and on the record before us we sustain it.

I

Since 1962, collective bargaining has been available to most federal employees. n1 In 1978, Congress enacted the Federal Service Labor-Management Relations Act, n2 the first legislation comprehensively governing labor relations between federal managers and employees, Congress did not, however, include the entire federal workforce within this regime. The Act itself exempted several federal agencies from coverage; n3 additionally Section [*725] 7103 (b)(1) authorized the President, under specified conditions, to make further exceptions:

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) The agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work; and

(B) The provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations. n4

n1 See Exec. Order No. 10,988, 3 C.F.R. 321 (1959–1963).

n2 Pub. L. No. 95–454, tit. VII, 92 Stat. 1111, 1191–1218 (1978) (codified at 5 U.S.C. §§7101 et seq. (1982 & Supp. IV 1986)). [**3]

n3 See 5 U.S.C. §7103 (a)(3) (1982).

n4 Id. §7103(b)(1).

In 1979, President Carter issued Executive Order 12171 n5 which, after paraphrasing Section 7103(b)(1), eliminated a number of agencies and subdivisions from coverage. In 1986, President Reagan promulgated Executive Order 12559, which undertook to amend the 1979 order to exclude certain subdivisions of the United States Marshals Service. n6 Appelles then instituted an action in the District Court attacking the legality of the latter order. The court rejected their claim that federal marshals are not engaged in protection of the national security, and consequently that the order was invalid on this account, ruling instead that judicial authority to reassess the facts underlying the order was lacking. n7 The court concluded, however, that it retained ''general power to ensure that the authority was correctly invoked,'' n8 and that this necessitated measurement of the order by the conditions specified in Section 7103(b)(1). n9 The court held that inclusion in the order of the President's determinations was a condition precedent to lawful exercise of the power, n10 only in this way, the court felt, could it be demonstrated [**4] that the circumstances contemplated by the Act existed. n11 The court further held that Executive Order 12559 was not saved merely by the fact that it sought only to amend the 1979 order, which did contain the recitation * * * necessary, n12 Accordingly, the court granted summary judgment in favor of appellees, n13 and appellants came here.

n5 3 C.F.R. 458 (1979).

n6 In relevant part, Exec. Order No. 12,559 provides:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title V of the United States Code, and in order to excempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows: Executive Order No. 12171, as amended, is further amended by deleting Section 1–209 and inserting in its place:

Section 1–209 Agencies or Subdivisions of the Department of Justice:

* * *b. The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in offices of the United States Marshals in the United States Marshals Service.

3 C.F.R. 217 (1986) (footnote omitted). [**5]

n7 AFGE v. Reagan, Civ. No. 86–1587 (D.D.C. Sept. 23, 1986) (opinion on preliminary-injunction and dismissal motions) at 5–7, Joint Appendix (J. App.) 22–24 [hereinafter First Opinion]. This contention is not before us on this appeal.

n8 Id at 7, J. App. 24.

n9 AFGE v. Reagan, 665 F. Supp. 31 (D.D.C. 1987) (opinion on summary-judgement motions) at 4, J. App. 32 [hereinafter Second Opinion].

n10 First Opinion, supra note 7, at 7. J. App. 23.

n11 Id. at 8, J. App. 25; Second Opinion, supra note 9, at 4–7, J. App. 32–35.

n12 Second Opinion, supra note 9, at 7–9, J. App. 35–37.

n13 AFGE v. Reagan, 665 F. Supp. 31 (D.D.C. 1987) (order), at 7–9, App. 39.

II

We first must address appellants' contention that the case is moot. In 1988, after the District Court ruled, the President issued Executive Order 12632, which provides for the same exclusions that Executive Order 12559 does, and contains all that the court deemed essential. n14 Since [*726] the 1988 order conforms fully to the court's standard, the question areas whether a controversy still exists. Appellants, while maintaining that the 1986 order remains [**6] valid, assert that the 1988 order fully resolves the dispute over validity of the 1986 order, and urge us to vacate the District Court's judgment and dismiss the appeal. n15

n14 Exec. Ord No. 12,632, 53 Fed. Reg. 9852 (1988).

n15 Defendants-Appellants' Suggestion of Mootness, AFGE v. Reagan, No. 87–5335 (D.C. Cir.) (filed Mar 28, 1988) at 2–5.

Important collateral consequences flowing from the 1986 order lead us to the conclusion that the controversy remains very much alive. Since issuance of the 1986 order, the Marshals Service has unilaterally abrogated the collective bargaining agreement as to affected deputy marshals, thereby depriving them of grievance procedures and other benefits, and has terminated checkoff of union dues, to the serious financial detriment of the union. n16 On this account, appellees have filed unfair labor practice charges with the Federal Labor Relations Authority, n17 which is holding the charges in abeyance pending the outcome of this appeal. n18 Resolution of the charges depends up the validity of the 1986 order—the precise question now before us.

n16 Plaintiffs-Appellees' Response to Suggestion of Mootness, AFGE v. Reagan, No. 87–5335 (D.C. Cir.) (filed Apr. 4, 1988) at 3–5. [**7]

n17 Id. at 4.

n18 Letter from S. Jesse Reuben to Wallace Roney and Tom Mulhern (Nov. 30, 1987), Attachment C to Appellees' Response to Suggestion, supra note 16 at 2.

In these circumstances, it cannot be said that the 1988 order has ''completely and irrevocably eradicated the effects of the alleged violation'' n19—the annulment of Executive Order 12559. n20 We accordingly put the suggestion of mootness aside and turn to the merits.

n19 County of Los Angeles v. Davis, 440 U.S. 625, 631, 99 S. Ct. 1379, 1384, 59 L. Ed. 2d 642, 649 (1979).

n20 Id. The Government urges us to dispose of all collateral consequences by treating the 1988 order as a ''curative act'' and extending its vitality as such back to the date of the 1986 order. Id. at 4–5. It suffices to point out that curative governmental action is not to be given such retroactivity as to demolish intervening vested rights—here those asserted by appellees with a view of remediation. See, e.g., Hodges v. Snyder, 261 U.S. 600, 603–604, 43 S. Ct. 435, 436, 67 L. Ed. 819, 822 (1923) (subsequent act may not deprive a person of a private right established under a previous law); Forbes Pioneer Boat Line v. Board of Comm'rs, 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1921) (legislation may not retroactively abolish vested rights); DeRodulfa v. United States, 149 U.S. App. D.C. 154, 171, 461, F.2d 1240, 1257 (1972) (''a vested cause of action, whether emanating from contract or common law principles, may constitute property beyond the power of the legislature to take away'' (footnote omitted)). [**8]

III

Appellants argue that the District Court improperly imposed upon the President a requirement not supported by the Act. n21 They insist that a presumption of regularity surrounded the promulgation of Executive Order 12559, and thus that there was no need to explicate findings by the President. n22 Appellants also claim that any infirmity in the order is rendered immaterial by the fact that it simply amended the 1979 order, which incorporated findings of the sort believed to be necessary. n23

n21 Brief for Appellants at 9, 13.

n22 Id. at 11.

n23 Id. at 16–19, 22–26.

Appellees contend that the 1986 order did not comply with the Act. n24 They insist that Congress designed the findings as preconditions to the President's resort to the exemption authority; that the courts are the instrumentalities for ensuring that the authority is properly exercised; and that the courts must see some proof that these prerequisites were satisfied. n25 Appellees point to other cases in which courts have invalidated executive action that did not satisfy statutory demands. n26

n24 Brief for Appellees at 13.

n25 Id. at 13–15.

n26 Id. at 15–17, citing National Fed'n of Fed. Employees Local 1622 v. Brown, 207 U.S. App. D.C. 92, 645 F.2d 1017, cert. denied, 454 U.S. 820, 102 S. Ct. 103, 70 L. Ed. 2d 92 (1981); NTEU v. Nixon, 160 U.S. App. D.C. 321, 492 F.2d 587 (1974); Levy v. Urbach, 651 F.2d 1278, 1282 (9th Cir. 1981). In National Federation, this court invalidated an attempt by the President to define the ''public interest,'' with respect to the pay of certain federal workers, ''without reliance on the explicit standards'' set by Congress. 207 U.S. App. D.C. at 100, 645 F.2d at 1017. In NTEU, this court issued a declaratory judgment that the President's failure to perform an express, statutory and non-discretionary duty violated his constitutional obligation to faithfully execute the laws. 160 U.S. App. D.C. at 326–336, 350, 492 F.2d at 592–603, 616. In Levy, the Ninth Circuit held that an executive order had to comport with the authorizing statute to be valid. 651 F.2d at 1282. Appellants do not take issue with these unexceptional holdings, and we merely observe that they land no assistance in solving the problem confronting us. [**9]

[*727] Section 7103(b)(1) makes clear that the President may exclude an agency from the Act's coverage whenever he ''determines'' that the conditions staturoily specified exist. n27 That section does not expressly call upon the President to insert written findings into an exempting order, or indeed to utilize any particular format for such an order. The District Court, by mandating a presidential demonstration of compliance wish the section, engrafted just such a demand onto the * * *.

n27 See text supra at note 4.

We deem the familiar presumption of regularity decisive here. It ''supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.'' n28 This presumption has been recognized since the early days of the Republic. In the summer of 1812, President Madison exercised a statutorily-conferred power to call forth state militiaman ''whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe.'' n29 In Martin v. Mott, n30 a militiaman objected on the ground that the order did not show facially that the President [**10] had determined that there was an imminent danger of invasion. p31 The Supreme Court responded:

It is the opinion of the Court, that this objection cannot be maintained. When the President exercises an authority confided to him by law, the presumption is that it is exercised in pursuance of law. Every public official is presumed to act in obedience to his duty, until the contrary is shown; and a fortiori this presumption ought to be favorably applied to the chief magistrate of the Union. It is not necessary to aver, that the act which he may rightfully do, was so done. n32

n28 United States v. Chemical Found. 272 U.S. I, 14–15, 47 S. Ct. 1, 6, 71 L. Ed. 131, 142–143 (1926).

n29 Act of Feb. 28, 1795, 1 Stat. 424.

n30 25 U.S. (12 Wheat.) 19, 6 L. Ed. 537 (1827).

n31 Id. at 32, 6 L. Ed. at 541.

n32 Id. 32–33, 6 L. Ed. at 541.

Over the many years since Martin v. Mott, the presumption of regularity has been applied in a variety of contexts, n33 and [*728] it is clearly applicable to the case at bar. The executive order under review cited accurately the statutory source of authority therefor, and purported to amend an earlier order that indubitably was * * * not itself require or even suggest that any finding be, reproduced in the order. No more than the District Court have appellants suggested any actual irregularity in the President's factfinding process or activity. In these circumstances, we encounter no difficulty in presuming executive regularity. We cannot allow a breach of the presumption of regularity by an unwarranted assumption that the President was indifferent to the purposes and requirements of the Act, or acted deliberately in contravention of them.

n33 The cases doing so are legion. The following are typical: INS v. Miranda, 459 U.S. 14, 18, 103 S. Ct. 281, 283, 74 L. Ed. 2d 12, 16–17 (1982) (specific evidence is required to overcome presumption that public officers have executed their responsibilities properly); Citizens to preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415, 91 S. Ct. 814, 823; 28 L. Ed. 2d 136, 133 (1971) (where statute prohibited approval by Secretary of Transportation of federal financing for construction of roadways through parks unless there was no feasible and prudent alternative route, and Secretary approved financing for such a project without making formal findings, Secretary's decisionmaking process was entitled to presumption of regularity); Michigan v. Doran, 439 U.S. 282, 290, 99 S. Ct. 530, 536, 58 L. Ed. 2d 521, 528 (1978) (in extradition hearing, presumption of regularity insulates demanding state's probable cause determination from review in asylum state); Philadelphia & T. Ry. v. Stimpson, 39 U.S. (14 Pet.) 448, 458, 10 L. Ed. 535, 541 (1840) (where statute required certain conditions to be met before corrected patent could issue, signatures of President and Secretary of State on corrected patent raised presumption that all requisite conditions were satisfied, despite absence of recitals so indicating on face of patent); Udall v. Washington, Va. & Md. Coach Co., 130 U.S. App. D.C. 171, 175, 398 F.2d 765, 769, cert. denied, 393 U.S. 1017, 89 S. Ct. 620, 21 L. Ed. 3d 561 (1968) (Secretary of Interior's determination that limitation of commercial bus service on portion of George Washington Parkway was required to preserve area's natural scenic beauty was entitled to presumption of validity, and burden was upon challenger to overcome it); National Lawyers Guild v. Brownell, 96 U.S. App. D.C. 252, 255, 225 F.2d 552, 555 (1955), cert, denied, 351 U.S. 927, 76 S. Ct. 778, 100 L. Ed. 1457 (1956) (''we cannot assume in advance of a hearing that a responsible executive official of the Government will fail to carry out his manifest duty'' by reaching a final decision on a matter before complete record required by law was compiled). [**12]

In ruling to the contrary, the District Court relied heavily upon the prevailing opinion of the Supreme Court in Panama Refining Co. v. Ryan. n34 There the Court, focusing on what it regarded as an excessive statutory delegation of legislative power to the President. n35 set for naught an executive order issued pursuant to the National Industrial Recovery Act by striking down the authorizing provision of the statute, n36 The Court held in the alternative that even if the statute was valid, the order would still be ineffective because it did not set forth express findings on the existence of conditions prerequisite to exercise of the authority conferred. n37 The Court observed that to hold that [the President] is free to select as he chooses from the many and various objects generally described in the [relevant] section, and then to act without making any finding with respect to any object that he does select, and the circumstances properly related to that object, would be in effect to make the conditions inoperative and to invest him with an uncontrolled legislative power. n38

n34 293 U.S. 388, 55S. Ct. 241, 79 L. Ed. 446 (1935).

n35 Id. at 414–430, 55 S. Ct. at 246–253, 79 L. Ed. at 456–464. [**13]

n36 Id. at 430, 55 S Ct. at 252–253, 79 L. Ed. at 464.

n37 Id. at 431, 55 S. Ct. at 253, 79 L. Ed. at 464–465.

n38 Id. at 431–432, 55 S. Ct. at 253, 79 L. Ed. at 464–465.

Just what situations this declaration encompasses may to many remain quite obscure. That one situation, however, is beyond its ken is crystal clear. The majority opinion cautioned that the Court was ''not dealing with . . . the presumption attaching to executive action. . . . We are concerned with the question of the delegation of legislative power.'' n39 The Court cited approvingly several cases, including importantly Martin v. Mott, in which the presumption of regularity was applied. n40 Our

proper course, then, is evident; we are to abide the Court's admonition that was Panama Refining does is in applicable here, and that, as in Martin v. Mott, the presumption of regularity is pivotal. Indeed, the Supreme Court has never given Panama Refining the interpretation it received in the District Court, nor, so far as we can ascertain, has any other court.

n39 Id. 293 U.S. at 432, 55 S Ct. at 253, 79 L. Ed. at 465.

n 40 Id. at 432 n. 15, 55 S Ct. at 253 n.15, 79 L. Ed. at 465 n.15. [**14]

We hold that Executive Order 12559 is effective, and has been from the date of its promulgation. The judgment of the District Court is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Mr. GRAMM. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. THOMPSON. I yield for a question.

Mr. GRAMM. Is our Senator aware, while our colleague from Louisiana cites a court case that upheld the President's power to grant a waiver under national security, that the Senator's own amendment changes the criterion from national security to terrorism?

Mr. BREAUX. It does not.

Mr. GRAMM. That, in fact, the very standard that the court has upheld is a standard that he changes. It is clear to those who are looking at making this work that a standard based on terrorism is not as strong as a standard based on national security. So I think what we are seeing, over and over again, is one discussion but another reality.

I just ask the Senator if he is aware that part of what is being done is a change from the standard that gives the President the ability to waive on national security concerns to a standard to waive on terrorism concerns, where there is no comparable litigation, and where there are no comparable precedents?

Mr. THOMPSON. In answer to that, the Senator is correct in that the Nelson language does not mention national security in the section that I am looking at that I think is the operable section and requires that the duty of the ''majority of the employees'' be engaged in ''intelligence, counterintelligence, or investigative work,'' and that all of it, or any of it, must be ''directly related to terrorism investigation.''

Mr. GRAMM. That is right.

Mr. THOMPSON. If it is not related to terrorism, the President does not have the authority, the way this is drafted. But I suppose what I wonder is if, in effect, what we are saying—and the Senator is right; we are comparing apples and oranges, it sounds like with this prior case—but if what we are saying is that we want to make it so the President's actions are not judicially reviewable at all, why are we having this debate?

I assume it is because we have an additional hurdle in there that every once in a while an honest President just couldn't make, such as the job changing. If the President is going to say, I have the authority, I can say whatever I want to say, I guess he could do that then. But if the President really does want to go to the trouble of determining whether or not the jobs of a majority of the people inside of an agency have changed, then that would be a situation where the President could not morally make such a determination.

Mr. GRAMM. Will the Senator yield?

Mr. THOMPSON. Yes.

Mr. GRAMM. Is the Senator also aware that making the determination on the basis of terrorism is very different than making the determination on the basis of national security? In fact, the roots of the President's national security powers go back to the Constitution. It is unclear how the courts would interpret or define terrorism.

Let me ask the following question. I think the Senator made a relevant point. If we all want the President to have national security powers, why are we having this debate? If you want to take the clothing off this amendment, is the Senator aware that in the last provision in the amendment that it strikes a provision in the pending substitute that guarantees that any power the President had under national security the day before the terrorist attack, he would continue to have after this bill? Is the Senator aware that provision is stricken by this amendment?

Can the Senator imagine, if our colleagues really, sincerely want the President to have emergency powers, why they would want to strike that provision?

Mr. THOMPSON. In answer to the Senator, I am aware of that. It is because if that section were in there, it would be inconsistent with this section.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. I am happy to yield.

Mr. BREAUX. Just to make two quick points. No. 1, it is very clear that the Nelson-Chafee-Breaux amendment is a supplement and not replacing the original section 7103(b)(1). We are not replacing the language talking about national security.

The second point, the debate on the floor has been the question about how difficult it would be for the President to make a showing that the mission and responsibilities of the agency have materially changed. I would say very clearly that the only court case in 30 years that has ever challenged the President's authority in making this determination said very clearly that this section makes clear that the President may exclude an agency from the act's coverage whenever he determines that the conditions statutorily specified exist. This section does not expressly call upon the President to insert any written findings into his exempting order or, indeed, to utilize any particular format for such an order.

That is as clear as you can say it. When the President says these conditions exist, that is all he has to show, period. That is the end of it.

I hope that will address the concerns of the ranking minority member about the President having to make findings and do things that he is incapable of doing. This case, the only case interpreting this, says he doesn't have to make any findings. It is left up to him. When he says, I have determined that these conditions exist, I can do it, that is not reviewable. The national security statute is still in place. It is still there. It has not been removed.

Our amendment is an amendment to the existing 7103. The national security language is still in place. It is not struck by our amendment in any way.

The President makes the determination and his determination is not reviewable by court based on the fact that these conditions do not exist. It is very clear.

Mr. THOMPSON. Mr. President, how in the world can we say that the Nelson amendment is a supplement to the current law, when the current law says the President may, and the Nelson amendment says the President may not? Square that one with me.

Mr. BREAUX. Will the Senator yield?

Mr. THOMPSON. In a moment. The current law says the President may issue an order if he determines that the agency or subdivision has a primary function of intelligence, counterintelligence, investigative, or national security work. The Nelson amendment says no agency shall be excluded because of the President's authority, unless the determination is made that the mission and responsibility of the agency or subdivision has materially changed.

You call that supplemental to, or whatever you want to call it, but it was not there before.

Mr. BREAUX. Will the Senator yield on that point?

Mr. THOMPSON. For a majority of the employees, current law says the agency has a primary function. The amendment says the majority of the employees within the agency have as their primary duty. The current law says, intelligence, counterintelligence, investigative, or national security. The amendment says intelligence, counterintelligence, or investigative work directly related to terrorism.

You can call it anything you want on the Senate floor, but the fact is, the current law is designed to give the President authority. The amendment is designed to limit the President's authority. It could not be any simpler.

I yield for a question, if I may.

The PRESIDING OFFICER. The Senator retains the floor.

Mr. BREAUX. For one moment, just to respond specifically to the language in the existing statute that says the President can, if he does certain things. Our language says, he cannot do it unless he does certain things. The

end result is exactly the same. Our language says that if the President makes a determination that these things exist, he can do whatever he needs to do in this area. The language in the existing statute simply phrases it differently, by saying the President can do this if he shows the following. The end result is exactly the same.

Mr. THOMPSON. May I ask the Senator, if the end result is exactly the same, why does he insist on proposing this amendment?

Mr. BREAUX. There are two different points to be made here. The first point is, the way the language was drafted it was intended to do the same thing by saying the President can take action if he does certain things. The answer to that question is, absolutely, yes. It is phrased differently. One is in the negative. One is in the positive. But the end result is that the President can do these things if he shows the following.

The amendment we have says, for the first time in history, you are not talking about moving 5 people or 10 people or 100 people; you are talking about moving thousands and thousands of people. Over 100,000 people are going to be changed. At least we ought to show that the majority of them have something to do with this issue. That is an additional requirement. It is one that he determines.

Mr. THOMPSON. Maybe we have finally settled it. I heard the phrase ''additional requirement.'' You can argue that because this is such a massive job, we ought to hamstring the President a little bit or you can argue because this is such a massive job that we should not.

But the Senator is absolutely correct in that he has laid on an additional requirement. That is the only thing I think we have been trying to establish.

Mr. LIEBERMAN. Will the Senator yield for a question?

Mr. THOMPSON. I am happy to yield.

Mr. LIEBERMAN. Let me say something first and then ask the question. The effect of the Nelson-Chafee-Breaux amendment is to add these two criteria for a judgment by the President in the specific case of the 43,000 currently unionized employees who will be moved to the new Department of Homeland Security. That is all.

The reason it does that is there is some apprehension, even though they have been doing these jobs for years and no previous President has found they are inconsistent with national security and being a member of the union, they want the President to make that determination. But here is the point I want to make about the court case.

There is actually no lessening of the President's authority because the underlying statute says in title 5 7103(b)(1):

> The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter—

Which is the collective bargaining chapter.

Mr. GRAMM. Seventy-one?

Mr. LIEBERMAN. It is 7103(b)(1). Then it says:

> if the President determines that—

And in the current statute which relates to the entire Federal workforce, it says:

> the agency . . . has as a primary function, intelligence, counterintelligence, investigative, or national security work, and the provisions of this chapter—

Collective bargaining—

> cannot be applied to that agency . . . in a manner consistent with national security. . . .

The Nelson-Breaux-Chafee amendment adds two other factors solely with regard to the employees who will be transferred to the new Department: The missions and responsibilities, not of the individual jobs but the agency or subdivision of change, and a majority of the employees within the agency have as their primary duties activities related to terrorism.

Here is the point I want to make as I read it. That is why I think there is not even a hair of difference between us in what we are saying. The basic operative point here is the language in the current statute—''if the President determines that.'' It is up to the President to determine the standards under the current law and the two standards for employees transferred to the new Department that Nelson-Chafee-Breaux adds. The Federal court has said the President's determination under this statute is not reviewable. That goes not just for national security, it goes for the two basic underlying and the two additional requirements that are added under this provision for employees of the new Department.

This is not effectively appealable. In other words, Senators Nelson, Chafee, and Breaux tried to come up with an amendment which responded to the concerns expressed by the White House and our colleagues on the floor that in some way the committee's bill in this regard was lessening the national security powers of the President by subjecting it to an appeal to the Federal Labor Relations Authority. We cut that out now.

I must say, I believe because we are so interested in getting this done we have been quite flexible on this side. I ask my colleagues on the other side, particularly the Senator from Texas, to take a close look at this because of the urgency of creating a homeland security agency. Let's try to find common ground and agree the President has essentially unassailable authority under this provision, exactly what he wants. It gives a small degree of what might be called due process to Federal homeland security workers against an arbitrary action by a President.

Frankly, under this wording and based on that court decision, the odds are a President could act arbitrarily here, too, if he invoked national security.

I thank the Senator from Tennessee for yielding. I guess my question is: Does the Senator not agree with me?

Mr. THOMPSON. Mr. President, let me pose a question to my friend from Connecticut. Is it the Senator's determination that this language he quoted under subsection (2) that ''The President may issue an order suspending any provision of this chapter . . . if the President determines that the suspension is necessary in the interest of national security,'' is it the Senator's understanding that would supersede the new requirement that he find the responsibilities of the agency have materially changed?

Mr. LIEBERMAN. Looking at that section—incidentally, the language, the Nelson-Chafee-Breaux amendment amends decisions made under 7103(b)(1). (b)(2) I think gives the President authority to suspend any provision of the chapter specifically with respect to any installation or activity located outside the United States of America.

It is not diminished at all, not really affected at all.

Mr. THOMPSON. The Senator points out the provision I just quoted is with respect to an agency or activity located outside.

Mr. LIEBERMAN. In responding to the Senator from Tennessee, my reading of that section (2) is simply to restate the President's authority, not only with regard to employees of the Federal Government within the United States of America and the District of Columbia but outside the United States of America and the District of Columbia.

Mr. THOMPSON. Mr. President, that is a big difference. I do not think it has anything to do with employees inside the United States of America. I think that section only has to do with employees outside the United States of America.

Mr. LIEBERMAN. I think that is right.

Mr. GRAMM. Will the Senator yield?

Mr. THOMPSON. Which would leave us, once again, in a situation where the President is having to make a new determination because there is ''concern''—concern we did not have with regard to any of these other Presidents, but we have concern with this President at this time. One can argue it is minimal. One can argue it is almost the same.

We are creating some interesting legislative history here. I wonder how anybody can ever contest the President after this discussion, quite frankly, but if that is the case, why in the world do we want to announce to the world we want to spend 2, 3, 4 days arguing over whether or not to diminish the President's authority a little bit or whether or not to put up an additional hurdle before him, when he is saying to us and the world—presumably, I do not know how onerous this is going to be; perhaps it will not be very onerous at all. It is just not right. It is just not right to diminish the President's authority

or to put up additional requirements of him at this time.

Mr. GRAMM. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BENNETT. Mr. President, I ask unanimous consent I be allowed to make a comment without the Senator from Tennessee losing the floor.

Mr. THOMPSON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I have been here for an hour and a half now listening to this debate, listening to the argument going back and forth, and the conclusion I think I hear from the Senator from Louisiana and the Senator from Connecticut is an interesting one. It may not be the conclusion they really think they came to, but the conclusion I hear them saying, particularly in the final statements that took place, is they put this in the amendment to give the labor unions a sense of security but, in fact, that security is not there, so we can vote for the amendment with a clear conscience; that they did what the unions wanted them to do so they would not feel nervous about being put into this new Department, but reading their interpretation of the law, they are saying it really does not make any difference.

The last comment from the Senator from Connecticut that even an arbitrary and capricious action by a President—and he made it clear he did not expect this President to do that, and I appreciate his graciousness in that, but then in a hypothetical, an arbitrary or capricious action by a President could still go unchecked under this amendment and, therefore, we ought to embrace it.

If that is, in fact, the case—I will look at it very closely with some help from people who are burdened with a legal education, as I am not—if that is, in fact, the case, I think the Senator from Connecticut has just exposed himself to a little criticism from the unions.

How can he have misled them into thinking he was doing something substantive on their behalf and at their behest if, in fact, it is not substantive and the President would get everything he wants?

Of course, the same question arises from the White House. If, in fact, the White House is seeing no substantive change and this is more of a cosmetic kind of a thing, why are they threatening to veto?

So I am now going to leave the floor and go to lunch. I have some time scheduled later in the afternoon when I will talk about something else, but I have found this to be a very interesting exchange. Without in any way attempting to diminish the sincerity, integrity, or intelligence of those who have engaged in the debate on both sides, it strikes me a little like the medieval debate about the number of angels who can dance on the head of a pin.

If, in fact, as the Senator from Louisiana said and then the Senator from Connecticut summarized, the net effect of this amendment in this area is to not change the law or ultimately take any of the President's power away——

Mr. GRAMM. If that were the effect.

Mr. BENNETT. The question arises, why are we doing it? Either there has been a misleading of the unions so they feel a false sense of security that they do not really get or there is, in fact, some substantive change that we are supposed to not notice on this side of the aisle.

As I say, I do not challenge the intelligence, the integrity, or the motives of anybody who has engaged in this debate, but as a layman, standing here for an hour and a half, listening to the debate go back and forth, I draw that conclusion. I find myself quite perplexed over the intensity with which this battle has been fought if indeed that is where we are.

I see the Senator from Connecticut is on the floor, and I will be happy to yield to him for whatever comment he may wish to make.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. I want to respond, and then I will yield the floor. I know other Members in the Chamber wish to speak.

I appreciate what the Senator from Utah has said because I think he has come to the nub of it. Part of what this dialogue has reflected is how much people on our side, including the folks from the Federal worker organizations, want to get this bill passed. There has been a substantial change from the original wording of the committee bill, which did allow an appeal to the Federal Labor Relations Authority from the decision of the Secretary—or administration in these cases.

Effectively what we have done is to add two more criteria for the President to base his decision on as to whether union membership is inconsistent with national security, but we have not diminished the President's authority to make that decision. In other words, the same high authority he has had, sustained by the court decision we have cited and the two criteria that are there now, he has that same power under the two we have added.

The Senator asks: What have we done then? By adding two more standards, what we have done is to establish a kind of protection against truly arbitrary use by some future President of this extraordinary power the statute gives. What is the protection against arbitrary? The President has to make the case that he has determined, and let me read from the Nelson-Breaux-Chafee amendment: Mission and responsibilities of the agency or subdivision has materially changed—and this is only with regard to these employees who have now been moved to this Department; the President's authority remains unchanged with regard to every other Department—and that a majority of employees within the agency or subdivision have jobs directly related to terrorism.

I agree with the Senator. I have forgotten the word he used, and I wish I could recall it, but the Senator is wondering now why we are spending all of this time arguing about this. In my opinion, we should not. We should be adopting the whole bill and sending it to a conference committee so we can get it done soon and everybody, beginning with the President, can claim a victory in the name of national and homeland security.

Mr. BENNETT. Mr. President, I thank my friend from Connecticut, the chairman of the committee, for his attitude and his approach to this. I will, in good faith, go back and examine it. In honesty, though, I must indicate I am not sure examining it is going to change my position, for this reason: The Senator from Connecticut has magnanimously, and I think accurately, said he does not believe our current President will abuse this power, and he has referred to some future arbitrary President.

Nonetheless, he says there will be some kind of review. At the risk of sounding paranoid myself, I think that is enough of an opening, enough of a crack in the door, for some future union leader, who might not have the same kind of motives that are being attributed to our current President, to go through that opening and, for reasons totally unrelated to the mission of the Department, reasons totally unrelated to the protection of the American homeland, decide that he or she wants to pick a fight with the President and set in motion a series of hearings and activities within the civil service procedure.

I do not know how many other Members of this body have served in the executive branch and been involved in civil service procedures. I have. I went into the executive branch thinking I knew something about personnel. I had hired and fired, I had been involved in difficult challenges, and I thought I understood the process. I was the biggest babe of all the babes in the woods when I got into that circumstance. I ended up with an employee who was totally incompetent, totally unqualified for the position into which I innocently and foolishly placed her. I immediately tried to get rid of her.

I served in the administration for 2 years. Then I left the administration, and while I was in my private life, I got a phone call saying I had been summoned to a civil service hearing on the case of this woman X number of years after I had left the Government. I went to her hearing, and I testified in her hearing as to the situation. I was astounded that it was 3 or 4 years—whatever the amount was—after we had initiated the action to remove her from the position for which she was totally unqualified. It had dragged on that long. I had finished my service in the executive branch. I was out in private

practice. I was called back in to testify, and it was made clear to me that this hearing was by no means going to be dispositive of the case; it would go on beyond that.

If there are additional hurdles being placed on the President's authority in this Department by this amendment, in all good faith, with a sincere attempt on the part of my friends who are working on this amendment to try to come to a resolution, my hesitancy stems from that experience. If indeed some labor leader decides he or she wants to pick a fight with the President and use those additional hurdles for some motive unconnected with national security, I am not comfortable giving them that opportunity, particularly when they do not have it now.

The argument is being made, they are being transferred into a new Department and so they need to be protected. The statement by the Senator from Connecticut, that I quoted back to him and he said I was probably right, is this is being done to give them a sense of protection and comfort but that substantively it is not any different. It may very well be that at the end of the day, after it goes through the courts, substantively it will not be any different. The position taken by the Senators from Louisiana, Connecticut, and Nebraska will be exactly right. But if that day comes after 6 years of adjudication and fooling around, with a Department that must be almost at hair-trigger capacity to deal with the threat, I am not going to accept that. That is my concern. To say at the end of the procedure the President will not have lost any power, all he will have had to do is go through some additional procedures to exercise his power and therefore nothing is threatened, is to say we are not focusing on the mission of the Department.

The whole reason we are creating the Department is so we will have faster response time, so we will have better coordination on a threat that did not exist when these situations were created in the first place.

Mr. NELSON of Nebraska. Will the Senator yield?

Mr. BENNETT. I am happy to yield, with the understanding I do not lose the floor.

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

Mr. NELSON of Nebraska. I suggest the Senator from Utah makes a good point in terms of not wanting this to go through an endless review process that will take years. It can take a substantial amount of time and tie in knots the entire operation. The reason that is unlikely, and most likely impossible, is the court case, the one case in 30 years, where it is made clear that if the President performs by making all the points that would be required by law, that is essentially nonreviewable.

All that is being proposed here is that there are two additional requirements that can be met, as well, and if the President dots the i's and crosses the t's and in good faith makes a determination that the court is not going to review it. It is important the court would not review it if he did not dot all the i's or cross the t's. I expect this President and the future President to do the right thing under the law.

That being the case, there is absolutely no reason to believe this will be tied up in court or there will be endless appeals by those who feel aggrieved by the determination. That is why it is important, whether you transfer these individuals or you go with the status quo, this body in the past and I think this body today has dealt with establishing requirements that must be met so that when they are met, due process has been achieved, the courts are not going to meddle in this process, and they are not going to review the administrations of the Congress when it comes to national security.

Mr. BENNETT. I thank my friend from Nebraska. But he comes back to the basic statement I made to the Senator from Connecticut. If in fact this is not really changing anything, and in fact there will be no significant delays, and if in fact the President has not lost any power, why is the amendment being offered? Why don't you just say if, in fact, nothing is going to change, we will not change it? And the issue that has been raised again and again is that the Senator from Texas put that exact statement in his amendment, he and the Senator from Georgia, that says nothing in this bill shall diminish the existing power of the President and the amendment before the Senate makes it very clear that statement has to go.

There has to be, by definition, some diminution of the power of the President.

I remember in such few Supreme Court cases I have reviewed one situation where the Court was confused what Congress was doing—surprising the Court would ever be unclear what we do; it is always so clear—the Court came down on the one side of the case with this comment. It said: We cannot assume that Congress committed a vacuous act. Therefore, they must have intended to have changed something or they wouldn't have passed this.

That is where we are here. We must, if we adopt the amendment proposed by the Senator from Nebraska, be assuming some diminution of the President's power. If not, why are we doing it?

Once again, I am perfectly willing to talk about diminution of the President's power if it is arbitrary and capricious and if it is damaging to the due process of employees. But this Department is not the place to experiment with that. This Department is the Department that is geared for quick action, for quick protection of Americans under attack, and of all places where the President's ability, the Secretary's ability to move quickly should not be hampered by additional requirements, this is the place. This is the Department where that should not happen.

To turn that proposition on its head and say that the President's power is as it is in every other Department, but it will be slowed down in this Department, is something I don't understand.

Mr. NELSON of Nebraska. If I thought this would slow down the process, if I thought this was a diminution of the President's authority to make determinations, I would not offer it.

It is important to distinguish between the threshold requirement and the President's power. If you want to defeat this, people will say it diminishes the President's power. It does not diminish the President's authority to make determinations. It does not, through the court cases, diminish the President's power and authority to make certain determinations.

In this particular situation, the threshold decision about whether or not the President meets that decision without regard to the President's power to make the decision that there has been a material change, that clearly is a reasonable requirement in this particular situation because you are moving one group from their current situation to another situation. The question will be, Is there a material change as it relates to those responsibilities that are set out? It does not diminish the President's power or authority.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. BENNETT. I will yield the floor. The Senator from Texas wants to get into this, and I am more than happy to facilitate that for him.

Let me close my statement with this comment. By virtue of my own background and my committee assignments, I happen to find myself in front of groups made up of executives perhaps more often than not. I asked this question, whenever this subject comes up, to the executives that are talking to me about this Department.

The first question: Have any of you ever been involved in a major corporate merger? Immediately, the smiles start around the room as the understanding of the implications of that question get through to them. They nod, yes.

I ask: Has it been a pleasant experience? In every case, the answer is no. Mergers are always difficult.

Here is a merger involving 170,000 employees gathered together from some 22 different agencies, each with its own culture, background, personnel procedures, and understanding. Anyone who thinks Government employees live in a monolithic world, regardless of which agency they work in, lives in ''Alice in Wonderland.'' Every agency has its own culture and its own way of doing things, and it is almost impossible to get them to deal with each other.

Then I say to them: If you were tapped by the President to be the chief executive officer of this new agency and you were told the employees who came into the agency in the process of it being created brought with them, by

law, all of the personnel procedures and activities they had in their previous agencies, would you take the job?

I have not found a single volunteer yet. Basically, aside from the legalities of this—which, again, as a layman I hear the lawyers arguing back and forth—aside from the legalities, that is what drives me in this debate. I want to view this as an agency which is governable when it is created.

As I said on the floor before, I lived through the creation of the Department of Transportation and all of the difficulties connected with bringing those groups together—a big Department but, compared to this, relatively small. I was at the shoulder of the second Secretary of Transportation, John Volpe, as he wrestled with those problems. I saw firsthand how essential it was for him to have flexibility in a variety of ways which the organized government employees unions did not want to give him. He got it in the creation of that Department by congressional mandate, and he was able to do what he was able to do by virtue of that.

I was not around, but I can read about the creation of the Department of Defense, which was on the scale that we are talking about here. It is not beyond the importance of our understanding how significant this challenge is going to be for us to recognize that the first Secretary of Defense committed suicide under the pressures of trying to make this all work. The Department of Defense probably never did work until after the Goldwater-Nichols Act, some 15 or 20 years after it was formed.

Let us understand as we go forward that we should be erring on the side of giving the Secretary and the President more flexibility, more authority, more ability to move quickly rather than less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I do not know how much you learn by having this job, but one thing you learn is patience.

Let me say it is probably a good thing I didn't get the floor earlier because I would have gotten up and accused my colleagues of insulting my intelligence. But now I realize that the authors of this amendment have not the foggiest idea of what this amendment is about or what it does.

Let me just start. There are a lot of points I want to make, but let me just begin with some English points. Before we get to legal points or security points, let's just talk about the English language.

Our colleague from Nebraska said: I wouldn't do the amendment if I thought it limited the President's power.

I would like to ask him to read the words of his amendment, on page 12, under the section that has to do with the President's labor-management powers. Remembering the President has the power in the name of national security to not put people out of the unions. That is a made-up term that the opponents of the President use over and over and over again. It is totally false. Nobody can take people out of unions. What it does is set aside work rules that inhibit the ability of the Department to do the job of providing national security. So the President has this exclusionary authority under the name of national security.

Our colleague from Nebraska, Senator NELSON, says his amendment does not reduce the President's power. Let me start with the English language, and let me read line 10 on page 12. This is a heading, and the heading is: ''Limitation On Exclusionary Power.''

If it is not limiting the President's power, what is it doing?

Mr. NELSON of Nebraska. Will the Senator yield?

Mr. GRAMM. Let me make my point. I have listened here for 2 hours, trying to get the floor.

If this is not limiting his exclusionary power, this is false advertising. It does, in fact, go on and limit his power. But that is not the end of it.

Then, on page 14, you have a new section heading, and what do you think the first words of it are? ''Limitation Related To Position Or Employees.''

Our colleague from Utah said he is not a lawyer and this is a hard debate. I am not a lawyer either although I guess over the years you learn how to read legal documents. But I do know a little bit about the English language. When heading after heading after heading is about limitation of power, you are talking about limiting power.

Let me just start from the beginning because our colleague from Utah came over, listened to a lot of things that didn't make any sense to him, and he made a point. The point was, either this amendment does nothing or the authors of the amendment are not explaining what the amendment does.

I will—certainly to my satisfaction, hopefully to others'—convince people that this amendment does a great deal. This is not some cosmetic change, where members of organized labor are being deceived. It looks to me as if they wrote the amendment and they knew exactly what they were doing. Let me start with just some obvious points.

Besides the fact that the amendment is full of sections with the word ''limitations'' in the title, the amendment strikes the following language from the pending Gramm-Miller substitute. Let me read the language. You heard our colleague from Nebraska say we are not trying to take power away from the President. Let me read you the language they strike.

The language reads as follows:

notwithstanding any other provision of this act . . .

I think people understand English. That means no matter what this act says.

The language they strike says:

. . . nothing in this act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attack on September 11, 2001.

In other words, no matter what else this amendment said, if it had not struck this language, the President would have the same national security power after this bill became law that he had on that horrible day, September 11. But guess what. This language is stricken by the amendment of the Senators. If they were not changing the President's powers, why did they strike this provision? They struck this provision because they may not know they are changing the President's powers but the people who wrote the amendment know they are changing the President's powers. And if they did not strike this provision, then everything they did in limiting his power would be nullified.

Let's just start with what they did. Let me remind my colleagues of something that the opponents of the President desperately want you to forget. The President, in terms of waiving these labor agreements that limit his ability to hire new people, move people, and to put the right person in the right place is also limited by these agreements that restrict the ability to change policy concerning carrying firearms, to change the physical makeup of inspection areas at customs, and to deploy a Border Patrol agent in an area where there is no laundry.

Mr. LIEBERMAN. Will the Senator yield for a very brief question?

Mr. GRAMM. I will be happy to yield, but let me just get through my basic points, and I will be happy to yield. I want some coherence to it.

Mr. LIEBERMAN. It is a factual question. I think the Senator is confusing the situation.

Mr. GRAMM. Let me go ahead and yield if the Senator is going to talk.

Mr. LIEBERMAN. The Senator refers to the power of the President in reference to waiving elements of collective bargaining agreements. That is not affected by this section. I think it is the right to join unions or remain in unions the President can override here, not elements of the collective bargaining agreement.

Mr. GRAMM. Let me reclaim my time. It is the collective bargaining agreement and elements of it that the whole waiver is about. And I will get back to that.

Let me go back to my point. The President did not ask for any additional authority in the name of homeland security to waive collective bargaining agreements. He never asked for additional power because every President since Jimmy Carter has had that power and every President since Jimmy Carter has used that power.

You might ask yourself, if the President never asked for that power, why are we debating it? Why are we debating the President's waiver power if he didn't even ask for new power?

The reason we are debating it is the underlying Lieberman amendment and the amendment that is proposed by Senator NELSON take power away from this President that every President since Jimmy Carter has had.

We are in the remarkable circumstance that terrorists have attacked America. They killed thousands of our people. We are writing a bill to give the President the tools he needs to fight and win the war. The first provision in this bill is to take away from the President powers that every President since Jimmy Carter has had. It almost sounds unbelievable. But believe it.

A second point that is interestingly enough even more unbelievable: Under this bill and this amendment, the members of Government who are moved into the Homeland Security Department would find themselves in a position that the President, in the name of national security, has fewer powers in hiring the right person, putting them in the right place, and moving them than he does at the Labor Department or the Office of Personnel Management or any other part of the Government. Interestingly enough, this bill and their amendment limits the President's emergency powers—not for the Government as a whole but only for the Department of Homeland Security.

My third point is that we have heard this talk about these court rulings. It is a very good point. But, unfortunately, it makes the case against their amendment. These court rulings are on the basis of national security. The Constitution gives the President power as Commander in Chief.

When the President in the past has made a ruling based on national security—Senator BREAUX made the point, repeated by Senator NELSON—those decisions have not been judicially reviewable or the court has deemed them not to be judicially reviewable. That is a pretty substantial power. But it is a power rooted in the Constitution.

Guess what they do with this amendment. They change the President's power so the President has the power to move only in terms of their waiver—not on the basis of national security but on the basis of terrorism.

Terrorism is not mentioned in the Constitution. Terrorism has not been litigated. Maybe it will be litigated and the power will be upheld. But the Office of Personnel Management, the experts in this area, the person who will probably be the Secretary, and the President of the United States, believe that changing the President's waiver power and basing it on terrorism rather than national security is a diminution of his power.

If somebody didn't think so, why is it being done?

Let me go my fourth point. We have heard a lot of discussion but let me try to get down to the facts. Again, we are all entitled to our own opinions. We are not all entitled to our own facts.

There are 20,000 union members among the 170,000 people who are going to be moved into this Department. There are 20,000 other people who are covered by collective bargaining. But they are not union members.

Under this amendment, rather than the President having his broad exemptive power to put the right persons in the right place at the right time, the President would now have to enter into negotiations. So we set up the Department. We are trying to get moving. We are trying to prevent another attack. We are trying to prevent Americans from dying. This is pretty serious business, in other words.

What does the new Secretary have to do? He shows up, and 170,000 people are moved. He comes into his office. What is the first thing he has to do under this amendment? Double the number of people at the principal ports of entry? No. Change the disposition of agents to keep nuclear weapons from being brought into New York Harbor? No.

The first thing the President has to do is to enter into binding arbitration with a labor union that represents 20,000 of the 170,000 people who work for the Secretary.

Under this amendment, 20,000 union members and their unions would negotiate on behalf of 170,000 people, and 20,000 of them aren't even members of the union.

Talk about a power grab—this is an extraordinary power grab.

Before the Secretary can do anything, he has to enter into binding arbitration with these 17 unions that are representing 20,000 of the 170,000 people in this Department, and only 20,000 of them are union members. He has to enter into a binding arbitration with those unions that will bind the work rules for 150,000 people who are not even union members.

What happens if the unions won't agree to the change in rules that would change the disposition of people in the Department to try to prevent a terrorist attack? What happens? You have binding arbitration. So here we are trying to protect people's lives, and rather than sending agents where we need them to go, we are in binding arbitration.

Then a panel, which has the historic role of making decisions about whether a governmental department had the right to cancel a Christmas party or not, is now going to be making a decision governing the running of the Homeland Security Department.

Mr. SESSIONS. Mr. President, will the Senator yield for a question on that point?

Mr. GRAMM. Yes. I would be happy to.

Mr. SESSIONS. Mr. President, I served in the Federal Government bureaucracy for about 15 years as a Federal attorney and as a U.S. attorney. Trust me, Federal employees, as Senator BENNETT said, have tremendous rights.

I was rather shocked, in connection with some of the things Senator GRAMM has been saying, to read some recent developments.

After September 11, is the Senator aware that the Customs Service wanted to require its inspectors—management—at 301 ports of entry to wear radiation detection pagers to help detect attempts to import nuclear and radiological materials across our borders, and that the National Treasury Employees Union—members of which are some of my good friends—objected saying that wearing the pagers should be voluntary and fought to invoke collective bargaining on the issue, which would have taken at least a year to resolve?

Mr. GRAMM. First of all, I have to say to my colleagues that I am not aware of that case. But I am aware of the case at the Boston airport where Customs wanted to change the makeup of the inspection room to make it more efficient, and the National Treasury Employees Union appealed it to the FLRA, and they sided against Customs and the changes were not made.

I am also aware that when there was an effort by INS to put more agents at the airport at Honolulu because of the large number of flights coming in and more inspectors were needed. In this case, the labor union representing the INS employees in Honolulu filed a case with FLRA saying it violated their contract to hire more agents. Guess what. The FLRA ruled in their favor.

Maybe someday you could get it straightened out. But what happens if by not getting it straightened out in time somebody's mama or somebody's child ends up being killed?

Mr. SESSIONS. Is the Senator aware that after September 11 the Customs Service signed a cooperative agreement with several foreign ports because we are concerned about ports being used to ship weapons of mass destruction here, and the best way to do it is to identify that as a foreign port before it gets here—that they signed a cooperative agreement allowing our inspectors to preinspect cargo abroad before it sailed here.

The Customs Service wanted to send its best agents to these ports because these are sensitive foreign assignments, and the National Treasury Employees Union objected, saying that internal union rules should determine who should be sent on these assignments, not the Customs Service managers.

Mr. GRAMM. I am aware of the case where an effort was made, in terms of foreign deployment, to pick the most able people because you have a limited number of people. That decision was overridden by the FLRA. They said you had to send the most ''senior'' people in terms of seniority.

I would say these are exactly the kinds of problems the President is trying to deal with. The President is not trying to deny people the ability to pay union dues, if they choose. The President is not trying to discriminate against people based on race, color,

creed, national origin. The President is trying to put the best person in the best place at the right time. The Senator has just outlined several examples of where we have not been able to get the job done in the past, and even where we have gotten the job done, that it has often been 14 months later.

The point is, these terrorists—and we know there are thousands of them—are not taking a sabbatical while we are having this debate.

Mr. SESSIONS. If the Senator will yield, in reference to Senator BENNETT's comments, merging these agencies is a difficult task. They come with different backgrounds and legal prerogatives and cultures that they have had. As a U.S. attorney, I represented every Federal agency in my district, which would include the Corps of Engineers, the Coast Guard, Treasury, Customs, the INS, the DEA, the FBI—every agency that was there. They all have a little bit different rules.

If we are going to form a new agency, we ought not diminish the President's power because it is going to be difficult enough as it is to bring this thing together in a coherent whole.

I believe the Senator is making a good point. I have listened to the debate that has gone on for some time. It seems to me quite clear the amendments that have been offered—the objections that have been made to your bipartisan bill, the Gramm-Miller bipartisan bill—have been designed to diminish the Executive's ability to coordinate quickly that new critical agency for our defense.

I thank the Senator for his leadership on it. I think it is important. The President should not allow his office and the office of future Presidents to have an even more difficult time than we already have with personnel.

For example, I have had many agency heads come to me and ask me about criminal activity by Federal employees. And I would say: Why don't you just fire them? They would say: You don't know how hard it is. We have a criminal case. Please prosecute this case; otherwise, we will be years removing this person.

It is amazing sometimes for the public to learn how difficult it is to manage in a Federal agency. It is far more difficult than private agencies. In the end, it hurts good employees of which there are so many of them out there. It keeps them from being promoted, and it undermines the ability of the agency to be effective.

I thank the Senator for his courageous leadership.

(Mrs. CLINTON assumed the chair.)

Mr. GRAMM. Madam President, let me finish up my remarks because I have spoken a long time.

Although I could give a lot of concrete examples, let me just give a couple of them: Under current law, the President has the ability, by declaring a national emergency, to change the work rules for the Border Patrol. And every President since President Carter has had that power. This amendment would take away these emergency powers from the President because under a current agreement which the Border Patrol operates, there cannot be any prolonged deployment of Border Patrol agents in areas that do not have a series of amenities, including drycleaners.

Under existing law, the President would have the ability to declare a national emergency and move Border Patrol agents to areas where there was a critical threat. He would not have that power under this amendment. Let me explain why.

In order for the President to be able to use his emergency powers, the President would have to find, after the Department is created, that the position and duties of the person had been materially changed. By the way, you guessed it, the first word of the heading on page 14 of this amendment is ''Limitation''—''imitation Relating To Positions Or Employees''. Who are we limiting here? The President. Every one of these headings on limitation represents a limitation of the President's power.

Let me give you an example. A Border Patrol agent is a Border Patrol agent, and after the creation of this Department, they will still be a Border Patrol agent.

I asked that the amendment be changed to say that either the function had changed or the threat had changed. That proposal has not been accepted.

What it would mean here is that if the President tried to use his powers to station a Border Patrol agent, on a prolonged basis, on one of the many areas along the border that did not have restaurants, churches, or drycleaners, there could not be a waiver to station them in that area. Now, I represent more of the border than any other Senator besides my colleague from Texas and I know that there are many such areas.

The problem is that while they are doing the same thing, the threat is different. Before it was a bale of marijuana or a box of cocaine or an illegal alien we were talking about. Today we are talking about an anthrax capsule or a chemical weapons vial or a biological agent thermos or a nuclear device. But yet, under this amendment, the President would not have the power to make that necessary change.

Our colleagues say a Border Patrol agent is still a Border Patrol agent and nothing has changed.

Madam President, everything has changed. After 9/11, the world has changed, but not the thinking of the President's opponents. It has not changed.

So let me sum up by simply pointing out why this amendment is unacceptable to the President, why he has said he would veto a bill that contained this amendment, and why we can't fight and win the war on terrorism with this amendment as part of the law.

Now, there is no guarantee that we are going to be successful in stopping terrorism with a good plan, but General Eisenhower once said: A good plan does not guarantee success, but a bad plan does guarantee failure.

This is what this amendment does. It takes away power that every President since President Carter has had and used. It sets a higher standard for using national security powers in the one agency of Government that is designated to protect the homeland security than it does any other Department of Government. So OPM would still have the same emergency powers that are denied to the President for homeland security, but he would not have them here. The whole standard by which the President could intervene is changed from national security to terrorism.

We take a system where we in essence say to the President: OK, you want these 170,000 people brought together in one agency. We want you to give up national security power. If you will give it up, we will put together the Department. In other words, we will put it together if we can take away your power to actually run it.

What this amendment would do is allow unions that have only 20,000 members out of the 170,000 people that will be brought into the agency, and it makes them the bargaining agent for all 170,000. We are going to hire somebody to fight terrorism. He is going to think he is coming in to fight terrorism, and he is immediately going to be in binding arbitration. And then, if the unions won't agree to his plan, it goes to a labor board that has the historic function of deciding whether a department can cancel Christmas parties or the color of uniforms or things of that nature. We set up an unworkable system.

Finally, powers the President says he must have, powers related to labor-management relations and appeals, are taken away. So the amendment before us is no effort at compromise. I don't doubt the goodwill of the people who have offered it. But the plain truth is, it is further away from where the President can go than the last time we were discussing this issue.

There has been only one compromise, and that compromise is the Gramm-Miller substitute which made 25 changes in the President's bill and preserved for Congress the power of the purse. It also did restrict the President's emergency powers but in ways that made sense. We said the President can't be arbitrary and capricious. We said the President cannot discriminate on the basis of race, color, creed, national origin, and the list goes on. But the bottom line is that we realized we were fighting a war against vicious killers and the President needed the power to get the job done.

We need to give the President that power. Our colleagues talk about the President using that power. The way it is now restricted, the only thing the President can use the power for is to fight terrorism, to put the right person in the right place at the right time.

My point is, this amendment is not significantly different from the underlying bill in that it takes away powers the President already has, and it does not give him the flexibility he needs. The President has said he would veto it.

In the end, if we want to get a bill, the logical thing we should do is try to reach a compromise. I do not see this as a compromise. I don't see anything in it that is a compromise. It takes power away from the President he has today. I believe it is totally unacceptable.

I have given the authors of the amendment, in working with the White House, the changes they would have to make for the President to be able to accept it. I hope they will consider them. But the problem is, in order to give the President the power he needs to fight and win the war on terrorism, you have to change business as usual in Washington.

If there has ever been an amendment that was committed to the status quo of business as usual, don't change anything, this is it. The amendment and the underlying bill are really based on the premise that government is to serve the people who work for the government, not to serve the people of this country, and the rights of these workers, as we have defined them in a bill that is now over 50 years old in its fundamental components. This is the equivalent of operating a horse and buggy on an interstate highway. When we are talking about protecting the lives of our people and homeland security, this amendment and the underlying bill still hew too much to the idea business as usual is more important than an effective program to help the President fight and win a war on terrorism.

We are apparently going to have a cloture vote tomorrow. That cloture vote is going to fail. It is a gimmick and a game being played to try to deny the President the right to have an up-or-down vote on his proposal. Our colleagues who oppose the President have every right under the rules of the Senate to do what they are doing. I am not complaining about it. I am just trying to be sure people understand. If they can invoke cloture, they could put the President's program into a straitjacket where he does not get a straight up-or-down vote, where the first vote will be on this amendment which basically cuts the heart out of the President's program so people who oppose the President never have to vote up or down on the President's program.

Our colleagues who oppose the President have the right to do this. I am not complaining about it. It is completely within the rules of the Senate. But I don't believe under the circumstances it is defensible.

Basically, those of us who support the President are going to resist. We are going to deny cloture, and we are going to continue until the President gets an up-or-down vote.

I don't think this is going to confuse anybody. I know sometime later today and probably in the morning, someone is going to stand up and say: Well, don't the people who support the President want to bring the debate to an end and give the President a vote?

I don't believe people are going to be deceived. It is easy to give the President a vote. All you have to do is to set a time when the President's proposal can be voted on. That is all you have to do.

Under these circumstances, we are not going to let business-as-usual practices in the Senate prevail. We are not going to let the President be denied an up-or-down vote on his proposal.

It may be those who oppose the President will be successful. It may be they can defeat the President. It may be they can pass a bill the President has sworn to veto. It may be they can prevent the President from having a Department of Homeland Security in this Congress. They may do that. But what they cannot do is deny the President a vote.

There was earlier a unanimous consent request propounded concerning allowing a vote on the pending amendment. So no one is confused, I would like to ask unanimous consent that at 11 a.m. on Tuesday, there be an up-or-down vote, yes or no, on the President's program, which is the Gramm-Miller substitute.

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas retains the floor. Has he given up the floor?

Mr. GRAMM. I have spoken beyond my limit of knowledge. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, while the Senator from Texas is on the floor, I want to renew a unanimous consent proposal I made earlier when he was off the floor which would give him the up-or-down vote he wants on the President's proposal. It is highly unusual. He is asking to deprive the Senate of the opportunity to amend. No one is infallible, but to give him the offer.

Madam President, I ask unanimous consent that immediately upon the disposition of Senator NELSON's amendment, Senator GRAMM be recognized to offer a further second-degree amendment, which is the text of the President's proposal as contained in amendment No. 4738, and that the Senate then vote immediately on his amendment.

That should give the Senator from Texas what he wants—an up-or-down vote on the President's proposal.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, Madam President, getting to amend the President's proposal before he gets a chance to have a vote is not giving the President an opportunity for an up-or-down vote. I have to object, though I will say we are going to have a vote on the President's proposal. Why not set it for 11 o'clock on Tuesday? Let's have the vote. If you can defeat the President, then you will make many special interests in Washington happy. If you cannot, we will have a bill. But at least we will settle the issue.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. So my question back to the Senator from Texas is why deprive the Senator from Nebraska and the Senator from Rhode Island and the Senator from Louisiana the opportunity to have a vote on their amendment?

Mr. GRAMM. If the Senator will yield, I will respond. Madam President, it is obvious to a blind man that there have to be some people on the side of the aisle of the Senator from Connecticut who do not want to vote against the President's homeland security bill, and if you can amend it first with an amendment confusing people as to what you are really doing, then they are off the hook. You all are not doing this because it is fun. Obviously, you have your plan in mind. I have mine.

The PRESIDING OFFICER. Is the Senator from Texas objecting?

Mr. GRAMM. I object.

Mr. LIEBERMAN. Madam President, does the Senator from Texas understand that under the unanimous consent request I have proposed the vote would be on the President's proposal, the Gramm-Miller substitute, unamended, second degree?

Mr. GRAMM. Madam President, I have a lot of problems, but one of them is not not understanding. I understand perfectly that if people could be convinced—there is no sense getting into the details. I think we have overdone it. The President wants an up-or-down vote on his bill, and we are going to hold out for that vote. If you can defeat the President, you have defeated the President. But we want an up-or-down vote, and the way we have things structured in a parliamentary sense, you would have to get cloture on their amendment to vote on it, and you are not going to be able to get it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I regret the objection of the Senator from Texas, and I fear what it reflects is an understanding that, primarily because of the courage of the Senator from Rhode Island, Mr. CHAFEE, who has created a common ground compromise preserving the President's national security powers and giving some, frankly, minimal due process to homeland security workers, that our friends on the other side do not have the votes anymore because they do not have the votes. They are going to filibuster effectively the adoption of a homeland security bill as amended by the Nelson-Chafee-Breaux amendment.

The Senator from Texas himself has said that 95 percent of his proposal is the same as our underlying committee proposal. The biggest difference between us is with regard to the rights of the homeland security workers and the right of the President to maintain national security powers. This compromise does it. I am disappointed—

Mr. GRAMM. Will the Senator yield so I can agree with him?

Mr. LIEBERMAN.—and I fear the White House is now blocking the early adoption by the Senate of legislation that would create a Department of Homeland Security.

Mr. GRAMM. Will the Senator yield?

Mr. LIEBERMAN. I will, for a question.

Mr. GRAMM. It is true our bills are 95 percent the same. It is like you are giving the President this nice, new, shiny truck, only yours does not have a steering wheel. That is the fundamental difference. There is only 5 percent. It is like the plane that does not have the bolt that holds the tail on. That is the fundamental difference.

Look, we are not holding it up. We are ready to vote. Set the vote for Tuesday. Let's have an up-or-down vote and see where we are.

Mr. LIEBERMAN. Madam President, in responding to the Senator, the vehicle that we would give the President has a great steering wheel. About the only thing that is probably changed is the color of the plastic on the rear lights. The differences, as elucidated in previous debate, are so minimal as to certainly be not worth blocking the creation of a Department of Homeland Security which is urgently needed because the terrorists are still out there.

I see my friend from Nebraska on the floor. He is a lead sponsor of the amendment. He has been waiting a while to speak. I will yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, the Senator from Texas has made a number of points that I think I will try to respond to as briefly as I possibly can but at the same time respond to the suggestions.

First of all, I am new to this Washington-style posturing and spin doctoring, but I think I am getting the hang of it—maybe slowly, but I am beginning to get the hang of it.

I agree that we are not entitled to our own set of facts. We may have interpretations, we may even have our own thoughts about a set of facts, but we are not entitled to characterize those facts differently just because we choose.

When one looks at a letter or a statement, the statement and/or the letter will speak for itself. I ask unanimous consent to print in the RECORD a letter from Governor Ridge, dated September 5, 2002, to Senator LIEBERMAN in which he says:

. . . the President seeks for this new Department the same management prerogatives that Congress has provided other departments. . . .

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

THE WHITE HOUSE,
Washington, September 5, 2002.

Senator JOSEPH I. LIEBERMAN,
Chairman, Senate Governmental Affairs Committee, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: During the past several months you and I have engaged in both public advocacy and private efforts to create a Department of Homeland Security. I have read your article in Tuesday's Washington Post and would like to respond to some of the observations and conclusions. You and I agree that the events of September 11, 2001 tragically underscore the critical need to reorganize a significant portion of the Executive Branch of government and to create a Department whose primary responsibility is securing the homeland. I certainly agree with your observation that never before has there been government "disorganization so consequential and the case for change so compelling."

It is critical to our mutual effort however, to do more than simply realign the many departments and agencies included in the Senate measure under one new Cabinet-level department. This new department must be equipped with the flexibility and agility to respond effectively to threats against this country and to move people and resources in response to those threats. The President has made it clear that the bill as presently written fails to achieve these critical objectives in several ways.

In your article you refer to the President's concerns with your bill as "detours," "secondary" issues, and "unnecessary roadblocks." I am at a loss to understand why the President's insistence that, as Commander-in-Chief, he be the final arbiter of this country's national security interests is a "detour" in this debate. Similarly, I am puzzled as to why his resolve that his new Secretary be given the flexibility to move people and resources in response to terrorist threats is being characterized as a "secondary" issue. In fact these very issues are critical to the success of this new Department.

The Administration believes that the new Secretary must have the freedom to put the right people in the right job, at the right time, and to hold them accountable. He or she must have the freedom to manage and the freedom to reorganize. One of the inescapable truths of this new war on terrorism is that we know that we cannot conduct "business as usual." I was surprised at your assertion that "the president's pleas for additional 'flexibility' would give his administration unprecedented power to undercut the civil service system, rewrite laws by fiat and spend taxpayers' money without congressional checks and balances." This is simply inaccurate. Senator, the President seeks for this new Department the same management prerogatives that Congress has provided other departments and agencies throughout the Executive Branch. For example: budget transfer authority ranging from one to seven percent is granted in various forms to several departments, including the Department of Health and Human Services, the Department of Agriculture, and the Department of Energy; reorganization authority was granted with the establishment of the Department of Energy and Education and government-wide reorganization authority was previously enjoyed by every President until 1984; and, personnel flexibility is currently enjoyed by the Federal Aviation Administration, the Internal Revenue Service, and the Transportation Security Administration.

Furthermore, the new Department of Homeland Security, as well as its new Secretary, will be fully accountable to Congress and subject to especially intensive reporting requirements and Congressional oversight.

Your conclusion that "the President and the Secretary of Homeland Security would, in fact, have more flexibility to run an efficient, effective and performance-driven department than the law now provides" is contrary to the literal language of the bill itself. As written the Senate bill places severe restrictions on the Secretary's ability to manage the Department and fails to provide the authority that the Secretary needs to effectively secure the homeland. Through a variety of separate provisions, the Senate legislation clearly prohibits the new Secretary from reorganizing, reallocating or delegating most of the agency functions in the new Department. It would preclude, for example, even the most basic consolidation of Federal inspectors at our border entry.

Moreover, the idea that "With the powers in existing law and new ones added in our bill, the administration would be able to promptly hire new talent, swiftly move employees around, discipline and fire poor performers" is seriously misleading. While the Senate bill introduces very narrow changes to the personnel system, such modest reforms and corrections are woefully inadequate to meet the President's basic goal of creating a workforce at the Department of Homeland Security with the flexibility, mobility, and agility needed to protect our nation from multiple and constantly changing threats. In fact, the Senate bill leaves in place a 50-year-old, rigid, statutorily mandated, and unalterable personnel system. This kind of organizational rigidity in the face of an agile and aggressive enemy is unacceptable to the Administration.

Your op-ed also mistakenly claims that the Senate bill would allow the President to "remove employees from collective bargaining units when national security is at stake." In fact, the Committee proposal includes language on Federal Labor Relations which would significantly restrict the President's existing, government-wide authority to prohibit collective bargaining for reasons of national security. The bill would in effect deny the President this authority over the Department of Homeland Security—an illogical result given that the President will continue to have the authority for every other department and agency of the Federal government. As every President since Jimmy Carter has shown, there are times where the needs of national security must take precedence over collective bargaining. Each of these Presidents—both Democrats and Republicans—has used this authority precisely and with restraint. It is unfathomable—and again simply unacceptable—that the Senate would choose a time of war to weaken the President's authority to protect national security.

While we continue to have considerable substantive disagreements with the measure presently before the Senate, as you begin the debate to establish the Department of Homeland Security, we must keep in mind the common goal of an accountable, effective agency with the resources and authorities necessary to protect the American people. At the end of the day, we must resolve out differences to reflect our mutual obligation to protect our special interest—America.

With Respect,

GOVERNOR TOM RIDGE,
Homeland Security Advisor.

Mr. NELSON of Nebraska. Madam President, he points out the Internal Revenue Service, which is exactly what we have included in this amendment, hardly opposing the President unless, Heaven forbid, Director Ridge opposes the President. He suggested it.

Then, Madam President, I do not need to enter—it is already a matter of record—the remarks of the good Senator from Texas in which he suggested that the current situation might be remedied by including the IRS formula that was included in the reorganization of the IRS.

I would not suggest for a minute that he opposes the President.

We have had some explanations or recharacterizations of what these documents mean. The recharacterization does not change the language, does not change the meaning, but now what seems to have changed is the goalposts have been moved, the rules have been changed, and now in good faith we proposed what we thought the White House and others, who were suggesting we ought to do it differently, we thought, what they were asking for.

As with mischaracterizations, I think anybody today watching us would feel as if they have been watching a little bit of ''Alice in Wonderland.'' This is the only place I can imagine where if you have an amendment, you are an opponent of the President. I am not an opponent of the President. I do not oppose the President. I am here trying to find a way to close the gap.

I would like to find the steering wheel for the car of the good Senator from Texas so that it is 100 percent complete, not 95 percent complete, as the example he gave before.

I am intrigued by mischaracterization, but I am not persuaded by it, and nor will my colleagues be persuaded by it as well.

The Senator from Texas referred to page 12 of our amendment and read from it the language he said was now taking away authority of the President. The title is: ''Limitation on Exclusionary Authority.'' He says we are excluding the President's authority. The truth is, this is just a reference to existing law, and it has to have some sort of a heading.

Let's move away from the heading and see what this particular provision does. It says no agency that is transferred to the Department will be excluded from the coverage of chapter 71 of title 5, United States Code 7103(b)(1).

What does that have reference to? The President's authority. It says the agency will not be exempt from the President's authority.

What is that President's authority this has reference to? It says that the President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines the agency or subdivision has as their primary function intelligence, counterintelligence, investigative or national security work, and the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

It also says that the President may issue an order suspending any provision of the chapter or activity if somebody is located outside of the United States and the District of Columbia. The truth is, this reference incorporates the President's current authority. It does not exclude it. It does not change it. It does not limit it.

What I agree with, which the Senator does point out, is it does then set some additional tests the President ought to apply in making a determination. That is not limiting authority. That is saying these are the tests that ought to be considered and have to be considered before the order is issued. The President has the same authority as before, but now it has a reference to dealing with there being a material change in the responsibility.

The good Senator has also made a suggestion maybe we ought to look at wording that says ''or the threats have changed.'' When the good Senator suggests a change to the existing law, he is not opposing the President, but when we make a suggestion, we are opposing. I think we have to use the same terminology and say we are both trying to improve the existing situation.

If the Senator from Texas makes a suggestion we add language, I am not going to suggest he is opposing the President. I am not even going to suggest he is opposing me. He is trying to make something he disagrees with better, but it does not make us opponents.

What we have heard today is a lot of discussion with a lot of hyperbole and changing the rules as we go along. Of course, I think anybody watching from the outside looking in will not be misled by this kind of spin-doctoring or this kind of labeling.

My hope is we can set aside partisan discussions and talk about the essence of what it is we are about. What we are about is finding a way to close the gap.

I have said to the Senator from Texas, and I say it again, if there is language—and we are looking at his suggestion there—that will make this clearer and stronger, we are very much in favor of considering that. But I do not think it will make either of us opponents of the President if we agree on that language, which is different from the current Gramm-Miller bill that is referred to as the President's bill.

So I think we must, in fact, put aside who is opposing and let us start talking about how we can amend, improve and close the gap so the good Senator's car will have its steering wheel and he can drive forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. REID. Will the Senator yield for a question?

Mr. NICKLES. Yes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I had a brief conversation privately with the Senator from Oklahoma, and while the Senator from Texas is in the Chamber, I say we have a vote scheduled for 3:45 this afternoon. It would seem to me the most logical and sensible thing to do, since we have been told by several people on the other side of the aisle we are not going to get cloture tomorrow when we vote an hour after we come in, instead of having the vote at 3:45 on the cloture that is now set we should have it on the amendment the Senator from Texas said we will not get cloture on, which makes more sense.

If we are not going to get it tomorrow, it would seem it would be in everyone's best interest, with all the things going on in Washington tomorrow, we have the vote today and allow people who are concerned about some of the things that might take place tomorrow in the District to be able to go to their home in the suburbs or in the District or back to the States.

If the Senator is right that we will not get cloture—and if, in fact, we did get cloture, it would allow a lot of people not to be here because the 30 hours runs and, of course, we have one hour at a pop. I am not going to formally ask at this time, but I ask the distinguished Republican assistant leader to see what he could do about working that out. It seems to me it would be in the best interest of the Senate and it would be in the best interest of those we are trying to work to some finality in this bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I will be happy to work with him on trying to schedule things that are convenient for all colleagues.

I rise today to make a few comments I really wish I did not have to make. Yesterday, the majority leader of the Senate made a very strong, impassioned speech. I missed most of it, but I caught a lot of it last night on ''Nightline.'' I caught a transcript of it and then I saw it again. I will read part of it. Senator DASCHLE said: I can't believe any President or administration would politicize the war. But then I read in the paper this morning, now even the President, the President is quoted in the Washington Post this morning as saying that the Democratic—the Democratic-controlled Senate is not interested in the security of the American people.

Senator DASCHLE was reading from The Washington Post. Unfortunately, though, he did not quote The Washington Post correctly and he certainly did not quote the President of the United States correctly.

It is a very strong accusation saying the President of the United States would politicize the war and he quotes the President of the United States, but he quoted the President of the United States inaccurately.

One, we should keep politics off the floor of the Senate, particularly when we are talking about issues of very significant importance such as war, war resolutions, or a resolution dealing with Iraq, which has been a troublesome spot for the United States. We have had several debates and discussions on Iraq. We should not be playing

partisan politics. I do not think we should be attacking the President of the United States on a quote in the Washington Post, which may or may not be accurate. The way it was stated by Senator DASCHLE was inaccurate, and I will read the President's quote from the Washington Post which was alluded to, and then I will again read Senator DASCHLE's quote and we will see directly they are not the same.

What the President said when he was in New Jersey on September 24 was:

So I asked the Congress to give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure.

The President goes on to say:

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats. See, this isn't a partisan issue. This is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be. Senator GRAMM, a Republican, Senator MILLER, a Democrat, are working hard to bring people together. And the Senate must listen to them.

That is what the President said, and to take out of that a statement that says the Democratic-controlled Senate is not interested in the security of the American people, is not what the President said. If someone is making a statement that receives a lot of attention, there must have been notification to the press this is going to be a very important statement, and to make a statement misquoting the President of the United States on an issue like this and accuse him of politicizing the war, when the issue was homeland security, I think is a real injustice to the President of the United States and to the quality and flavor of debate we should be having in the Senate.

We should not be politicizing a debate dealing with war and talking about international repercussions. And there are repercussions when we make speeches, particularly when the Democrat leader makes a speech. I cannot help but think the headlines that came out as a result of his speech brought about some comfort for those who really oppose the United States policies or those who are opposed to formulating an international coalition the administration is presently trying to put together in the United Nations, in Europe, and in the Middle East.

This President, like his father, was trying to build an international coalition. I can't help but think when they read that the Democrat leader of the Senate is accusing the President of politicizing the war and misquoting the President, that gives them a lot of ammo. That gives them a lot of justification for Saddam Hussein or others to say: See, I told you they are just politicizing this war. They want to do this for political purposes, when that was not what the President said.

Again, when I first heard of this I thought, well, let me find out what the President said. I am a friend of the President's. I am willing to defend him, but I wanted to see what he had to say. I know the President very well and I said, I can't believe he would say Senate Democrats are not concerned about national security because that is not factual.

But then when I read these comments, not only did he not say it, he didn't say anything close to it. Then in the next sentence down he said:

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats.

I wish Senator DASCHLE would have read that. I wish he would have read that he compliments both Senator GRAMM, a Republican, and Senator MILLER, a Democrat, and he never once said what was said on the floor yesterday. He never once said Senate Democrats are not interested in national security. He didn't say it. But that was the attack that was made yesterday.

I just think of the international repercussions, and I am thinking of this enormous challenge to build an international coalition, one that President Bush 1 was able to do in 1990 and 1991, an enormous coalition, but it was not easy to build. It is a coalition, I might mention, that was put together, and very successfully, in 1991, that dissipated over the next 8 years and is now gone. So President Bush, this President Bush at the present time, is trying to rebuild the coalition. Then to be attacked by the majority leader, misquoting him, I think is very inappropriate.

I also wish to make a comment about Vice President Gore.

Before I do that, I want to read another. The President made two speeches. I scanned both. I didn't want to misstate what the President said. I like to be factually accurate. If I ever misquote anybody, it will be a mistake.

So I read the President's speech that he made at another event. This goes to the same subject. I believe this was made on September 25th.

Right now in the Senate the Senate feels like they want to micromanage the process, not all Senators but some Senators. They feel they have to have a pile of books this thick that will hamstring future administrations how to protect our homeland. I am not going to stand for it.

I appreciate John's vote on a good homeland security bill. And the Senate must hear this, because the American people understand it. They should not respond to special interests—they ought to respond to this interest: protecting the American people from a future attack.

Again, he didn't say anything about the Democrat Senate not supporting national security.

But there was a real political statement made the other day. That was by former Vice President Al Gore. Again, I would like to think that Presidents and former Presidents and former Vice Presidents wouldn't undercut the existing President and Vice President on the floor—while they are trying to build coalitions. That is exactly what the former Vice President did. Former Vice President Gore, in speaking to, a group of Democrats or a group of people in San Francisco, had a lot of outlandish things to say.

I read—well, he is trying to garner support from the political left or right, and I guess he has that right to do so. But I would think he would have the dignity to try to maintain the dignity of the Office of Vice President and not undermine an existing administration that has a difficult challenge to try to rebuild a coalition. This is one of the things Vice President Gore said on September 23:

To begin with, to put things first, I believe we ought to be focusing on efforts first and foremost against those who attacked us on September 11 and who have thus far gotten away with it.

For Vice President Gore to say that is grossly irresponsible, and is very inconsistent, I might say, with some of the things he had to say in the past.

It is very troubling to me, when I look at the previous administration and what they did or didn't do in response to previous acts of terrorism, for him to be blaming this administration for not being aggressive enough in fighting the war on terrorism, and I see terrorist attacks that happened during Vice President Gore's administration, President Clinton's administration, and I look at the response they had against terrorism and I say, Where is it?

For him to be critical of this President when this President has made an aggressive effort to combat terrorism and basically eliminating it—going into Afghanistan, helped in liberating the Afghan people, dispersing al-Qaida, going after and rounding up and killing hundreds of terrorists—for the Vice President to be critical of this administration is mind-boggling.

I remember when the U.S. Embassies were bombed in Kenya and Tanzania on August 7, 1998; 224 people were killed, including 12 Americans, almost all of those were employees of the United States. Five thousand people were wounded.

And what did we do? Well, we lobbed a few cruise missiles hoping maybe we would get Bin Laden and then we didn't do anything else. That was in August of 1998. Yet we didn't do anything, after that for the next couple of years; the previous administration did nothing.

And then the U.S.S. *Cole* was attacked on October 12, the year 2000; 17 U.S. sailors were killed; 39 were wounded. The entire ship could have sunk.

What did we do? Nothing.

President Clinton said:

If, as it now appears this was an act of terrorism, it was a despicable and cowardly act. We will find out who was responsible and

hold them accountable. If their intention was to deter us from our mission in promoting peace and security in the Middle East, they will fail utterly.

President Clinton, as a result of the bombings of the U.S. Embassies, on August 7 of 1998 said:

These acts of terrorist violence are abhorrent. They are inhuman. We will use all the means at our disposal to bring those responsible to justice no matter what or how long it takes.

That was President Clinton's remarks, and I would assume Vice President Gore would agree with those remarks, but we didn't do anything. And we didn't follow up. We did lob a few cruise missiles, but we didn't stay after Bin Laden. We could have. We could have sent some special forces. We could have sent some airplanes over there. We could have been very aggressive in trying to hunt down the people who killed hundreds of people in those two attacks, but we didn't do it. We flat didn't do it. As a result, some of the people who planned those two activities also planned and carried out the airplane bombings in the World Trade Center and the Pentagon and in the fields of Pennsylvania—probably headed towards the Capitol—because we didn't follow up. We didn't pursue them as aggressively as we should have in 1998, 1999, 2000.

Then to have the former Vice President be critical of this administration, that has moved aggressively to combat terrorism and go after the terrorism—I am very troubled by that. Very troubled by it, indeed. We are all entitled to our opinions. We are all entitled to state what we think should be done. But I happen to be one who believes that when you are in a war, you should be working together and not try to undermine the President of the United States.

I am afraid, as a result of both the comments that were made by the majority leader and the comments that were made by the former Vice President, I think it does undermine our united efforts to combat terrorism and to go after those people who are directly responsible.

Finally, I want to make a couple of other comments. In dealing with the bill we have before us, Senator GRAMM has mentioned that he has an amendment, supported by the President, endorsed by Senator MILLER. I compliment them for their work on this issue. Unfortunately, the amendment tree is filled. I don't want to get too bogged down in the parliamentary jargon, but I am looking at this tree. I want to read a quote Senator DASCHLE once said in June. He said:

I announced at the very beginning of my tenure as majority leader I will never fill the tree to preclude amendments. I am going to hold to that promise.

That was made on June 10. I happen to be one who doesn't like filling the tree, either. But this tree is filled and why is it filled? It is to deny people a vote, the Senator from Texas and Georgia having a right to a vote on their amendments next. They want to obscure it so we vote on other amendments first.

Then the issue of cloture—we are going to have a vote tonight or we are going to have a vote tomorrow. Well, the purpose of cloture is to deny them the vote and it is to falsely allude to—maybe people on this side of the aisle are filling the tree, which is false. We are not filibustering the Interior bill.

I said that several times, and I happen to consider myself a person of my word. I will let you know if I am filibustering a bill. The Senator from Nevada knows me pretty well. I will let him know if I am filibustering a bill. He will know it. No one is filibustering this bill. Well, ''We are going to file cloture.'' They know they have to get 60 votes for cloture. They won't have it today and they won't have it tomorrow.

The Senators from Texas and Georgia introduced the President's package. It has been modified to accommodate a lot of Senators and to make sure we don't have anything that would be intrusive against public employees. It has a lot of protections in it. It is a well-thought-out amendment and is very similar to many of the adoptions made in the House of Representatives. They are entitled to their vote. Will cloture deny them that opportunity? This amendment would not be germane postcloture. It would fall.

I have said repeatedly that they are entitled to their vote, and they are going to get their vote.

I urge my colleagues, we could do a lot better in legislating if we didn't fill trees, if we didn't file cloture every other day, and if we worked together to come up with a reasonable alternative to allow people to vote on this alternative, to vote on the Gramm-Miller alternative, to vote on other alternatives and be finished with the bill.

The same thing with the Interior bill—if we had a vote on the various proposals dealing with fire. Let us vote. That is what we are paid to do. Let us vote. I urge my colleagues, let us not use the floor of the Senate to be accusing this President of politicizing the war; the Vice President as well. I think that undermines the Senate and is not worthy of debate in the Senate.

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

Mr. NICKLES. I would be happy to yield.

Mr. BYRD. I just want to say this: I agree with what the Senator said in respect to the appropriations bills. We had this talk—those of us who agreed on appropriations bills. He is ready to vote on them. So am I.

I hope the leadership will attempt to get some of the other appropriations bills up. Let us see who is holding up appropriations bills. We have to do the Health and Human Services bill. We have that. We have all of these bills backed up, and not a single one of the 13 appropriations bills has been sent to the Senate.

I thank the Senator for making that point. He is ready. Let us vote on those bills.

Mr. NICKLES. I appreciate the chairman of the Appropriations Committee. I do know that when we have appropriations we have disputes on amendments. The way to dispose of those amendments is not to file cloture because it won't work. The way to dispose of those amendments is to, if you do not like it, move to table it, or accept it. Maybe you accept it, or drop it. But you deal with the amendment.

I am embarrassed that we have been on two bills for 4 weeks and we have made so little progress. We have spent the entire month of September, and the end of the fiscal year is next month, and we haven't passed one appropriations bill this month.—not one. We have only had three or four votes on each bill—both the Interior bill and the homeland security bill. That is pretty pathetic progress.

As a result, we have only passed three appropriations bills out of the Senate. It is maybe one of the worst records we have had in a long time. That is not acceptable.

I can't help but think if the majority or minority would get together and say let us bring up these bills, move them quickly; let us table nongermane amendments; let us get our work done; that it would help make the process work a lot better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I, as every Senator who serves here, came to the Senate for the purpose of being a public servant and to try to do things that help our respective States and the country. That is why we are here. People at home, in many instances, are somewhat jaundiced of the process. They think things we do here are political in nature and in the negative sense, and that we are really not here for the good of the country. I don't want to believe that. But there were times when even I became suspect about what is going on here.

TOM DASCHLE, the majority leader of the Senate, came to the floor twice yesterday. He was concerned because blazed across the country in the newspapers is something that has not been said once, but during the last month the President of the United States has said on six different occasions—four times at fundraisers—that the Senate—specifically on occasion Senate Democrats—weren't concerned about national security.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I yield for a question.

Mr. NICKLES. I just want to correct the record and say I have scrutinized the President's speech. And I have never seen where this quote—I just gave it to the clerk—this quote comes from Monday. I looked at the President's speech. I have the President's speech. I will enter it into the RECORD.

But it did not say the Democratic-controlled Senate is not interested in the security of the people.

Again, we have to be factually accurate. If we are going to quote the President of the United States and accuse him of politicizing the war, let us have an accurate quote. You can't take only part of a newspaper, the part that says the Democrat Senate—I guess what was not in quotes. But it was read on the floor like it was quotes; like it was a direct quote from the President. The President did not say that. Even the Washington Post didn't say it. You can't say, well, the Washington Post had it wrong; that the Washington Post inferred that he meant the Democrat Senate. But that is not what he said.

When it is something of this significance, when it has international repercussions, and when it can undermine our efforts in trying to get countries such as Egypt, Jordan, Germany, Italy, and others to be on our side; to say the President said the Democratic-controlled Senate is not interested in national security, when he didn't say it, is a real injustice.

Mr. REID. Folks listen. Listen. Six times within the past month—four times at fundraisers—the President said the same thing.

When the majority leader came to the floor, he said a number of things.

First of all, he quoted correctly that at a fundraiser, Dowd, one of the Republican pollsters, was quoted, and I quote:

> Number-one driver for our base motivationally is this war.

Then, of course, we go to Karl Rove. Karl Rove, prior to the President being elected, no one knew who he was. We in Nevada knew him because he is from Nevada. But now everybody knows Karl Rove because he is known as the President's closest confidant. Of course, in June a floppy disk was found at Lafayette Park, right across from the White House. No one has denied that Karl Rove said what was on this floppy disk. Basically, it said focus on the war. There is the key point that should be centered on White House desire to maintain a positive issue environment. That positive issue environment is focus on the war and not on the stumbling economy.

Then we go to Andrew Card. Andrew Card said from a marketing point of view, you don't introduce new products in August.

Then we have the Vice President, and then we have the President. OK. Now.

Mr. NICKLES. Will the Senator yield?

Mr. REID. No. I will not.

Today, the Republican National Committee—of course, who leads the Republican National Committee? It is the President of the United States. Just like when we have a Democratic President, he is the leader of the Democratic National Committee. We have e-mail now. For some people, e-mail is not what we are used to. But we have an e-mail. Who was this e-mail sent to? It was sent to GOP team leaders. And it also gives you information if you want to become a GOP team leader. Who do you get to become one? We know how. Money.

What does this say? Maybe this is what this is all about—fundraising; seeing if they can raise some more money for the midterm elections.

> Tell Your Senators to support President Bush's Homeland Security. Democrat Senators Put Special Interests Over Security.

Among other things, this said the Senate is more interested in special interests in Washington and not the security of the American people.

It goes on to say.

> This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, Federal Government employee unions, over the security of the American people.

Mr. NICKLES. Will the Senator yield?

Mr. REID. I will not yield until I finish. Just be patient.

Madam President, this is what it is all about—raising money for the midterm elections and accusing me of being not for the interests of this Nation.

I was the first Democrat to publicly support this President's father. I came to this floor right here—first Democrat—to say go to Iraq and do what you have to do. And to accuse me of not being for the Nation's security—as Senator DASCHLE pointed out, back here is a man who is missing an arm that was blown off when he was in the Second World War. As he said, he was a very young man. MAX CLELAND came in. He has one arm. He is missing both legs and an arm. He is not for the security of this Nation?

Talk to FRITZ HOLLINGS, a man nearly 80 years old, who was in World War II as an officer and fought in combat.

DANNY AKAKA. Now, most of us here don't have Congressional Medals of Honor like DAN INOUYE has. And let us not forget JOHN KERRY and TOM CARPER. But vicariously I have served in the Senate and the House of Representatives trying to do what I could to have this a secure nation. And to have anyone accuse me of not being for a secure nation is accusing me of not being patriotic. That is not right.

They can accuse me of being too liberal on an issue, too conservative on an issue, being a big spender, not spending enough, but don't accuse me—I didn't come back here to be called names. That is what I am being called.

Now, you can criticize TOM DASCHLE all you want, but, remember, the American people know he is right. You can't do what has been done.

We want to pass homeland security. This is a good man, Senator LIEBERMAN. He is one of the most conservative people we have in the Democratic caucus. He started working on this bill before September 11. Does he not want this bill? Of course he wants this bill.

We are being told we can't have cloture. Why did we file cloture? Because for 4 weeks we have been trying to pass a bill for this President, whose chairman of the Republican National Committee is sending out this trash.

So I think we should debate the issues. I am proud of TOM DASCHLE for standing up and bringing attention to what is going on.

What is going on? That the No. 1 driver for the Republicans is the war. It should not be.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will just repeat to my colleague, you may find a quote from the RNC, and I am sure we could finds things from the Democratic National Committee to be quite partisan. What I stated was that the President did not state what was alluded to yesterday on the floor when the majority leader said that, quote: the Democratic Senate is not interested in the security of the American people.

That is what he said. I am just saying, quite frankly, the President of the United States did not say it. I reviewed the entire speech.

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

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

PRESIDENT CALLS ON CONGRESS TO ACT

Army National Guard Aviation Support Facility, Trenton, NJ, September 23, 2002

The President: Thanks a lot for coming out this morning. It is my honor to be—it is my honor to be back in New Jersey. I want to thank you all for coming out. I want to thank the people of the New Jersey Army and Air National Guard for your hospitality. (Applause.) I'm here to talk about how best to make America a stronger country, a safer country, and a better country for all of us.

There is an old bridge over the Delaware River that says: Trenton makes, the world takes. (Applause.) It talks about the work ethic of the people of this part of our country, it talks about the creativity, it talks about the true strength of America. The true strength of America are our fellow citizens. The strength of our country is the people of America. And I'm honored to be with such hardworking people. (Applause.)

Congress can help. Congress needs to work hard before they go home. Congress needs to get some things done, which means a homeland security department, a budget that reflects our priorities. They've got to make sure they don't overspend your money. They've got to remember, everything they do must go to make sure America is a stronger and safer and better place. (Applause.)

I want to thank Brigadier General Glenn Rieth for opening up this hangar and for inviting me to this base. I want to thank all the Guard personnel who serve the United States of America. I want to thank you for your service, I want to thank you for your sacrifice. (Applause.) I want to thank your governor for being here today. I appreciate Governor McGreevey being at the steps of Air Force One. I'm thankful for his hospitality. I appreciate him coming to say, hello, and I'm honored he's here today to hear this speech. Governor, thank you for coming.

I appreciate members of the congressional delegation. Congressmen Ferguson, Saxton and Smith from New Jersey, thank you all

for being here. (Applause.) I want to thank Bob Prunetti who is the Mercer County Executive, for greeting me here, as well. And I want to thank you all for coming.

Here's what's on my mind: I want our people to work here in America. Any time somebody who wants to work can't find a job, it means we've got a problem in this country. And we will not rest until people can find work. A stronger America means a strong economy. A stronger country means that our good, hardworking Americans are able to put food on the table for their families.

Now, we're making progress. Listen, interest rates are low, inflation is low, we've got the best workers in the world. We've got the best, hardest workers and smartest workers in the world. We've got the ingredients for growth. But what has taken place so far is not good enough for me. And I hope it's not good enough for the Congress. What's happening in the economy is not good enough for a stronger America. And Congress can help.

Listen, I come from the school of thought that says, if you've got an economic problem—and remember, for the first three quarters of my administration we were in negative growth; the stock market started to decline in March of 2000; economic growth started to show down in the summer of 2000; we were in recession in the first three quarters of 2001.

In order to make sure the country was stronger, I pulled this page out of the economic textbook, the page that says, if you let people keep more of their own money, they're going to spend it on a good or a service. If they spend it on a good or a service, somebody will produce the good and service. And if somebody produces a good or service, some American is more likely to find work. The tax relief came right at the right time for economic growth and jobs. (Applause.)

And if Congress wants to help in job creation, they need to make the tax relief permanent. They need to make the tax relief permanent so our New Jersey small businesses and entrepreneurs can plan for the future. After all, most growth of new jobs comes from small businesses all across America.

Congress also must understand they've got to pass an energy bill. You see, an energy bill will be good for jobs. An energy bill will be good for national security. We need an energy bill that encourages consumption [sic], encourages new technologies so our cars are cleaner, encourages new renewable energy sources, but at the same time encourages increase of supply here at home, so we're less dependent on foreign sources of crude oil. (Applause.)

Congress needs to get some work done before they go home. And one of the most important things they can do is to pass an anti-terrorism insurance bill. See, we need an insurance bill to cover potential terrorist acts, so that hard hats in America can get back to work. And I want a bill on my desk that says we care more about the working people and less about the trial lawyers. We want a bill that puts the hard hats back to work, not enriches the trial lawyers here in America. (Applause.)

In order to make sure our country is stronger and our economy grows, Congress must be wise with your money. Notice I said ''your money.'' When it comes time to budgeting and appropriations, which means spending, sometimes in Washington they forget whose money they're talking about. You hear them talking about the government's money. No,the money in Washington is not the government's money, the money in Washington is your money. And we better be careful about how we spend your money. And if Congress overspends, it's going to a problem for making America's economy continue to grow. And so my message to Congress is: remember whose money you're spending.

Now, one of the problems we have is that any time you're worried about spending, you set a budget. That's what you do. The Senate hasn't been able to do so. They don't have a budget, which means it's likely they're going to overspend. See, every idea in Washington is a good idea. Everybody's idea sounds good, except the price tag is generally in the billions. In order to make sure the country is stronger, we need fiscal responsibility in Washington, D.C. We need to make sure that Congress does not overspend. Without a budget, they're likely to overspend.

They set deadlines on you, when it come to paying our IRS, paying your taxes. There ought to be a deadline on them in order to get a budget passed and to get bills passed. Now, because they haven't been able to move, they're going to send my desk soon what looks like what they call a temporary spending bill. And that temporary spending bill should not be an excuse for excessive federal spending. The temporary spending bill ought to remember whose money they're spending. A temporary spending bill ought to be clean, so that we don't overspend as the economy is trying to continue to grow. What we need in Washington is fiscal responsibility, fiscal sanity. We need to set priorities with your money. And the most important priority I have is to defend the homeland; is to defend the homeland from a bunch of killers who hate America. (Applause.)

It's very important for the school children here to listen to what I'm about to say. You're probably wondering why America is under attack. And you need to know why. We're under attack because we love freedom, is why we're under attack. And our enemy hates freedom. They hate and we love. They hate the thought that this country is a country in which people from all walks of life can worship an almighty God any way he or she fits. They hate the thought that we have honest and open discourse. They hate the thought that we're a beacon of liberty and freedom.

We differ from our enemy because we love. We not only love our freedoms and love our values, we love life, itself. In America, everybody matters, everybody counts, every human life is a life of dignity. And that's not the way our enemy thinks. Our enemy hates innocent life; they're willing to kill in the name of a great religion. (Applause.) And as long as we love freedom and love liberty and value every human life, they're going to try to hurt us. And so our most important job is to defend the freedom, defend the homeland—is to make sure what happened on September the 11th doesn't happen again, we must do everything we can—everything in our power—to keep America safe.

There are a lot of good people working hard to keep you safe. There are people at the federal level and at the state level, a lot of fine folks here at the local level, doing everything we can to run down every lead. If we find any kind of hint, we're moving on it—all within the confines and all within the structure of the United States Constitution. We're chasing down every possible lead because we understand there's an enemy out there which hates America.

I asked the Congress to work with me to come up with a new Department of Homeland Security, to make sure that not only can this administration function better, but future administrations will be able to deal with the true threats we face as we get into the 21st century. A homeland security department which takes over the hundred different agencies and brings them under one umbrella so that there's a single priority and a new culture, all aimed at dealing with the threats.

I mean, after all, on our border we need to know who's coming into America, what they're bringing into America, are they leaving when they're supposed to be leaving America. (Applause.) Yet, when you look at the border, there are three different federal agencies dealing with the border: there is Customs and INS and Border Patrol. And sometimes they work together and sometimes they don't—they don't. They've got different work rules. They've got different customs. Sometimes they have different strategies. And that's not right.

So I asked Congress go give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure. (Applause.)

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats. See, this isn't a partisan issue. this is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be.

Senator Gramm, a Republican, Senator Miller, a Democrat, are working hard to bring people together. And the Senate must listen to them. It's a good bill. It's a bill I can accept. It's a bill that will make America more secure. And anything less than that is a bill which I will not accept, it's a bill which I will not saddle this administration and future administrations with allowing the United States Senate to micro-manage the process. The enemy is too quick for that. We must be flexible, we must be strong, we must be ready to take the enemy on anywhere he decides to hit us, whether it's America or anywhere else in the globe. (Applause.)

But the best way to secure our homeland, the only sure way to make sure our children are free and our children's children are free, is to hunt the killers down, wherever they hide, is to hunt them down, one by one, and bring them to justice. (Applause.)

As far as I'm concerned, it doesn't matter how long it takes. See, we're talking about our freedom and our future. There's no cave deep enough, as far as I'm concerned; and there's no cave deep enough, as far as the United States military is concerned, either. I want you all to know, if you wear the uniform of our great country, I'm proud of you. I've got confidence in you. I believe that you can handle any mission. (Applause.)

No, it's a different kind of war than our nation has seen in the past. One thing that's different is oceans no longer keep us safe. The second thing is, in the old days, you could measure progress by looking at how many tanks the enemy had one day, and how many he had the next day, whether or not his airplanes were flying or whether or not his ships were floating on the seas. It's a different kind of war. And America has begun to adjust its thinking about this kind of war.

See, this is the kind of war where the leaders of the enemy hide. They go into big cities—or as I mentioned, caves—and they send youngsters to their suicidal death. That's the kind of war we're having. It's not measured in equipment destroyed, it's going to be measured in people brought to justice. And we're making progress. I had made it clear to the world that either you're with us or you're with the enemy, and that doctrine still stands. (Applause.) And as a result of the hard work by our United States military an the militaries and law enforcement officers of other countries, we've arrested or

brought to justice a couple thousand or more. Slowly but surely, we're finding them where we think they can hide.

We brought one of them in the other day. He thought he was going to be the 20th hijacker, or at least he was bragging that way. I don't know if he's bragging now. But, see, he thought he was immune, he thought he was invisible, he thought he could hide from the long arm of justice. And like many—about the like number haven't been so lucky as the 20th hijacker. They met their fate.

We're getting them on the run, and we're keeping them on the run. They're going to be—as part of our doctrine, we're going to make sure that there's no place for them to alight, no place for them to hide. These are haters, and they're killers. And we owe it to the American people and we owe it to our friends and allies to pursue them, no matter where they try to hide.

And that's why I asked the Congress for the largest increase in defense spending since Ronald Reagan was the President. I did so because I firmly believe that any time we commit our troops into harm's way, you deserve the best pay, the best training and the best possible equipment. (Applause.) I also asked for a large increase because I wanted to send a clear signal to the rest of the world that we're in this for the long haul; that there is no calendar on my desk that says, by such and such a day we're going to quit, that by such and such a day we will all have grown weary, we're too tried, and therefore we're coming home.

That's not the way we think in America. See, we understand obligation and responsibility. We have a responsibility to our children to fight for freedom. We have a responsibility to our citizens to defend the homeland. And that only means—not only means dealing with real, immediate threats, it also means anticipating threats before they occur, before things happen. It means we've got to look out into the future and understand the new world in which we live and deal with threats before it's too late.

And that's why I went into the United Nations the other day. And I said to the United Nations, we have a true threat that faces America; a threat that faces the world; and a threat which diminishes your capacity. And I'm talking about Iraq. That country has got a leader which has attacked two nations in the neighborhood; a leader who has killed thousands of people; a leader who is brutal—see, remember, we believe every life matters and every life is precious—a leader, if there is dissent, will kill the dissenter; a leader who told the United Nations and the world he would not develop weapons of mass destruction, and for 11 long years has stiffed the world.

He looked at the United Nations and said this is a paper tiger, their resolutions mean nothing. For 11 years he has deceived and denied. For 11 years he's claimed he has had no weapons and, yet, we know he has.

So I went to the United Nations and said, either you can become the League of Nations, either you can become an organization which is nothing but a debating society—or you can be an organization which is robust enough and strong enough to help keep the peace; your choice.

But I also told them that if they would not act, if they would not deal with this true threat we face in America, if they would not recognize that America is no longer protected by oceans and that this man is the man who would use weapons of mass destruction at the drop of a hat, a man who would be willing to team up with terrorist organizations with weapons of mass destruction to threaten America and our allies, if they wouldn't act, the United States will—we will not allow the world's worst leaders to threaten us with the world's worst weapons. (Applause.)

I want to see strong resolutions coming out of that U.N.; a resolution which says the old ways of deceit are gone; a resolution which will hold this man to account; a resolution which will allow freedom-loving countries to disarm Saddam Hussein before he threatens his neighborhood, before he threatens freedom, before he threatens America and before he threatens civilization. We owe it to our children and we owe it to our grandchildren to keep this nation strong and free. (Applause.)

And as we work to make America a stronger place and a safer place, we always must remember that we've got to work to make America a better place, too—a better place. And that starts with making sure every single child in America gets a great education. (Applause.) Make sure that every child—make sure that we focus on each child, every child. It says we expect and believe our children can learn to read and write and add and subtract. As a society, we will challenge the soft bigotry of low expectations.

We believe every child can learn, every child matters, and therefore we expect to be told whether or not the children are learning to read and write and add and subtract. And if we find they're not, if we find there are certain children who aren't learning and the systems are just shuffling through as if they don't matter, we must challenge the status quo. Failure is unacceptable in America. Every child matters, and no child should be left behind in this great country. (Applause.)

A better America, a better America is one which makes sure that our health care systems are responsive to the patient and make sure our health care systems, particularly for the elderly, are modern. We need prescription drug benefits for elderly Americans. The Medicare system must be reformed, must be made to work so that we have a better tomorrow for all citizens in this country. (Applause.)

A better America is one that understands as we're helping people go from dependency to freedom, from welfare, we must help them find work. A better America understands that when people work, there is dignity in their lives. A better America is America which understands the power of our faith-based institutions in our country. It's in our churches and synagogues and mosques that we find universal love and universal compassion. (Applause.)

You now what's really interesting about what's taking place in America is this: the enemy hit us, but out of the evil done to America is going to come some incredible good, because of the nature of our soul, the nature of our being. On the one hand, I believe we can achieve peace. Oh, I know the kids hear all the war rhetoric and tough talk, and that's necessary to send a message to friend and foe alike that we're plenty tough, if you rouse this country, and we're not going to relent.

But we're not going to relent because my desire is to achieve peace. I want there to be a peaceful world. I want children all across our globe to grow up in a peaceful society. Oh, I know the hurdles are going to be high to achieving that peace. There's going to be some tough decisions to make, some tough action for some to take. But it's all aimed at making America safe and secure and peaceful, but other places around the world, too. I believe this—I believe that if our country—and it will—remains strong and tough and we fight terror wherever terror exists, that we can achieve peace. We can achieve peace in the Middle East, we can achieve peace in South Asia. We can achieve peace.

No, out of the evil done to America can come a peaceful world. And at home, out of the evil done to our country can come some incredible good, as well. We've got to understand, in America there are pockets of despair and hopelessness, places where people hurt because they're not sure if America is meant for them, places where people are addicted. And government can help eradicate these pockets by handing out money. But what government cannot do is put hope in people's hearts or a sense of purpose in people's lives. That's done when neighbor loves neighbor. That's done when this country hears the universal call to love a neighbor just like you'd like to be loved yourself.

No, out of the evil done to America is coming some incredible good, because we've got citizens all across this land—whether they be a part of our faith-based institutions or charitable institutions—citizens all across this land who have heard the call that if you want to fight evil, do some good. if you want to resist the evil done to America, love your neighbor; mentor a child; put your arm around an elderly citizen who is shut-in, and say, I love you; start a Boy Scout or Girl Scout troop; go to your Boys and Girls Clubs; help somebody in need.

No, this country, this country has heard the call. This country is a country full of such incredibly decent and warm-hearted and compassionate citizens that there's people all across New Jersey and all across America who without one government act, without government law are in fact trying to make the communities in which they live a more responsive and compassionate and loving place.

Today I met Bob and Chris Morgan, USA Freedom Corps greeters, who coordinate blood drives right here in New Jersey for the American Red Cross. Nobody told them they had to do that. There wasn't a law that said, you will be a part of collecting blood. They decided to do it because they want to make America more able to address emergency and help people in need. Whether it's teaching a child to read, whether it's delivering food to the hungry or helping those who need a—housing, you can make a huge difference in the lives of our fellow Americans.

See, societies change one heart, one conscience, one soul at a time. Everybody has worth and everybody matters. No, out of the evil done to America is going to come a compassionate society. (Applause.) Now this great country will show the world what we're made out of. This great country, by responding to the challenges we face will leave behind a legacy of sacrifice, a legacy of compassion, a legacy of peace, a legacy of decency for future generations of people fortunate enough to be called an American.

There's no question in my mind—I hope you can tell, I'm an optimistic fellow about our future. I believe we can overcome any difficulty that's put in our path. I believe we can cross any hurdle, climb any mountain, because this is the greatest nation on the face of the earth, full of the most decent, hardworking, honorable citizens.

May God bless you all, and may God bless America. Thank you, all. (Applause.)

Mr. NICKLES. I read the speech.

Read the next paragraph. I have read the one paragraph. Read the next paragraph. The Senator from West Virginia will be interested in this. I will read the two relevant paragraphs again:

> The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people.

He didn't say the Democrats in the Senate. He didn't say what was stated on the floor. Let's be factual. Let's be honest. Let's say exactly what was

said. Let's not construe and say something else.

Let me go on. The President said:

I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure.

And people are working hard in Washington to get it right in Washington, both Republicans and Democrats.

That is in the President's speech. That doesn't sound very partisan to me.

See—

This is again the President:

See, this isn't a partisan issue. This is an American issue. This is an issue which is vital to our future. It'll help us determine how secure we'll be.

Senator GRAMM, a Republican, Senator MILLER, a Democrat, are working hard to bring people together.

That is not a partisan speech. That is not flailing all Senate Democrats. That is not accusing all Senate Democrats as being unpatriotic. Quite far from it.

So to stand on the floor and say, well, the President said that six times in the last few days, I don't believe is factually accurate. And to send signals to our allies and our adversaries that this is politicizing the war, or that some people think we might be, is politicizing the war, and it is wrong. And it sends the wrong signal. It sends all kinds of wrong signals, and it shouldn't be done.

If you are going to quote the President of the United States, not his election committee, not some mysterious tape that shows up someplace, but if you are going to quote the President of the United States, you ought to quote him accurately. And that was not done. And it is probably one of the harshest attacks I have ever seen on a sitting President of the United States in my 22 years in the Senate—the harshest. And at a time when we are in the process of trying to build an international coalition, the timing could not be much worse.

Also, I am bothered that people would say: Well, he said it. I'm just sure he did.

Well, he didn't say it. And if somebody has a quote—an accurate quote—that shows I am incorrect, I will stand here and say, oops, I'm wrong, because I believe more than anything my integrity means more to me than whatever somebody else says. I want to be factually accurate.

Before I came down yesterday to the floor, I said: Give me a transcript of the speech. I wanted to see exactly what it said. I didn't want to say: It didn't sound like something President Bush would say to me. And I have heard him give many campaign speeches. I know him pretty well. That doesn't sound like him. Where is it in his speech? Oh, he didn't say that.

He even went on to say both Democrats and Republicans are working to pass a good bill. And he never castigated all Senate Democrats as being unpatriotic or not interested in national security—he didn't say it.

Surprisingly enough, just because something is in the Washington Post does not make it right. The Washington Post was not even quoted accurately. I mean, come on now. This is a serious issue.

I want to conclude with a statement.

The Senate of the United States is a great institution, and I don't think it behooves us to quote a flier from the Republican National Committee, or the Democrat National Committee, and play a lot of politics, and say let's see what we can pull out of these documents. We are talking about a quote from the President not these fliers and statements from other people.

I can pull out more quotes right now from President Clinton and Vice President Gore stating their efforts to repudiate Saddam Hussein, the need for strong enforcement of resolutions, and on and on, that they never enforced—that they never enforced.

There were 16 resolutions passed in the United Nations dealing with Iraq, and the previous administration talked tough, lobbed a few bombs, a few cruise missiles, but we never enforced them. The net result is there have been no arms control inspections going on in Iraq for the last four years.

It is a lot more dangerous today than it was four years ago.

When I read these previous statements, both by President Clinton and Vice President Gore, about how we have to get tough against Iraq, and then we didn't do anything, it makes me wonder: Wait a minute, what is going on?

So now we are saying we should adopt a resolution that is not too far different than what we adopted unanimously in 1998 with almost no debate, and people are acting like: Wait a minute, the sky is falling. Or they try to move an issue from homeland security into the war on Iraq. I don't know if that is deliberate or just a mistake, but there is a real problem there. You can't be sending mixed signals to our potential adversaries and/or our potential allies, when we are trying to get people on our side, and misquote the President of the United States on something that important.

Mr. LIEBERMAN. Mr. President, will the Senator yield for a question?

Mr. NICKLES. I am happy to yield.

Mr. LIEBERMAN. Of course, I am working with colleagues on both sides of the aisle and with the White House to see that we can fashion a strong resolution giving the President authority to take whatever actions are necessary in Iraq.

But will the Senator from Oklahoma help me understand, what did the President mean when he said, at a fundraiser for Mr. Forrester, in New Jersey, Monday: ''And my message to the Senate is: You need to worry less about special interests in Washington and more about the security of the American people''? At a welcome ceremony in Trenton, Monday, he said: ''The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people.''

At a meeting with Cabinet members on Tuesday, the President said: ''My message, of course, is that—to the senators up here that are more interested in special interests, you better pay attention to the overall interests of protecting the American people.''

Then, finally, on Tuesday, at a fundraiser for Mr. THUNE, from South Dakota: ''I appreciate John's vote on a good homeland security bill. And the Senate must hear this, because the American people understand it: They should not respond to special interests. They ought to respond to this interest: protecting the American people from a future attack.''

So I say the problem here is we have a disagreement about how to best protect homeland security workers or whether to protect them, and also how to preserve the authority of the President over national security. That is a good-faith dispute which we are having.

But I think the concern is that the President was questioning the patriotism of those who do not agree with him on that issue.

Mr. NICKLES. I will be happy to respond to my colleague. I actually read both of those quotes. I put one in the RECORD. I will put both quotes in the RECORD so the American people can see this.

I read the President's comments. You only read one line. I read three paragraphs—he never said, ''The Democrats in the Senate are not interested in national security.'' That was the maddening quote. He never said it—never said it. Yet it was accepted that he said it. That is wrong. It was stated on last night's TV, stated in this morning's floor debate. I heard one or two people say he impugned the integrity of the entire Democratic caucus. No, he didn't. Read what the President said. He even complimented Democrats. He said both Republicans and Democrats are working hard to pass a good bill.

There are consequences to words. Words are important. I read the President's statements both at the Forrester event and the Thune event. They were not offensive, and they never stated what was said on the floor of the Senate. They were misconstrued somehow, some way. That is unfortunate because there are consequences to our words.

There are some people who listen. There are headlines. I haven't read what the European papers have said, but I don't look forward to that because I am afraid it sends the wrong signals.

I do agree with my colleagues, we should improve the quality of debate in the Senate. If we ever quote anybody, we should quote them accurately. We should never impugn the motives or integrity of any Member. That has happened more frequently around here than it should. Nor should we impugn

the motives or integrity of the President of the United States. Certainly if we are going to quote the President, an equal branch of Government, we should do it accurately. That wasn't done in this case.

I don't think we should be reading from campaign flyers because we could do that all day long. We don't want to turn this into a political brawl. We want to legislate. We need to pass a Department of Homeland Security bill. We need to work out the issues. There is a legitimate debate, a difference of whether or not we should change the President's power or authority in dealing with employees. Should he have a national security waiver? Every President, going all the way back—most people said since Jimmy Carter—I believe to John F. Kennedy, has had a national security waiver in dealing with employees. The President of the United States needs flexibility to put people in, do different things.

Senator GRAMM has shown me a complaint filed by a union that was upset because of higher notification status—they didn't negotiate that with the union. That is absurd. The President should not have to negotiate with the union; if he feels compelled to issue a higher security threat to the Nation's people, he should not have to negotiate that with the union. One union has already filed a complaint, I guess before the NLRB, about that.

Again, I will not impugn the integrity or the motives or the patriotism of a colleague because they may have a difference with me on that particular issue.

Mr. BYRD. Will the Senator yield?

Mr. NICKLES. I am happy to yield.

Mr. BYRD. Who has the floor?

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BYRD. I want to inquire as to how long the Senator believes he will be needing the floor.

Mr. NICKLES. I will conclude very shortly.

Mr. BYRD. I am not complaining.

I would also like to quote George Romney, who used to be Governor of Michigan.

Mr. NICKLES. I remember George Romney.

Mr. BYRD. Here is what he said: I didn't say that I didn't say it. I said that I didn't say that I said that. I want to make that perfectly clear.

Mr. NICKLES. I appreciate the chairman of the Appropriations Committee for his enlightening the debate.

I will yield the floor.

Again, I want to help restore the dignity and integrity of Senate debate. I want to help repair some of the damage that might have been done between the legislative branch and the executive branch. It is critically important. I say this mindful that I used to be one of the leaders when there was a Democrat in the White House. I didn't agree with President Clinton many times, and I stated so on the floor with great energy many times. I may have crossed the line sometimes. I am not sure. But I think it is very important that we respect the office of the President of the United States and that we not misquote the office of the President of the United States, nor that we ever misquote colleagues.

I am very insistent that we be accurate in our positions, our statements, our numbers, our quotes. If not, it is demeaning to the body.

Vice President Gore's speech to a San Francisco group was very demeaning to the office of the former Vice President because I think it undercuts the existing administration's dealing with some problems that were left by the previous administration.

Mr. LIEBERMAN. Will the Senator respond to a question briefly?

Mr. NICKLES. I am happy to.

Mr. LIEBERMAN. I agree with everything the Senator has said. We have so much important work to do. We ought to go about it, even when there are differences of opinion, not impugning—to use his term—each other's motives.

Would the Senator not agree that the processes of government would also be made not only more productive but more respectable if the President himself would not impugn the motives of Members of Congress of either party when they disagree with him?

Mr. NICKLES. I will tell my friend and colleague, I just read the quotes. I don't think he was impugning our motives. He did not say Senate Democrats. If there is anything else from this dialog and speech, I hope the press and others will realize, the President never said, ''Senate Democrats aren't interested in national security.'' That is a misquote, and I am afraid a misquote that has done some damage. Hopefully, it can be repaired.

I listened to the President. I don't think I have heard him impugn the motives of colleagues.

I yield the floor.

The PRESIDING OFFICER. The deputy majority leader.

Mr. REID. Mr. President, I want printed in the RECORD this statement from this e-mail, the title of which is ''Urgent: Effectively defending our homeland at stake.'' This was sent out today. It quotes the President of the United States, George W. Bush. It says:

> The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people.

That is a quote, supposedly, that the Republican National Committee sent out quoting President Bush. It goes on further in another paragraph to say:

> This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, federal government employee unions over the security of the American people.

I want that in the RECORD. That is what is sent out today as a fundraiser from the Republican National Committee, the leader of which is the President of the United States, George W. Bush.

I ask unanimous consent to print the document in the RECORD.

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

EFFECTIVELY DEFENDING OUR HOMELAND AT STAKE!

TELL YOUR SENATORS TO SUPPORT PRESIDENT BUSH'S HOMELAND SECURITY; DEMOCRAT SENATORS PUT SPECIAL INTERESTS OVER SECURITY.

''I asked Congress to give me the flexibility necessary to be able to deal with the true threats of the 21st century by being able to move the right people to the right place at the right time, so we can better assure America we're doing everything possible. The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not accept a Department of Homeland Security that does not allow this President, and future Presidents, to better keep the American people secure.''
—PresidentGeorge Bush, September 23, 2002.

President Bush has called on the Senate to pass the bipartisan plan by Senators Gramm and Miller that creates a homeland security agency with the flexibility and freedom to manage the needs to keep America safe. This bipartisan approach is stalled in the Senate because some Senate Democrats have chosen to put special interest, federal government employee unions over the security of the American people. Instead of providing President Bush with the power he needs to protect the homeland, these Senate Democrats would strip the Presidency of a vital national security tool every President since John F. Kennedy has had—the power to suspend collective bargaining agreements during times of national emergency. Learn why this is critical to our homeland defense: http://www.gopteamleader.com/myissues/ view issue asp?id=3;

This week the Washington Post exposed why some Democrat Senators have put special interests over our national interests by reporting that ''lawmakers are loath to cross them just weeks before critical elections,'' saying that Democrats have received ''$50 million in donations in this cycle'' alone. Tell these Democrat Senators that our homeland security is more important than partisan politics and that they need to support the bipartisan bill endorsed by President Bush. We need a single homeland security agency that:

Protects the President's existing National Security authority over the federal workforce:

Gives the new Secretary of Homeland Security the flexibility and freedom to manage to meet new threats;

Protects every employee of the new department against illegal discrimination, and builds a culture in which federal employees know they are keeping their fellow citizens safe through their service to America.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Did the Senator want me to yield to him?

Mr. GRAMM. I wanted to put something in the RECORD.

Mr. BYRD. I yield to the distinguished Senator without losing my right to the floor.

Mr. GRAMM. Mr. President, we were debating homeland security at one point earlier today. A perfect example of the kind of problem I am concerned about has just come to my attention. That is a complaint that has been filed

by the National Treasury Employees Union against a system that we are all familiar with. When there is concern about a potential terrorist attack, the Government has set up threat priorities. Green is a low threat, blue is a guarded threat, yellow is an elevated threat, orange is a high threat, and red is a severe threat.

We have just gotten word that the National Treasury Employees Union—and I want to put this in the RECORD—has filed a complaint basically contending that this system of ratings violates their union contract because the Department was required to negotiate with them before it sent out a warning system.

I also want to put in the RECORD the statement from the White House release on it that said:

> In effect, the union is saying that the Customs Service has no right to implement the President's homeland security direction without entering into lengthy negotiations. And since the Customs Service went ahead anyway, it is now suing the Customs Service in the Federal Labor Relations Authority.

This is a case that just happened that we ought to be looking at as we write this bill.

I thank the Senator for yielding. To save money for the taxpayers, we produced one document on one side of the paper, and the other document on the other side of the paper. So when we put it in the RECORD, look on both sides of the paper. I ask unanimous consent that these documents be printed in the RECORD.

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

UNITED STATES OF AMERICA, FEDERAL LABOR RELATIONS AUTHORITY—CHARGE AGAINST AN AGENCY

1. Charged Activity or Agency: United States Customs Service, 1300 Pennsylvania Avenue, NW, Room 2.3–D, Washington, DC 20229, (202) 927–2733, fax. (202) 927–0558.

2. Charging Party (Labor Organization or Individual): National Treasury Employees Union, 901 E. Street, NW, Suite 600, Washington, DC 20004, (202) 783–4444, fax. (202) 783–4085.

3. Charged Activity or Agency Contact Information: Sheila Brown, Director Labor Relations, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, (202) 927–3309, fax. (202) 927–0558.

4. Charging Party Contact Information: Jonathan S. Levine, Asst. Counsel for Negotiations, 901 E St., NW, Suite 600, Washington, DC 20004, (202) 783–4444, fax. (202) 783–4085.

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? (See reverse) (1) and (5).

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

On or about August 20, 2002, Customs issued a Customs Alert Protective Measures Directive without first notifying NTEU and affording it the opportunity to negotiate in violation of 5 U.S.C. 7116(a)(1) and (5).

TIMELINE

March 11: President signed Homeland Security Policy Directive 3 (Attachment A), which called for the creation of the five-level Homeland Security Advisory System. The key idea of this system was that federal state, and local agencies would adopt standardized protective measures for the different threat levels. This began a formal 135 day comment period.

July 26: Attorney General Ashcroft and Governor Ridge reported to the President that the system was ready to put into effect.

July 28: The White House directed all agencies to conform their protective security conditions to the new five tiered system.

August 20: The Commission of Customs, Judge Rob Bonner, complied with this directive from the President by issuing a Customs Alert Protective Measures directive to the entire customs Service (Attachment B).

September 10: The President decided to raise the threat level from yellow (level 3) to orange (level 4). The Customs Service and many other federal, state, and local security agencies responded by increasing their protective measures to the next level. Virtually all experts agreed this is a better system that what we had before.

September 18: The National Treasury Employee Union, which represents some officers of the Customs Service, filed a grievance with the Federal Labor Relations Authority (Attachment C) against the customs Service for issuing the directive.

[Their grievance reads: ''On or about August 20, 2002, Customs issued a Customs Alert Protective Measures Directive without first notifying and affording it the opportunity to negotiate in violation of 5 U.S.C. 7116(a)(1) and (5).'' (5 U.S.C. 7116(a)(1) and (5) is the standard statute under which ULP grievances are customarily filed.)]

In effect, the union is saying that the Customs service has no right to implement the President's homeland security direction without entering into lengthy negotiations. And since the Customs Service went ahead anyway, it is now suing the Customs Service in the Federal Labor Relations Authority.

The PRESIDING OFFICER. The Senator from West Virginia.

IRAQ

Mr. BYRD. Mr. President, amidst the wall-to-wall reporting on Iraq that has become daily grist for the Nation's news media, a headline in this morning's USA Today leaped out from the front page: ''In Iraq's arsenal, Nature's deadliest poison.''

The article describes the horrors of botulinum toxin, a potential weapon in Iraq's biological warfare arsenal. According to the Journal of the American Medical Association, botulinum toxin is the most poisonous substance known. We know that Saddam Hussein produced thousands of litres of botulinum toxin in the run up to the Gulf war. We also know where some of the toxin came from. Guess. The United States, which approved shipments of botulinum toxin from a nonprofit scientific specimen repository to the government of Iraq in 1986 and 1988.

I recently asked Defense Secretary Donald Rumsfeld about these shipments during an Armed Services Committee hearing a week ago. I repeat today what I said to him then: In the event of a war with Iraq, might the United States be facing the possibility of reaping what it has sown?

The threat of chemical and biological warfare is one of the most terrifying prospects of a war with Iraq, and it is one that should give us serious pause before we embark on a course of action that might lead to an all-out, no-holds-barred conflict.

Earlier this week, British Prime Minister Tony Blair released an assessment of Iraq's weapons of mass destruction program which contained the jolting conclusion that Iraq could launch chemical or biological warheads within 45 minutes of getting the green light from Saddam Hussein.

The British government assessment, while putting Iraq's chemical and biological capabilities in starker terms than perhaps we have seen before, closely tracks with what U.S. officials have been warning for some time: namely, Saddam Hussein has the means and the know-how to wage biological and chemical warfare, and he has demonstrated his willingness to use such weapons. By the grace of God, he apparently has not yet achieved nuclear capability.

On the matter of biological warfare, Gen. Richard Myers, Chairman of the Joint Chiefs of Staff, testified before the Senate Armed Services Committee last week that many improvements have been made to the protective gear worn by American soldiers and to the sensors used to detect chemical or biological agents.

But according to the USA Today article on botulinum toxin, U.S. troops would be just as vulnerable to botulinum toxin today as they were during the Gulf war.

This is what the article states:

> There's still no government-approved vaccine, and the only antitoxin is made by extracting antibodies from the blood of vaccinated horses using decades-old technology.

Last year's anthrax attack on the U.S. Senate gave all of us in this Chamber firsthand experience with biological warfare and new insight into the insidious nature of biological weapons. And that attack—hear me now—involved only about a teaspoon or so of anthrax sealed in an envelope. The potential consequences of a massive bioweapons attack against American soldiers on the battlefield boggle the imagination.

My concerns over biological warfare were heightened last week when I came across a report in Newsweek that the U.S. Government had cleared numerous shipments of viruses, bacteria, fungi, and protozoa to the Government of Iraq in the mid-1980s, at a time when the U.S. was cultivating Saddam Hussein as an ally against Iran. The shipments included anthrax and botulinum toxin.

Moreover, during the same time period, the Centers for Disease Control, CDC, was also shipping deadly toxins to Iraq, including vials of West Nile fever virus and Dengue fever.

This is not mere speculation. I have the letters from the CDC and the American Type Culture Collection laying out the dates of shipments, to whom they were sent, and what they

included. This list is extensive and scary anthrax, botulinin toxin, and gas gangrene to name just a few. There were dozens and dozens of these pathogens shipped to various ministries within the Government of Iraq.

Why does this matter today? Why do I care about something that happened nearly 20 years ago when Saddam Hussein was considered to be a potential ally and Iran's Ayatollah Khomeni was public enemy No. 1 in the United States? I care because it is relevant to today's debate on Iraq. This is not yesterday's news. This is tomorrow's news.

Federal agencies have documents detailing exactly what biological material was shipped to Iraq from the United States. We have a paper trail. We not only know that Iraq has biological weapons, we know the type, the strain, and the batch number of the germs that may have been used to fashion those weapons. We know the dates they were shipped, and the addresses to which they were shipped.

We have in our hands—now get this—the equivalent of a Betty Crocker cookbook of ingredients that the U.S. allowed Iraq to obtain and that may well have been used to concoct biological weapons. At last week's Armed Services Committee hearing, Secretary Rumsfeld said he has no knowledge of any such shipments, and doubted that they ever occurred. He seemed to be a little affronted at the very idea that the United States would ever countenance entering into such a deal with the devil.

Secretary Rumsfeld should not shy away from this information. On the contrary, he should seek it out if he does not know it. Let's find out. No one is alleging that the United States deliberately sneaked biological weapons to Iraq under the table during the Iran-Iraq war. I am not suggesting that. I am confident that our Government is not that stupid. It was simply a matter of business as usual, I suppose. We freely exchange information and technology including scientific research with our friends. At the time, I suppose, Iraq was our friend. If there is any lesson to be learned from the Iraq experience, it is that we should choose our friends more carefully, see further down the road and exercise tighter controls on the export of materials that could be turned against us. Today's friend may be tomorrow's enemy.

This is not the first time I have advocated stricter controls on exports. In fact, I added an amendment to the 1996 Defense Authorization Act that was specifically designed to curb the export of dual-use technology to potential adversaries of the United States.

In the case of the biological materials shipped to Iraq, the Commerce Department and the CDC have lists of the shipments. The Defense Department ought to have the same lists so that the decisionmakers will know exactly what types of biological agents American soldiers may face in the field. Doesn't that make sense? Shouldn't the Defense Department know what is out there, so that the generals can know what counter-measures they might need to take to protect their troops?

I believe the answer to those questions is yes, and so I am sending the information I have to Secretary Rumsfeld. He said he did not have any such information so I am going to send it to Secretary Rumsfeld. No matter how repugnant he finds the idea of the U.S. even inadvertently aiding Saddam Hussein in his quest to obtain biological weapons, the Secretary should have this information at hand, and should make sure that his field commanders also have it.

The most deadly of the biological agents that came from the U.S. were shipped to the government of Iraq by the American Type Culture Collection, ATCC, a non-profit organization that provides biological materials to industry, government, and educational institutions around the world. According to its own records, the ATCC sent 11 separate shipments of biological materials to the government of Iraq between 1985 and 1988. The shipments included a witches brew of pathogens including anthrax, botulinum toxin, and gangrene.

Meanwhile, the CDC was shipping toxic specimens to Iraq—including West Nile virus and dengue fever—from January 1980 until October 13, 1993.

The nexus between the U.S.-approved shipments of pathogens and the development of Iraq's biological weapons program is particularly disturbing. Consider the following chain of events: In May of 1986, the ATCC reported the first shipments of anthrax and botulinum toxin to Iraq. A second shipment including anthrax and botulinum toxin was sent to Iraq in September of 1988.

At approximately the same time that the first shipment was sent in April of 1986, Iraq turned from studying literature on biological warfare to experimenting with actual samples of anthrax and botulinum toxin. The turning point, according a report to the United Nations Security Council from the U.N. weapons inspection team, came when ''bacterial strains were received from overseas'' and delivered to an Iraqi biological weapons laboratory.

In April of 1988, the U.N. weapons inspectors reported that Iraq began research on the biological agent Clostridium perfringens, more commonly known as gas gangrene. Clostridium perfringens cultures were among the materials shipped to Iraq by the ATCC in both 1986 and 1988.

These are only a few examples of the pathogens that Iraq is known to have imported from the United States. It is not known how many of these materials were destroyed following the Persian Gulf war, or how many Iraq continues to possess, whether they are still viable, or whether in its pursuit of biological weapons, Iraq has developed ways to extend the shelf life of toxic biological agents. There is much that we do not know about Iraq's biological warfare program. But there are two important facts in which we can have great confidence: Iraq has biological weapons, and Iraq obtained biological materials from the United States in the 1980s.

I asked Secretary Rumsfeld, at last week's Armed Services Committee hearing, whether we might be reaping what we have sown in Iraq, in terms of biological weapons. The question was rhetorical, but the link between shipments of biological material from the United States and the development of Iraq's biological weapons program is more than just an historical footnote.

The role that the U.S. may have played in helping Iraq to pursue biological warfare in the 1980s should serve as a strong warning to the President that policy decisions regarding Iraq today could have far reaching ramifications on the Middle East and on the United States in the future. In the 1980s, the Ayatollah Khomeni was America's sworn enemy, and the U.S. Government courted Saddam Hussein in an effort to undermine the Ayatollah and Iran. Today, oh, how different. Saddam Hussein is America's biggest enemy, America's greatest enemy, America's most dangerous enemy, and the U.S. is said to be making overtures today to Iran.

The Washington Post reported today that the President is expected to authorize military training for at least 1,000 members of the Iraqi opposition to help overthrow Saddam Hussein. The opposition groups include the Kurds in the north, and the Shiite Muslims in the south.

The decision to provide military training to Iraqi opponents of Saddam Hussein would mark a major change in U.S. policy, ending a prohibition on lethal assistance to the Iraqi opposition. It is not a decision that should be undertaken lightly.

Although administration officials told the Post that initial plans called for modest steps that would allow members of the Iraqi opposition to provide liaison to the local population and perhaps guard prisoners of war, the officials did not shut the door on providing training and equipment for more lethal activities.

''Nobody is talking about giving them guns yet,'' one official was quoted as saying. ''That would be a dramatic step, but there are many dramatic steps yet to be taken.''

Has the administration adequately explored the potential ramifications of creating ethnic armies of dissidents in Iraq? Could the U.S. be laying the groundwork for a brutal civil war in Iraq? Could this proposed policy change precipitate a deadly border conflict between the Kurds and Turkey? Could we perhaps be setting the stage for a Shiite-ruled Iraq that could align itself with Iran and result in the domination of the Middle East by hard-line Shiite Muslims along the lines of the Ayatollah Khomeni?

These are legitimate questions. They are troubling questions. And they should be carefully thought through before we unleash an open-ended attack on Iraq. We had better think about these questions. We better ask these questions. The administration had better listen and so had the American people.

There are many outstanding questions that the United States should consider before marching in lockstep down the path of committing America's military forces to effect the immediate overthrow of Saddam Hussein. The peril of biological weapons is only one of those considerations, but it is an important one.

Has it been thought out? Has it been discussed? Has the administration said anything to Congress about this, whether or not the administration has explored these questions? Here are the questions. Don't say they were not asked. The more we know now, the better off our troops will be in the future.

Decisions involving war and peace—the most fundamental life and death decisions—should never be rushed through this Senate. I say that again. Decisions involving war and peace—the most fundamental of life and death decisions—they affect your sons and daughters out there, your blood. Such decisions should never be rushed through, never be rushed through or muscled through in haste.

Our Founding Fathers understood that and they wisely vested in the Congress—not in the President, not in any President, Democrat or Republican—the power to declare war.

We are going to discuss this. There is going to be a discussion of it. It is not going to be rammed through all that fast.

Congress has been presented with a Presidential request for authorization to use military force against Iraq. We now have the responsibility to consider that request, consider it carefully, consider it thoroughly, and consider it on our own timetable. I urge my colleagues to do just that and avoid the pressure—avoid the pressure to rush to judgment on such an important and vital and far-reaching and momentous matter.

I yield the floor.

Mr. REID. 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.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent at the conclusion of the vote on the motion to invoke cloture on the Lieberman substitute amendment, regardless of the outcome, the Senate stand in recess until 5:15 p.m. today; further, notwithstanding rule XXII, the vote on the motion to invoke cloture on the Gramm-Miller amendment No. 4738 occur at 5:30 today, with the time between 5:15 and 5:30 equally divided and controlled between the two leaders or their designees; and that second-degree amendments to the Gramm-Miller amendment may be filed until 6 p.m. today.

When this vote is completed, we will be in recess until 5:15. Both parties are having conferences. Following that, there will be 15 minutes of debate and then there will be a vote on cloture on the Gramm-Miller amendment.

I would say this has been a long struggle getting to where we are today. I express my appreciation to the manager of the bill, Senator THOMPSON, and of course the person we have heard a lot from in the last several days, my friend, the distinguished senior Senator from Texas, Mr. GRAMM.

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

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, the Homeland Security bill:

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton, Jeff Sessions, John Edwards, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Lieberman amendment No. 4471 to H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

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

The result was announced—yeas 50, nays 49, as follows:

[Rollcall Vote No. 226 Leg.]

YEAS—50

Akaka	Byrd	Conrad
Baucus	Cantwell	Corzine
Bayh	Carnahan	Daschle
Biden	Carper	Dayton
Bingaman	Chafee	Dodd
Boxer	Cleland	Dorgan
Breaux	Clinton	Durbin
Edwards	Kerry	Reed
Feingold	Kohl	Reid
Feinstein	Leahy	Rockefeller
Graham	Levin	Sarbanes
Harkin	Lieberman	Schumer
Hollings	Lincoln	Stabenow
Inouye	Mikulski	Torricelli
Jeffords	Murray	Wellstone
Johnson	Nelson (FL)	Wyden
Kennedy	Nelson (NE)	

NAYS—49

Allard	Frist	Nickles
Allen	Gramm	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Brownback	Hagel	Shelby
Bunning	Hatch	Smith (NH)
Burns	Helms	Smith (OR)
Campbell	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Miller	
Fitzgerald	Murkowski	

NOT VOTING—1

Landrieu

The PRESIDING OFFICER. Upon reconsideration, on this vote the yeas are 50, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 2003—CONFERENCE REPORT

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to the consideration of the conference report to accompany H.R. 1646, just received from the House; that the report be considered and agreed to; that the correcting resolution, H. Con. Res. 483 at the desk be agreed to; the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements related to this matter be printed in the RECORD.

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

(The report is printed in the House proceedings of the RECORD of September 23, 2002.)

Mr. BIDEN. Mr. President, I am pleased to present to the Senate the conference report on H.R. 1646, the Foreign Relations Authorization Act for fiscal year 2003.

The bill contains two divisions. Division A is the State Department Authorization Act, and contains authorization of appropriations for the Department of State, and other foreign policy programs, and also contains several policy provisions. Division B contains the Security Assistance Act, which provides authorizations and legal authorities under the Arms Export Control Act and the Foreign Assistance Act.

This bill includes several important items, including the completion of a project that Senator HELMS and I began in 1997, the legislation to authorize payment of our back dues to the United Nations in exchange for reform in that organization. The conference

report would facilitate the final installment of $244 million in arrears to the UN and other international organizations. I salute the former Chairman of the Committee, Senator HELMS, for initiating this project six years ago and for sticking with it. It has made a material difference in improving the relationship between the United States and the United Nations.

The bill includes two other provisions important to continuing the improvement of our relationship with the United Nations. First, the bill clears the way for the payment of nearly $80 million in new arrears which have accumulated in the last few years. Second, the bill authorizes the payment of our dues to the UN at the beginning of the calendar year, rather than the current system whereby we pay our dues at the start of the U.S. fiscal year. That late payment of our dues is detrimental, not only to UN operations, but to U.S.-UN relations. I hope the Administration will embrace this provision and request the necessary funds in the fiscal year 2004 budget.

Further, the bill authorizes funding at levels equal to or exceeding the President's budget request for the Department of State, embassy security, contributions for international organizations and international peacekeeping, and international broadcasting. The United States is a great power, and it has substantial responsibilities around the world, In order to meet those responsibilities, it must have a well-funded and well-equipped diplomatic corps. And if we are going to deploy our diplomats around the world, we must protect them. We cannot provide perfect security for our people, but we can and must take all reasonable precautions against known dangers. In 1999, Congress provided an authorization of $4.5 billion over five years—or $900 million per year, for embassy construction and security. This bill adds an additional $100 million to this authorization for fiscal year 2003.

Division B of this bill is the Security Assistance Act of 2002. It includes: foreign military assistance, including Foreign Military Financing and International Military Education and Training; international arms transfers; and many of our arms control, nonproliferation and antiterrorism programs.

This division includes some significant initiatives. For example, several provisions are designed to streamline the arms export control system, so as to make it more efficient and responsive to competitive requirements in a global economy, without sacrificing controls that serve foreign policy or nonproliferation purposes. This is a vital enterprise. U.S. industry depends upon the efficient processing of arms export applications, and U.S. firms lose contracts when the U.S. Government cannot make up its mind expeditiously.

At the same time, however, an ill-advised export license could lead to sensitive equipment getting into the hands of enemies or of unstable regimes. So there is a tension between the need for efficiency and the need not to make a mistake that ends up putting U.S. lives at risk. This bill addresses that tension providing funds for improved staffing levels, information and communications to enable the State Department to make quicker and smarter export licensing decisions. It also raises modestly the prior notice thresholds for most arms sales to our NATO allies, Australia, New Zealand or Japan. On the other hand, this bill adds a prior notice requirement for some sales of small arms and light weapons and strengthens the prior notice requirement for changes in the United States Munitions List.

Division B includes several new nonproliferation and antiterrorism measures. For example, the ban on arms sales to state supporters of terrorism, in section 40(d) of the Arms Export Control Act, is broadened to include states engaging in the proliferation of chemical, biological or radiological weapons.

This bill requires the President to establish an interagency mechanism to coordinate nonproliferation programs directed at the independent states of the former Soviet Union. This provision is based on S. 673, a bill introduced by Senator HAGEL and me with the cosponsorship of Senators DOMENICI and LUGAR. It will ensure continuing, high-level coordination of our many nonproliferation programs, so that we can be more confident that they will mesh with each other. The need for better coordination has been cited in several reports, including last year's report of the Russia Task Force of the Secretary of Energy Advisory Board, chaired by former Senator Howard Baker and former White House counsel Lloyd Cutler.

This bill encourages the Secretary of State to seek an increase in the regular budget of the International Atomic Energy Agency, beyond that required to keep pace with inflation. Because the IAEA's budget for 2003 has already been adopted, this bill authorizes an increase in the U.S. voluntary contribution to IAEA programs. This organization is vital to our nuclear nonproliferation efforts, its workload is increasing, and now it has begun a major program to locate and secure ''orphaned'' radioactive sources that could otherwise show up in a terrorist's radiological weapon.

Subtitle XIII–B of this bill is the ''Russian Federation Debt for Nonproliferation Act of 2002,'' a provision that Senator LUGAR and I introduced, with the support of Senator HELMS. This subtitle authorizes the President to offer Soviet-era debt reduction to the Russian Federation in the context of an arrangement whereby the savings to Russia would be invested in agreed nonproliferation programs or projects. Debt reduction is a potentially important means of funding the costs of securing Russia's stockpiles of sensitive nuclear material, chemical weapons and dangerous pathogens, of destroying its chemical weapons and dismantling strategic weapons, and of helping its former weapons experts to find civilian careers and resist offers from rogue states or terrorists.

Three months ago, the Bush Administration persuaded the G–8 countries to take a significant step: they agreed to what is known as ''10 plus 10 over 10,'' a commitment to provide the Russian Federation $10 billion in U.S. nonproliferation assistance and $10 billion in assistance from the other G–8 members over the next 10 years. This joint willingness to provide $20 billion opens new possibilities in Russian nonproliferation. It also sends a message to Moscow that working with the West or nonproliferation will be more profitable than selling dangerous technology to Iran.

The G–8 agreement included the important possibility of the leading economic powers using debt reduction to finance this assistance, and the Administration worked with us to ensure that this subtitle gives the President the flexibility he would need if he chose to use debt reduction. Pursuant to the Federal Credit Reform Act of 1990, he must still obtain appropriations for the cost of reducing any debt pursuant to this section. I have every hope, however, that we will see the day when both the United States and several of our allies use debt reduction to increase our nonproliferation assistance to Russia.

In closing, I thank my colleagues on the conference committee, particularly Chairman HYDE and Representative LANTOS in the other body, and Senator HELMS, for their cooperation in putting together this bill.

I would also like to recognize the hard work of all the staff on both the House and Senate committees, who did much of the preliminary work to prepare the bill for consideration by the conference committee. Equally important, I want to recognize the invaluable contributions and tireless efforts of the Deputy Legislative Counsel in the Senate, Art Rynearson. Mr. Rynearson labored many hours, including all of this past weekend, to assist the Committee staff in preparing and refining the legislative language in the conference report. This report would not have been ready for consideration at this time without his hard work.

This conference report is important to the operation of our U.S. foreign policy agencies. It has received strong approval in the other body. I urge its approval by the Senate.

Mr. HELMS. Mr. President, this legislation is the culmination of a bipartisan effort begun early in the 107th Congress. Senator BIDEN chaired our conference committee and was a tremendous leader in finalizing the bill and ensuring its bipartisan support. I thank him for his leadership of the committee and his friendship over the past 30 years.

Given the strange events of the 107th Congress, this bill in fact had bipartisan authorship. We provided a first draft of this legislation to Senator BIDEN in May 2001, when the Senate leadership changed hands. The bill approved by the conference committee is similar to that draft in many respects. It contains important details that advance our national interest and reflect shifts in priorities that followed the terrorist attacks on our country of September 2001.

The bill allows for the payment of our U.N. assessments in a manner that encourages that organization to embrace improved financial practices and to complete the reforms that were initiated at our insistence, including the critical issue of appropriate representation of American personnel in U.N. positions.

This bill accomplishes a number of other important objectives. It reaffirms Congress's strong support for Israel as an important ally in a turbulent region by recognizing the right of Israel to name Jerusalem as its own capitol and by financial backing to ensure its national security. It promotes stability in the Taiwan Straits by reaffirming our insistence that any resolution of that long-standing conflict must be peaceful and based on the freely expressed assent of the people of Taiwan.

We have, I hope conclusively, clarified the status of the American Institute in Taiwan by requiring that the American flag be flown just as proudly over that Institute as it is over all American diplomatic facilities.

The legislation recognizes the importance of maintaining pressure on the repressive Castro regime in Cuba and moves us toward the goal of liberating the Cuban people. It does this by specifically authorizing continued radio broadcasting to Cuba.

The bill provides Secretary Powell with additional authorities to meet the increasing need for effective American diplomacy in the present crisis and to enhance the capacity of Diplomatic Security agents. It also makes equitable pay, personnel and travel adjustments for the benefit of State Department personnel.

We also extended indefinitely the reporting requirement on international child abductions, reflecting our dissatisfaction with the lack of success in reuniting American parents with their children when they are kidnapped overseas by the other parent. We established new reporting obligations that ensure that Congress is notified when individuals who have previously engaged in terrorist activities are granted visas for entry into the United States.

The progress that Russia has made toward becoming a real democracy has been painful but necessary. This bill emphasizes the establishment in Russia of a free press and the rule of law as indispensable institutions in a functioning democracy. These institutions would focus public attention on dangerous activities that are ignored or condoned by government officials. I expect that these institutions, once firmly established, would have a restraining effect on highly questionable activities, such as Russian support for the Iranian nuclear program, and help curtail the proliferation of weapons technology and expertise, nuclear know-how is just as dangerous as nuclear material. This bill also encourages the Russian Government to make serious contributions to nonproliferation efforts in order to give them a stake in these efforts and complement our efforts in Russia.

The Tibet Policy Act in this bill culminates the Senate's decades-long support for the Tibetan people. It bolsters Administration efforts by specifying investment guidelines to invigorate the Tibetan economy while preserving the distinct identity of the people. Most notably, this will end any dispute over the importance of the Special Coordinator for Tibet by legally mandating such a position.

The Security Assistance portion of this bill contains several important provisions, particularly those regarding the proliferation of weapons of mass destruction. While I support the overarching framework of the Russian debt-for-nonproliferation provision in Title XIII, I harbor deep concerns about continued Russian proliferation to such state sponsors of terrorism as Iran. Thus, the Title includes a provision that places restriction on this debt reduction authority by requiring the President to certify that the Russian Federation has made and continues to make ''material progress'' in stemming the flow of sensitive goods, technologies, material, and know-how related to weapons of mass destruction to states that are international sponsors of terrorism. In this era of uncertainty, it is critical that we address this threat. Following in this vein, the Iran Nonproliferation Act of 2000 has been amended to require additional information be provided in required reports on transfers of weapons or weapons-related technologies to Iran.

With nonproliferation and disarmament issues taking a front seat in this bill, a provision has been included to allow development assistance to be spent for the destruction of surplus stockpiles of small arms, light weapons and other munitions in developing countries. This is indeed an important activity for developing countries as they emerge from periods of civil war or ethnic conflict.

The Security Assistance title of this bill also recognizes that South Asia is a critical theater of operations in our war against terrorism, and encourages the U.S. Government to continue to work on issues of nuclear and missile proliferation in this region. To this end, this section states that it shall be the policy of the United States, consistent with its obligations under the Treaty on the Nonproliferation of Nuclear Weapons, to encourage and work with the Governments of India and Pakistan to achieve a specific set of nonproliferation objectives by September 30, 2003. The Administration must continue to make this a high priority in its key foreign policy objectives.

Title XI affirms strong support for the profoundly important responsibilities of the Verification and Compliance Bureau to promote compliance analysis and enforce countries' compliance with their legal and political nonproliferation commitments. The title authorizes a larger budget than requested for this Bureau, including $1.8 million for additional personnel to adequately staff the mission of this critical Bureau and to improve verification capabilities. This Bureau is essential to ensuring that treaties and agreements are more than simple parchment, and should be adequately funded to carry out its mission.

Furthermore, I am happy to support a Title XII provision that provides the President with the authority to enter into bilateral or multilateral agreements for post-undergraduate flying and tactical leadership training at facilities in Southwest Asia. This is critical addition for our war against terrorism, as it enables the United States to maintain a positive influence in the region and enables our forces to have access to training and range facilities. Additionally, Title XIV recognizes the important work of the Office of Defense Trade Controls, and supports additional authorities so that it can achieve a greater level of efficiency in processing munitions licenses.

Finally, every Senator knows that no bill is possible without many long hours and hard work by staff. I can't tell these young men and women often enough what a great service they do for the Senate and for the country. I am particularly grateful to Patti McNerney, the Committee's Republican Staff Director, Rich Douglas, the Chief Republican Counsel, Senior Staff Members Mark Lagon and Mark Esper, Republican Counsel Jeff Gibbs, and Professional Staff Members Carolyn Leddy and Maurice Perkins. I am grateful for the work of the rest of the Committee's Republican Staff: Skip Fischer, Walter Lohman, Jed Royal, Jose Cardenas, Brian Fox, Susan Williams, David Merkel, Kelly Siekman, Sara Battaglia, Philip Griffin, Lester Munson, Kris Klaich, Hannah Williams, and Sarah Bardinelli.

The cooperative efforts and hard work of the Democratic Committee staff members, especially Brian McKeon, the Committee's Chief Counsel, Ed Levine, and Jofi Joseph, as well as the current and former staff directors, Tony Blinken and Ed Hall.

Last—but by no means least—I note that Art Rynearson, the Deputy Legislative Counsel of the Senate, has done his usual superb job of putting this conference report into proper legislative form. I say thank you to all.

The conference report was agreed to.

The concurrent resolution (H. Con. Res. 483) was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 5:15 p.m.

Thereupon,, the Senate, at 4:17 p.m, recessed until 5:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. REID).

HOMELAND SECURITY ACT OF 2002—Continued

AMENDMENT NO. 4738

The PRESIDING OFFICER. Under the order previously entered, there are 15 minutes equally divided between the two managers of the bill.

Who yields time?

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I yield myself up to 3½ minutes.

One of my favorite expressions is: Only in America, this great country of ours. I was thinking, as we approach this debate on the motion to invoke cloture, that only in the Senate, the great deliberative body we are, would we find Members about to do what I fear they are going to do, which is to vote against a proposal that they themselves have made because they want to vote on it without anyone else having a right to amend it. That is where we are.

We have had a good debate. We have the Gramm-Miller substitute amendment to the underlying Senate Governmental Affairs Committee proposal that created the Homeland Security Department. Senator GRAMM and Senator MILLER said their proposal and ours are 95 percent the same. We have a disagreement about how to protect homeland security workers in the new Department and still retain the authority of the President over national security.

Senator BEN NELSON of Nebraska and Senator JOHN BREAUX of Louisiana, working together with Senator LINCOLN CHAFEE of Rhode Island, have found common ground. They presented and crafted an amendment that gives a little bit of reassurance against arbitrary action to the Federal workers before they have their union rights, collective bargaining rights, taken away because the President determines those rights are in conflict with national security. It gives the President some new authority to reform the civil service system but encourages him to try to negotiate those changes with the unions. If that does not work out, then it is decided by a board, where the President appoints all the members. This achieves some due process and fairness for homeland security workers but does not diminish the final word of the President of the United States at all.

In short, with all respect, I say to my colleagues who support Gramm-Miller but who are going to oppose the end of a filibuster of Gramm-Miller, they do not know how to accept a yes to the question they have asked. The Nelson-Chafee-Breaux amendment says yes to the question they have asked: How can we create a Department of Homeland Security, retain the authority of the President, and still protect some fairness and due process for homeland security workers?

What they are asking for is an up-or-down vote on the Gramm-Miller proposal, the President's proposal, denying us, apparently—the majority of us, now 51—the right to vote on an amendment which, incidentally, is pretty much the exact same amendment Congresswoman CONNIE MORELLA, a Republican of the House, was allowed by the Republican leadership of the House to put on the President's proposal. We can at least offer the same courtesy and rights to three bipartisan Members of the Senate.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Mr. President, I yield such time as the Senator from Nebraska requires.

The PRESIDING OFFICER. The Senator from Nebraska has up to 4 minutes.

Mr. NELSON of Nebraska. Mr. President, I thank my colleague from Connecticut for this opportunity to speak on this amendment.

Quite frankly, I think my colleague from Connecticut is absolutely right, and I ask my friends on both sides to take yes for an answer because I truly think this amendment will be the kind of yes that has been sought in the past.

I am puzzled, as I think perhaps anybody watching and many of us here today are puzzled, by the characterization of this amendment as being in opposition to the President. Anytime you are trying to close the gap, anytime you are trying to bring about a resolution of compromise, it is hardly an exercise in opposition. I think, if anything, we should be looked at as friends of the process in trying to bring this together.

To also suggest cloture would be inappropriate now is also very startling because I always thought cloture was how we finally brought the end of debate to get a vote for or against legislation to move it forward. Right now it seems the vote against cloture is to stall and have more opportunity for debate.

So if people are a bit puzzled, I can only appreciate that fact because I am puzzled, too.

In this exercise, I have learned a lot about the spin as opposed to the appropriate characterization of letters or of comments on the floor. I thought we were giving Governor Ridge and Senator GRAMM exactly what they were asking for because that is the way I read Senator GRAMM's comments. I presided the day he was presenting them, and I thought I understood him. I am surprised to find out I did not understand what he was saying. I am surprised I cannot read a letter from Governor Ridge in which he says the same management authority that is now provided in the IRS model is what we are after. We provide that in this amendment. Now we find that is not the case, either.

This is a puzzling day for me. It is perhaps puzzling others who are watching it, because when it appears yes cannot be taken for an answer, I do not know what kind of an answer will be appropriate. If there is other language, I have said I will take a look at it, but I do not think the answer is no language. In fact, what we have is an opportunity to present something that ought to close the gap, fill in the last 5 percent, so we have 100 percent legislation that does what the President needs to be able to do and also protects national security.

National security is lost in this debate over nits and little differences of opinion about this piece of the amendment or that piece of the amendment. We can close them, but we have to be able to be in a position to know when they are closed and when enough will be enough.

Right now I would not know even how to begin to try to close this if it remains open, but it seems to me we can vote for cloture and then let's have the opportunity to finish this bill, get an up-or-down vote, as has been requested, move on and make national security the important point it is and have a Homeland Defense Department.

I yield the floor.

The PRESIDING OFFICER. Senator BURNS is under the time controlled by Senator THOMPSON. The Senator from Montana.

Mr. BURNS. I congratulate my friends from Nebraska and Connecticut who were just talking. It seems like yesterday we came to this body. You didn't get my goat, either.

We have all been involved in conferences. Anytime we pass legislation in this body and then it is passed in the House, we go to conference. In conference is where we settle our differences. It usually comes down to one or two items where there starts to be an impasse.

Basically, those one or two items were not dealt with in the amendment of my friend from Nebraska. It is still there and even adds another layer or hurdle for the President to jump in the management of this Department before a final decision can be made on the movement of money or personnel and their responsibilities in this particular national security Department.

We have not dealt with the two very important ones, and nobody puts it better than the ranking member of the committee of jurisdiction. So I caution Senators this is a bold attempt to find a compromise, but even though you pass their amendment, it does not deal with the heart of this debate.

So whenever Senators start looking at this, they should look into it deeply, and they will find a compromise was attempted, but it did not get us to where we should be if they think the President should have the flexibility to manage money and personnel in this very important new Department we are creating.

I yield the floor.

Mr. STEVENS. I am proud to be an original cosponsor of this bipartisan substitute, and I am here to urge its adoption as the most effective way to create a new Department of Homeland Security to protect our Nation from the threat of terrorism.

I take this opportunity to highlight four important provisions of the bipartisan substitute that are significant improvements to the committee-endorsed legislation before the Senate.

These provisions address the use of appropriated funds, presidential reorganization authority, and the status of the Coast Guard within the Department.

Section 738 of the bipartisan substitute includes the appropriations-related language that the committee endorsed to maintain the appropriate checks and balances between the legislative and executive branches with respect to the use of appropriated funds.

It improves on that language by authorizing an appropriation of $160 million, and general transfer authority of $140 million, to begin operating the new Department. Both amounts would be subject to reasonable Congressional oversight and decisions.

Section 739 requires the submission of a multi-year spending plan for the Department so that Congress and the American people can fully understand, and support, the magnitude of funds needed to conduct an effective homeland defense.

Senator COLLINS and I authored the Coast Guard language in the bipartisan substitute—Section 761. This language preserves the non-homeland security missions of the Coast Guard and its capabilities to perform those missions.

The language also ensures that the Coast Guard Commandant can report directly to the homeland security secretary without being required to report through any other official of the Department.

I believe this language improves upon the Committee bill by removing the Coast Guard from the Directorate of Border and Transportation Protection—the new directorate—and by making it a freestanding organization—still the Coast Guard—operating within the department and answering directly to the Secretary.

This action ensures that there is no ambiguity about the independent and distinct status of the Coast Guard within the Department, or about the Commandant's direct reporting authority. He will report directly to the Secretary.

Finally, Section 734 provides the President with the authority to propose further reorganization plans for the Department of Homeland Security and to have those plans considered by the Congress under expedited procedures.

This language guarantees that Congress will play a significant role in deciding any further reorganizations, and that these proposals will be debated and acted upon without delay.

I would like to discuss the use of appropriated funds.

The improved appropriations related language and reorganization plan language in the bipartisan substitute recognize that the need to establish the new Department can be addressed while still preserving the Constitution, especially with respect to maintaining Congress's ''power of the purse.''

That ''power'' is the primary way Congress holds the executive branch accountable for the use of funds, and it ensures that Congress has a central role in determining how hard-earned tax dollars will be expended.

Section 738 of the bipartisan substitute reinforces existing law on how appropriated funds are used and how property is disposed of. It requires congressional approval of any plans to modify or eliminate any of the organizations being transferred to the new Department.

Congress must approve, in advance, the reallocation of transferred funds away from their originally intended purposes.

Accordingly, the proposed statutory language preserves the statutory and administrative requirements needed to ensure that any funds made available to the new Department are used effectively and efficiently and according to the will of the people as reflected through their elected Senators and Representatives.

Our amendment demonstrates that the necessary funding mechanisms and flexibility already exist to enable the new Department of Homeland Security to perform its mission.

These procedures are embodied in the appropriations process, which can provide the funds needed for the Department without delay through a combination of new appropriations, supplementals, or reprogramming actions.

We already have the opportunity to consider new appropriations to create the Department in several of the funding bills working their way through the congressional process at this very moment. These bills will be considered in some format before September 30 or at least before we recess for the election period.

Funds to continue the operations of the organizations transferring to the Department also will be provided in these appropriations measures.

The bipartisan substitute underscores the importance of providing in the appropriations process the $160 million in new appropriations and the $140 million in general transfer authority.

These allocations total $300 million, which is a very large sum of money. This amount should be more than enough to create the new Department and to provide for any initial staffing, equipment, and other expenses.

I pledge to do my very best to provide these amounts in the appropriations process as needed.

The bipartisan substitute reaffirms the regular appropriations process and that it will work to allocate the needed start-up funding and to prevent disrupting the ongoing operations of the transferred organizations.

With regard to reorganization authority the originally proposed legislation for the Department of Homeland Security would have granted the new Secretary almost unlimited authority to establish, consolidate, alter, or discontinue any organizational units within the Department after giving Congress 90 days notice.

Under the Constitution, Congress has the responsibility to appropriate funds by law for the executive branch departments, agencies, and other organizations that have constitutional responsibilities to execute our laws.

Congress should not allow the many agencies transferring to the Department to be altered, merged, disbanded, or replaced solely and unilaterally by executive branch fiat.

We have the responsibility to ensure that the people's elected Senators and Representatives are part of the process of creating, modifying, or disbanding the organizations that spend the people's hard-earned tax dollars.

Congress's constitutional role in our system of Government is to set priorities for the use of appropriated funds and to oversee their use to ensure that these funds are expended effectively and efficiently.

The creation of a new and effective Department of Homeland Security is a shared responsibility between the executive and legislative branches. For the Department to be successful, both branches of Government—really each branch of Government—must cooperate with each other.

Congress and the executive branch should forge a relationship that is based on the mutual trust and shared compromise that the Framers of the Constitution envisioned in creating a system of checks and balances. Such a relationship is necessary for the effective functioning of the Federal Government.

In section 734, the bipartisan substitute preserves Congress's rightful role in this process by requiring that both the Senate and the House of Representatives approve any proposed reorganization plans under expedited procedures.

With regard to submission of a multiyear homeland security budget plan, section 739 of the bipartisan substitute requires the submission of a multiyear, homeland security spending plan with each budget request for the new Department, beginning with the fiscal year 2005 request.

This section will enable the Congress and the executive branch to fully understand the annual and multi-year

funding requirements to make our homeland secure.

It will assist us in determining the most appropriate funding levels to protect the American people from terrorist threats.

The recommended statutory language requires that the Future Years Homeland Security Program be structured as, and include the same type of information and level of detail as, the Future Years Defense Program required by law to be submitted to Congress by the Department of Defense.

We have a section preserving the Coast Guard's mission performance. Finally, section 761 of the bipartisan substitute is highly important language Senator COLLINS and I authored to maintain the structural and operational integrity of the Coast Guard, the authority of the Commandant, the nonhomeland security missions of the Coast Guard, and the service's capabilities to carry out these missions even as it is transferred to the new Department.

In addition to transferring the Coast Guard as an independent, distinct entity reporting directly to the Secretary, the language states that the Secretary may not make any substantial or significant change to any of the nonhomeland security missions and capabilities of the Coast Guard without the prior approval by Congress in a subsequent statute.

The President may waive this restriction for no more than 90 days upon his declaration and certification to the Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver.

The language further directs that the Coast Guard's authorities, functions, assets, organizational structure, units, personnel, and nonhomeland security missions shall be maintained intact and without reduction after the transfer unless the Congress specifies otherwise in subsequent acts. This language does permit the Coast Guard to replace or upgrade any asset with an asset of equivalent or greater capabilities.

It also states that Coast Guard missions, functions, personnel, and assets—including ships, aircraft, helicopters, and vehicles—may not be transferred to the operational control of, or be diverted to the principal and continuing use of, any other organization, unit, or entity of the Department except under limited conditions.

Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary and not through any other official of the Department.

The inspector general of the Department shall annually assess the Coast Guard's performance of all its missions with a particular emphasis on examining the nonhomeland security missions. The detailed results of this assessment shall be provided to Congress annually.

None of the conditions in the recommended language shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

The Coast Guard's nonhomeland security missions—and the service's capabilities to accomplish them—are as vital to the 30 coastal and Great Lakes States as are its homeland security missions and capabilities.

No state is better than Alaska for demonstrating the importance of the Coast Guard's nonhomeland security missions.

The United States has a coastline of 96,000 miles. Alaska has a coastline of 47,300 miles, or almost 50 percent, of our Nation's total.

Alaska's fisheries are a billion dollar industry that delivers food to tables all across America and around the world. We harvested 5 billion pounds of seafood last year.

The Coast Guard plays an indispensable role in protecting and supporting this industry, and in promoting the safety of its participants. Just this summer, the Coast Guard dispatched additional assets to the maritime boundary line in the Bering Sea to guard against intrusions by Russian trawlers.

The Coast Guard's nonhomeland security missions are marine safety, search and rescue, aids to navigation, living marine resources—including fisheries law enforcement, marine environmental protection, and ice operations. They all are critical to the well-being of Alaskans, and we rely on the Coast Guard virtually every day for protection and assistance in these mission areas.

The service's homeland security missions are ports, waterways and coastal security, drug interdiction, migrant interdiction, defense readiness, and other law enforcement.

The language in the bipartisan substitute is intended to assure that the important homeland security priorities of the new Department will not eclipse the Coast Guard's crucial nonhomeland security missions and capabilities.

This language modifies the committee provisions to reflect suggestions made by the Commandant and his senior staff after they analyzed the original language at my request.

Our additional language allows the Coast Guard to conduct joint operations more effectively with other entities in the Department, to assign a limited number of Coast Guard military members or civilian employees to these entities for liaison, coordination, and operational purposes, and to replace or upgrade assets or change nonhomeland security capabilities with equivalent or greater assets or capabilities.

With the Bipartisan Substitute, I believe the Coast Guard will be in an even stronger position to carry out both its vital non-homeland security missions and its important homeland security responsibilities.

Finally, there have been claims that the improved statutory language I have highlighted today still may restrict the President's flexibility to establish and operate the new Department.

It is my understanding that the White House was a key participant in the crafting of the Bipartisan Substitute, and that any significant language was reviewed for acceptability by the President's advisors.

The President has stated repeatedly that he supports the language in the Bipartisan Substitute.

In his Radio Address to the Nation last Saturday, September 21, the President specifically stated that the Bipartisan Substitute would, and I quote, ''provide the new Secretary of Homeland Security much of the flexibility he needs to move people and resources to meet new threats.''

I ask unanimous request to insert into the RECORD at the conclusion of my remarks the recent statements by the President and his spokesman that strongly endorse the bipartisan substitute.

I also ask unanimous request that an explanation of the start-up funding authorized in the bipartisan substitute be inserted in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 1).

Mr. President, the bipartisan substitute underscores Congress's legitimate role in the ongoing process to meet our Nation's homeland security requirements responsibly and effectively. It is a significant improvement over the committee legislation which I did vote for.

I urge the Senate to adopt it without delay.

I thank my friend from Texas, Senator GRAMM, for working with us so closely in adopting the portions of the bill from the substitute I just described. I thank the leadership for their cooperation.

EXHIBIT 1

PRESIDENT ENDORSES GRAMM-MILLER BIPARTISAN SUBSTITUTE

President urges Congress to pass Iraq resolution promptly, September 24, 2002, White House:

It's time to get a homeland security bill done, one which will allow this President and this administration, and future Presidents—give us the tools necessary to protect the homeland. And we're working as hard as we can with Phil Gramm and Zell Miller to get this bill moving. It's a good bill. It's a bill that both Republicans and Democrats can and should support.

President Bush calls on Congress to act on Nation's priorities, September 23, 2002, Army National Guard Aviation Support Facility, Trenton, New Jersey, September 23, 2002:

Senator Gramm, a Republican, Senator Miller, a Democrat, are working hard to bring people together. And the Senate must listen to them. It's a good bill. It's a bill I can accept. It's a bill that will make America more secure. And anything less than that is a bill which I will not accept, it's a bill which I will not saddle this administration and future administrations with allowing the United States Senate to micro-manage the process. The enemy is too quick for that. We

must be flexible, we must be strong, we must be ready to take the enemy on anywhere he decides to hit us, whether it's America or anywhere else in the globe.

Radio address by the President to the Nation, September 21, 2002:

In an effort to break the logjam in the Senate, Senator Miller and Republican Senator Phil Gramm have taken the lead in crafting a bipartisan alternative to the current flawed Senate bill. I commend them, and support their approach. Their proposal would provide the new secretary of homeland security much of the flexibility he needs to move people and resources to meet new threats. It will protect every employee of the new department against illegal discrimination, and build a culture in which federal employees know they are keeping their fellow citizens safe through their service to America.

I ask you to call your senators and to urge them to vote for this bipartisan alternative. Senators Miller and Gramm, along with Senator Fred Thompson, have made great progress in putting the national interest ahead of partisan interest.

Press briefing by Ari Fleischer, September 19, 2002:

Mr. FLEISCHER. The President today is going to announce his support for a bipartisan compromise, the Miller-Gramm compromise.

BASIS OF COST ESTIMATE INCLUDED IN BIPARTISAN SUBSTITUTE

The authorization of $160 million to begin departmental operations is based primarily on a CBO cost estimate. That estimate is the best estimate we have.

OMB's position is that no new funds are needed because start-up costs will be paid with funds diverted from agencies transferred to the Department.

However, the transferred agencies will need these funds to accomplish their missions.

Also, Congress should not relinquish its authority and oversight over funding reallocations in the Executive Branch.

Most of the CBO's estimate for FY03 would be spent on one-time costs to hire, house, and equip key personnel to manage the new Department.

There are four major cost categories:

$50 million for salaries and other personnel expenses;

$50 million to rent new space or renovate existing space for about 500 personnel;

$50 million for a basic computer network and telecommunications system; and

$10 million to plan for a more sophisticated computer/communications system to operationally integrate major agencies in the Department.

The 140 million estimate for general transfer authority was created by Committee staff to give the Department a $300 million total for first year operations.

The personnel costs assume that the new management team and its support structure will be phased in over the next two years.

These include the Secretary, his Deputy, the Under and Assistant Secretaries, and key managers such as the General Counsel and Inspector General.

It also includes ''corporate'' personnel, such as those needed for policy development, legislative affairs, and budget and finance activities.

The office space estimate is based on GSA experience in housing new agencies.

The basic computer, date processing, and telecommunications systems will perform the Department's administrative functions—budgeting, accounting, personnel records, etc.

A more sophisticated and interoperatble computer and communications network to integrate the major operational entities, such as the Coast Guard, INS, Customs, Secret Service, and the Border Patrol, may cost more than $1 billion in later years.

Mr. CORZINE. Mr. President, I rise today in strong opposition to the labor provisions in the Gramm-Miller substitute amendment. This approach to homeland security undermines longstanding labor protections and a national commitment to the right to organize.

This amendment seems to rely on the unsupported premise that workers rights are somehow incongruous with national security. There is no objective basis for that view. In fact, I would argue labor protections are directly in our national interest.

The people of the United States trust federal employees to stand at the frontlines in the war on terrorism and protect our nation against the myriad vulnerabilities that we may confront in the years to come. Border guards, INS workers, and customs agents are people who have the patriotic interest of our nation at heart. They guard our waterways and now protect our airports. Just as we are emphasizing the United States' increasing reliance on these workers, it would demonstrate tremendous chutzpah for the United States to remove essential labor protections and question the commitment and responsiveness of these workers to our national challenges. Working Americans have often sacrificed much to save our nation and to subject them to political and unchecked managerial discretion is an abdication of America's long held belief in the political independence of our government operations.

But that is precisely what this amendment would do: eliminate hard fought labor protections as America calls on its employees to take on even greater responsibilities in the War on Terrorism.

For instance, in the name of management flexibility, the substitute amendment being considered here would eviscerate the civil service system, and I fear put all Americans at risk.

The new Department we are discussing today should not be a Republican Department or a Democratic Department but an American Department from start to finish. There is no room for partisan politics when it comes to defending the American people. This cabinet department is being created for security, a truly nonpartisan objective and its operation after its creation should stay that way.

In the event that this substitute amendment is accepted by the Senate, employees of the Department of Homeland Security whose views are out of sync with the official line could be dismissed or transferred with little of no justification. This would have a chilling effect on the ability of employees in this critically important department to perform their jobs with the competence and creativity that everyone would expect.

Furthermore, this amendment could undermine vital whistleblower protections designed to ensure that the Congress and the American public are kept aware of severe problems that might develop in the new Department. The so-called ''management flexibility'' provisions would have the effect of silencing criticism in official forms, criticism that is desperately needed to improve America's ability to defend its borders and protect its people. In fact, incentives to leak critical views would be drastically increased as official forms would no longer be easily available.

Let us be clear: the primary supporters of this amendment have never been supportive of the various labor protections provided to government employees. They never liked the civil service system, despite the fact that it prevents bureaucratic decisions from getting mired in politics. They oppose the application of Davis-Bacon laws to the new Department, despite the fact that requiring federal government contractors to pay the prevailing wage encourages higher quality work. And they oppose collective bargaining agreements, despite the fact that the underlying legislation allows broad authority for the president to waive collective bargaining rights for job activities directly related to national security. The driver behind this amendment appears to be a political and philosophical view opposing the concepts embedded in the right to organize, not in protecting national security.

The fact is, that this Governmental reorganization provided opponents of labor rights with a golden opportunity to undermine the very protection that they have long opposed. This is not a new approach to a new situation, but an old familiar refrain from opponents of labor policies that empower our federal employees. Supporters of this amendment claim the whole purpose of the change is to increase management flexibility in the interests of national security, but make no mistake: this debate is about an ideological opposition to fundamental components of American labor law.

With all the waiver authority provided the President in Senator LIEBERMAN's bill, it is difficult to see just how this legislation would tie the hands of the President. Few reasonable analyses believe it will.

When tragedy struck on September 11, thousands of firefighters and police officers rushed to the world trade center. They risked life and limb to save their fellow Americans. Their union membership did not make them any less patriotic. Union membership of law enforcement and firefighters across the nation is unquestioned and standard procedure. Their collective bargaining rights did not undermine national security. And their work rules did not stop them from demonstrating a high level of professionalism on that horrific day or any other day.

Mr. President, I for one, do not believe we should allow American workers to lose hard-fought labor protections while we are asking them to take

on even greater responsibilities and to assimilate into a new department. Clearly the authors of the Gramm-Miller amendment disagree.

I urge my colleagues to oppose the Gramm-Miller amendment.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Who yields time?

Mr. GRAMM. Mr. President, I will be brief. By using cloture, this is an effort to put us into a straitjacket that will guarantee the President will not get an up-or-down vote on his program.

Now one may be against the President; they may believe there are some priorities higher than the life and safety of our citizens. I do not. But whether one agrees with the President or not, when thousands of our citizens have been killed, when we are at war with terrorism, the President of the United States has the right to have an up-or-down vote on his program. That is what we insist on. We will not get that if cloture is voted for.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Could I inquire as to how much time we have remaining?

The PRESIDING OFFICER. Three and a half minutes.

Mr. THOMPSON. Mr. President, before we vote, it is important we understand the parameters of the Nelson-Chafee-Breaux amendment. Two points: One has to do with the President's national security authority, and the other has to do with flexibility. This amendment is purported to be a compromise. Senator GRAMM has worked diligently, and he and Senator MILLER have made about 25 changes. They have a compromise that is a good one and one the President supports. The compromise represented by the Nelson-Chafee-Breaux amendment is not really a good compromise, with all due respect to those who have made this effort, because of those two areas I mentioned. With regard to the President's national security authority, it changes the current law which says if the President makes a determination the primary function of an agency has to do with national security, he can act under that law to protect the national security.

The changes in the Nelson amendment would make it so the President would have to make a determination the activity involved would have to be related to terrorist activities, and then this additional requirement that the new position to which the people in the agency have been transferred, the majority of those people have essentially had a change in the function of their job and those things are reviewable by courts.

I understood my friend from Louisiana to say and debate awhile ago this court case we were all talking about basically did not give any judicial review. Maybe I misunderstood him because when I look at the case, it is quite clear there is judicial review under current law and under the Nelson amendment. However, under current law, the President only has one hurdle. He has to make a determination with regard to national security.

Under the Nelson amendment, he has to make a determination with regard to terrorism, but he also has to make a determination with regard to the nature of the actual work being carried out by the various employees—the President of the United States. Two challenges now can be made to the President's activity. Now when you go to court, the President has a rebuttable presumption of regulator. There is still jurisdiction there, there is still an additional hurdle. Why in the world do we want to impose an additional hurdle for this President that we have not imposed on prior Presidents? That is No. 1.

Second, with regard to flexibility, the House sent over six areas of flexibility. The Nelson amendment takes two of those areas off the table altogether. The Nelson amendment says the new Secretary cannot touch the labor-management chapter. It says the new Secretary cannot touch the appeals chapter. Both are areas we know need changing. Both are areas we know need improvement. We cannot even negotiate with regard to those areas. They are totally off the table.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMPSON. I appreciate the attentiveness of the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, the Senator from Texas has asked us to consider what is best for the security of the American people. What is best for the security of the American people is to quickly adopt legislation that creates a Department of Homeland Security to protect them, and not to maintain a stubborn insistence that before you are willing to do that, the President must have an up-or-down vote on his proposal. That is something on which the Republican House did not insist. They gave Members the opportunity to introduce amendments, including one just like this.

I urge my colleagues, vote for cloture. Let's adopt this bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The majority leader asked me to announce this is the last vote today. The next vote will occur at approximately 5 or 5:30 on Monday afternoon.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to Rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Gramm-Miller amendment No. 4738 to H.R. 5005, the Homeland Security legislation:

Harry Reid, Ben Nelson of Nebraska, Hillary Rodham Clinton, Debbie Stabenow, Mark Dayton, Patrick Leahy, John Breaux, Tom Carper, Tom Daschle, Byron L. Dorgan, Jack Reed, Jim Jeffords, Tim Johnson, Mary Landrieu, Max Baucus, Daniel K. Inouye.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Gramm-Miller amendment numbered 4738 to H.R. 5005, the homeland security bill, shall be brought to a close? The yeas and nays are required under rule XXII.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

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

The yeas and nays resulted—yeas 44, nays 53, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—44

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Murray
Bingaman	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Cantwell	Harkin	Reed
Carnahan	Hollings	Reid
Carper	Inouye	Rockefeller
Chafee	Jeffords	Schumer
Cleland	Johnson	Stabenow
Clinton	Kerry	Torricelli
Conrad	Kohl	Wellstone
Corzine	Leahy	Wyden
Dayton	Levin	

NAYS—53

Allard	Feingold	Murkowski
Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Boxer	Grassley	Sarbanes
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Byrd	Hutchinson	Smith (OR)
Campbell	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Kennedy	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
Daschle	Lugar	Thurmond
DeWine	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Miller	

NOT VOTING—3

Domenici	Helms	Landrieu

The PRESIDING OFFICER. On this vote the yeas are 44, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Gramm-Miller amendment No. 4738.

The PRESIDING OFFICER. The leader has that right. The motion is entered.

CLOTURE MOTION

Mr. DASCHLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Gramm-Miller amendment No. 4738:

Joseph Lieberman, Max Baucus, Ben Nelson of Nebraska, Dianne Feinstein, Tim Johnson, Patrick Leahy, Jeff Bingaman, Jack Reed, Hillary Rodham Clinton, Jim Jeffords, Debbie Stabenow, Daniel K. Akaka, Harry Reid, Maria Cantwell, Byron L. Dorgan, Herb Kohl.

Mr. LEVIN. Mr. President, I would like to say a few words about the Freedom of Information Act compromise that Senators BENNETT and LEAHY and I were able to achieve and which is included in both the Lieberman and Gramm-Miller amendments.

One of the primary functions of the new Department of Homeland Security, DHS, will be to safeguard the nation's infrastructure, much of which is run by private companies. The DHS will need to work in partnership with private companies to ensure that our critical infrastructure is secure. To do so, the homeland security legislation asks companies to voluntarily provide the DHS with information about their own vulnerabilities; the hope being that one company's problems or solutions to its problems will help other companies with problems they may be having with their own critical infrastructure.

Some companies expressed concern that current law did not adequately protect their confidential business information that they are being asked to provide to the new DHS from public disclosure under the Freedom of Information Act. They argued that without a specific statutory exemption they would be less likely to voluntarily submit information to the DHS about critical infrastructure vulnerabilities. However, the Freedom of Information Act and the case law developed with respect to it already provide the protections these companies seek.

The language of our amendment protects from public disclosure the records of concern to these companies while preserving the existing rights of public access under FOIA. The amendment would protect from public disclosure any record furnished voluntarily and submitted to DHS that: No. 1, pertains to the vulnerability of and threats to critical infrastructure, such as attacks, response and recovery efforts; No. 2, the provider would not customarily make available to the public; No. 3, are designated and certified by the provider as confidential and not customarily made available to the public.

The amendment makes clear that records that an agency obtains independently of DHS are not subject to the protections I just enumerated. Thus, if the records currently are subject to disclosure by another agency under FOIA, they will remain available under FOIA even if a private company submits the same information to DHS. The language also allows the provider of voluntarily submitted information to change a designation and certification and to make the record subject to disclosure under FOIA. The language requires that DHS develop procedures for the receipt, designation, marking, certification, care and storage of voluntarily provided information as well as the protection and maintenance of the confidentiality of the voluntarily provided records.

The amendment defines the terms ''critical infrastructure'' and ''furnished voluntarily.'' ''Critical infrastructure'' is the same as that found in the USA Patriot Act. The term ''furnished voluntarily'' excludes records that DHS requires an entity to submit and that are used to satisfy a legal obligation or requirement or obtain a grant, permit, benefit, or other government approval. This means that records used to satisfy a legal obligation or requirement or to obtain a grant, permit, benefit or other government approval are ineligible for protection under this amendment. In addition, this language does not preempt state or local openness laws. Finally, the language requires the General Accounting Office to prepare a report tracking the voluntarily submitted information to DHS, the number of FOIA requests for voluntarily submitted information and whether those requests were granted or denied, and recommendations for improving the collection and analysis of information held by the private sector.

It is important to protect the public's right to access information as the White House's recent national strategy for homeland security points out. The White House report also notes that any limitation on public disclosure must be done ''without compromising the principles of openness that ensure government accountability.'' I agree. We must move cautiously when enacting any legislation to withhold information that is not already exempt from disclosure under FOIA and national security classifications.

The principles of open government and the right-to-know of the people are cornerstones upon which our country was built. We cannot and will not hastily and foolishly sacrifice them in the name of protecting them. This compromise achieves the balancing that is needed between openness and security. I thank Senators BENNETT and LEAHY for their work on developing this amendment.

Mr. LEAHY. Mr. President, in the wake of the terrorist attacks of September 11, bipartisan support in the Senate grew for the concept of a Cabinet-level officer with a new department to coordinate homeland security. In fact, Chairman LIEBERMAN of the Governmental Affairs Committee and Senator SPECTER must be commended for their hard work and prescience in introducing legislation within weeks of the attacks to create a new Department of Homeland Security.

The administration initially differed with this approach. Instead, the President invited Governor Ridge to serve as the Director of a new Office of Homeland Security. I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about how he would improve the coordination of law enforcement and intelligence efforts, and his views on the role of the National Guard in carrying out the homeland security mission, but he declined.

Without Governor Ridge's input, the Judiciary Committee continued oversight work that had begun in the summer of 2001, before the terrorist attacks, on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings with the Attorney General and with officials of the Federal Bureau of Investigation and the Immigration and Naturalization Service. In the weeks immediately after the attacks, the Committee turned its attention to hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. Committee members worked in partnership with the White House and the House to craft the new antiterrorism law, the USA PATRIOT Act, which was enacted on October 26, 2001.

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security but did not, at the request of the White House. Indeed, from September, 2001 until June, 2002, the Administration was steadfastly opposed to the creation of a Cabinet-level Department to protect homeland security. Governor Ridge stated in an interview with National Journal reporters on May 30 that if Congress put a bill on the President's desk to make his position statutory, he would ''probably recommend that he veto it.'' That same month, the White House spokesman also objected to a new Department and told reporters, ''You still will have agencies within the federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn't solve anything.''

In one respect, the White House was correct: Simply moving agencies around among Departments does not address the problems inside agencies such as the FBI or the INS—problems like outdated computers; hostility to employees who report problems; lapses in intelligence sharing; lack of translation and analytical capabilities; along with what many have termed, ''cultural problems.'' The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. To that end, the Committee unanimously reported the FBI Reform Act, S.1974, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, that bill has

been stalled on the Senate floor by an anonymous Republican hold.

The White House made an abrupt about-face on June 6, 2002, on the issue of whether our national security could benefit from the creation of a new Department of Homeland Security. This was the same day that the Judiciary Committee was continuing its oversight responsibility and was scheduled to hear from FBI Director Robert Mueller and FBI Special Agent Coleen Rowley, who was highly critical of the manner in which FBI Headquarters handled the investigation of Zacarias Moussaoui.

Thirty minutes before the nationally televised testimony from an FBI agent about intelligence failures before the September 11 terrorist attacks, word emerged from the White House that the President had changed his position and announced that he supported the formation of a new Homeland Security Department along the lines that Senator LIEBERMAN and Senator SPECTER had suggested, though the draft of the President's proposal was not yet completed. Indeed, press reports that day indicate that ''Administration officials said the White House hoped to use the reorganization to deflect attention from the public backbiting that broke out among federal agencies as Congress began investigating intelligence failures surrounding the Sept. 11 attacks.'' Washington Post, June 6, 2002, at 12:52 PM.

Two weeks later, on June 18, 2002, Governor Ridge transmitted a specific legislative proposal to create a new homeland security department. It should be apparent to all of us that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the Administration's proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply; the conflicts of interest and accountability rules for agency advisors would not apply. The new Department head would have the power to suspend the Whistleblower Protection Act, the normal procurement rules, and to intervene in Inspector General investigations. In these respects, the Administration asked us to put this new Department above the law and outside the checks and balances these laws are put there to ensure.

Exempting the new Department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start—not the sure footing we all want for the success and endurance of this endeavor.

Specifically, the administration's June proposal contained, in section 204, a new exemption requiring nondisclosure under the Freedom of Information Act, FOIA, of any ''information'' ''voluntarily'' provided to the new Department of Homeland Security by ''non-Federal entities or individuals'' pertaining to ''infrastructure vulnerabilities or other vulnerabilities to terrorism'' in the possession of, or that passed through, the new department. Critical terms, such as ''voluntarily provided,'' were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the Administration's proposal on June 26, 2002, when he testified in his capacity as the Director of the Transition Planning Office for the proposed Department of Homeland Security. At that hearing, a number of Senators made clear that the President should not play politics with the proposal to create a new Department. One senior Republican member of the Judiciary Committee put it bluntly that action on the new Department should take place ''without political gamesmanship,'' I share that view.

We all wanted to work with the President to meet his ambitious timetable for setting up the new department. We all know that one sure way to slow up the legislation would be to use the new department as the excuse for the Administration to undermine or repeal laws it did not like or to stick unrelated political items in the bill under the heading of ''management flexibility.'' We all want the same end goal of an efficiently operating Homeland Security Department, but as the same senior Republican member of the Judiciary Committee advised at the June 26 hearing, for the sake of getting the new department underway, ''[t]here may well be areas of debate or issues that we in Congress need to save for another day.''

At that hearing, I cautioned the administration not to use the proposal for the new Department of Homeland Security to: No. 1, increase secrecy in government by creating a huge new exemption to the Freedom of Information Act for private sector security problems; No. 2, weaken whistleblower protections for dedicated Government workers who help fight Government waste, fraud and abuse; or No. 3, cut wages and job security for hardworking Government employees.

Governor Ridge's testimony at that hearing is instructive. He appeared to appreciate the concerns expressed by Members about the President's June 18th proposal and to be willing to work with us in the legislative process find common ground to get the legislation done. On the FOIA, he described the Administration's goal to craft ''a limited statutory exemption to the Freedom of Information Act'' to help ''the Department's most important missions [which] will be to protect our Nation's critical infrastructure.'' Governor Ridge explained that to accomplish this, the Department must be able to ''collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.''

The FOIA already exempts from disclosure matters that are classified; trade secret and commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety.

Indeed, the head of National Infrastructure Protection Center, NIPC, testified over 5 years ago, in September, 1998, that the private sector's FOIA excuse for failing to share information with the Government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a ''national security intelligence'' investigation, including information submitted confidentially or even anonymously. This is from the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information, ''Hearing on Critical Infrastructure Protection: Toward a New Policy Directive,'' on March 17 and June 10, 1998. The FBI also used the confidential business record exemption under (b)(4) ''to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received.'' NIPC was developing policies ''to grant owners of information certain opportunities to assist in the protection of the information (e.g., by sanitizing the information themselves) and to be involved in decisions regarding further dissemination by the NIPC.'' In short, the former administration witness stated:

> Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act (FOIA). The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law.

Nevertheless, businesses have continued to seek a broad FOIA exemption. I expressed my concern that an overly-broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks and said he was ''anxious to work with the Chairman and other members of the committee to assure that the concerns that [I had] raised are properly addressed.'' He assured us that ''[t]his Administration is ready to

work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.''

Almost before the ink was dry on the Administration's earlier proposal, on July 10, the Administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter without the submitter's prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt state sunshine laws if the designated information is shared with state or local government agencies, (4) impose criminal penalties of up to one year imprisonment on government employees who disclosed the designated information, and (5) extend antitrust immunity to companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the Administration's promulgation of two separate proposals for new FOIA exemption in as many weeks, in July, Governor Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to ''convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector.''

The need for more study of the Administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affect. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the Administration's proposal, companies could avoid enforcement action by ''voluntarily'' providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the Administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee—and in particular, with Senator LEVIN and Senator BENNETT—to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security, without providing incentives to ''game'' the system of enforcement of environmental and other laws designed to protect the nation's public health and safety.

I commend Chairman LIEBERMAN and Senators LEVIN and BENNETT and their staffs for diligently working with me to refine the FOIA exemption in a manner that satisfies the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

Specifically, section 198 on ''Protection of Voluntarily Furnished Confidential Information'' of the Lieberman Amendment to H.R. 5005 reflects the compromise solution we reached with the Administration and other Members interested in this important issue. This section exempts from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. This provision improves on the Administration's July 18 proposal in the following ways:

First, section 198 limits the FOIA exemption to ''records'' submitted by the private sector, not ''information'' from the private sector. Therefore, if companies provide information to the new Department that is documented in an agency-created record, that record will be subject to the FOIA and not exempt simply because private sector information is referenced or contained in the record. Moreover, this section makes clear that portions of records that are not covered by the exemption should be released pursuant to FOIA requests, unlike the Administration proposals which would have allowed the withholding of entire records if any part is exempt.

Second, section 198 limits the FOIA exemption to records pertaining to ''the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts)'' not all ''critical infrastructure information.''

Third, section 198 does not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement action.

Fourth, section 198 limits the FOIA exemption to records submitted to the new Department of Homeland Security, as in the administration's initial June 18 proposal, since the stated goal of the exemption is to help that Department provide a centralized function of collection, review and analysis of critical infrastructure vulnerabilities. Records submitted by private companies to other agencies are not covered by the new exemption, even if the same document is also submitted to the new Department.

Fifth, section 198 does not preempt state or local sunshine laws.

Sixth, section 198 narrowly defines ''furnished voluntarily'' to ensure that records submitted by companies to obtain grants, permits, licenses or other government benefits are not exempt, but are still subject to the FOIA process.

This section is a significant improvement over both versions of the Administration's proposed new FOIA exemptions.

Unfortunately, other critical areas that were mentioned at the June 26 hearing with Governor Ridge, on which he assured us he would work with us to find common ground, remain stumbling blocks. The Administration has threatened a veto over the issue of ''management flexibility.'' At the same time we are seeking to motivate the government workers who will be moved to the new Department with an enhanced security mission, the Administration is insisting on provisions that threaten the job security for these hardworking government employees. The Administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely, and it is a sure way to destroy the bipartisanship we need.

Mr. ALLEN. Mr. President, I rise to speak in support of an amendment that I have offered to assist Federal employees who have been injured on the job. My good colleagues, Senator WARNER of Virginia and Senators CLINTON and SCHUMER of New York, join me in this important effort. This provision was inspired by Mrs. Louise Kurtz, a Federal employee who was severely injured in the September 11 attack on the Pentagon. She suffered burns over 70 percent of her body, lost her fingers, yet fights daily in rehabilitation and hopes to return to work one day. Current law does not allow Mrs. Kurtz to contribute to her retirement program while she is recuperating and receiving Office of Worker's Compensation Programs disability payments. As a result, after returning to work she will find herself inadequately prepared and unable to afford to retire because of the lack of contributions during her recuperation period.

As Mrs. Kurtz's situation reveals, Federal employees under the Federal Employees Retirement System who have sustained an on-the-job injury and are receiving disability compensation from the Department of Labor's Office of Worker's Compensation Programs are unable to make contributions or payments into Social Security or the Thrift Saving Plan. Therefore, the future retirement benefits from both sources are reduced.

The provision I have offered corrects this shortfall in the Federal Employees Retirement System, FERS. By increasing a Federal employee's FERS direct benefit by 1 percent for a period of extended convalescence resulting from a work related injury, the future reductions on Social Security and Thrift Savings Plan, TSP, benefits that result from the inability to make contributions during periods of disability are offset.

The retirement program for Federal Employees Retirement System employees has three distinct parts: Social Security, Federal Employees Retirement System Defined Benefits, and Thrift Savings Plan. Social Security taxes and benefits are the same for all participants. The Federal Employees Retirement System Defined Benefit and the Thrift Savings Plan are similar to defined benefit and 401(k) plans in the private sector. Unlike the impact on Social Security and the Thrift Savings Plan, periods during which an individual is receiving Office of Worker's Compensation Programs disability payments have no impact when calculating the length of service for determining the Federal Employees Retirement System Defined Benefit retirement payments. To explain how the provision will work, I offer the following illustration.

As you know, Mr. President, the goal of the Federal Employees Retirement System is to provide retirement pay totaling about 56 percent of their ''high three'' annual salary. Under the old Civil Service Retirement System, a direct benefit plan, two percent of a person's salary was set aside to provide the retirement benefit of 56 percent employees did not pay into Social Security or a vested savings plan. Under Federal Employees Retirement System, one percent of a person's salary is set aside to provide the Federal Employees Retirement System Direct Benefit retirement payment of 26 percent of their ''high three'' annual salary with Social Security and Thrift Savings Plan retirement pay contributing the remaining 30 percent for a total of 56 percent. But increasing the Federal Employees Retirement System Direct Benefit calculation by one percentage point for extended periods of disability, one can adequately offset reduction in Social Security and Thrift Savings Plan payments resulting from the lack to payments into the systems during periods of disability caused by one the job injuries.

Louise Kurtz has earned our appreciation for the role she and her husband Michael have played in identifying this shortfall in Federal Employees Retirement System and in persevering in getting legislation introduced to address the problem. Indeed, Mrs. Kurtz continues to serve the American public even while recuperating from injuries sustained in the terrorist attack upon the Pentagon.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Wisconsin has been waiting for a long time. The Senator from Pennsylvania is here to offer a unanimous consent request. It is my understanding that it would take 2 minutes. So I appreciate the courtesy of the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Pennsylvania.

UNANIMOUS CONSENT REQUEST—H.R. 4695

Mr. SANTORUM. Mr. President, I thank the Senators from Wisconsin and Nevada.

I rise to offer a unanimous consent request for the Senate to consider the partial-birth abortion bill that passed the House recently. We have been working diligently for the past 18 months, since the Supreme Court decision, to craft a partial-birth abortion bill that meets the constitutionality muster of the Nebraska decision. We think we have accomplished that, and I would argue that the House agrees with us.

The House recently passed this legislation 274 to 151. I understand time is short, and we have held this bill at the desk. I am hopeful and have been working to try to get a unanimous consent agreement that we can bring up this legislation for debate and discussion. We are willing to do it on a very limited time agreement, limited amendments, or as many amendments as the other side thinks is necessary.

This is an important piece of legislation. It is one the President said he would sign. It is one that received an overwhelming bipartisan vote in the House. I believe it will have a very strong bipartisan vote in the Senate.

While I understand this unanimous consent will be objected to this evening, I am hopeful we can continue to work together to try to bring up this very important piece of legislation that has been voted on here at least in the last three sessions of Congress with very strong majorities. Unfortunately, it was vetoed by President Clinton. We now have a President who will sign it. We have language that will meet constitutional muster. We will continue to work and seek the unanimous consent request to bring this up.

I now offer that request. I ask unanimous consent that at a time determined by the majority leader, after consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 521, H.R. 4965, a bill to prohibit the procedure commonly known as partial-birth abortion. I further ask unanimous consent that there be one relevant amendment on each side, with 1 hour of debate equally divided on each amendment, and that there be 2 hours for debate equally divided between the two leaders or their designees; provided further that following the use or yielding back of time, the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no further intervening action or debate.

Mr. REID. Reserving the right to object, Mr. President, the Senator from Pennsylvania is absolutely right. Time is so critical. Separate and apart from the time involving this matter, there are a number of Senators who have spoken to me personally about their objection to proceeding to this matter, if it came to the floor while I was here. Senator FEINSTEIN was the last to have spoken to me in this regard.

I note an objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from Wisconsin.

IRAQ

Mr. FEINGOLD. Mr. President, I rise to comment on the administration's ''discussion draft'' of a resolution authorizing the use of force against Iraq.

This proposal is unacceptable. The administration has been talking about war in Iraq for quite some time now. Surely they had the time to draft a more careful, thoughtful proposal than the irresponsibly broad and sweeping language that they sent to Congress.

Apparently the administration put forward such broad language as a negotiating tactic—asking for everything in the hopes of getting merely a lot.

But we are not haggling over a used car. We are making decisions that could send young Americans to war and decisions that could have far-reaching consequences for the global campaign against terrorism and for America's role in the world in the twenty-first century.

To put forth such irresponsible language is to suggest that the President actually wants the authority to do anything he pleases in the Middle East—and that suggestion is likely to raise tensions in an already explosive region. To pepper the resolution with so many completely different justifications for taking action signals a lack of seriousness of purpose, and it obscures the nature of the mission on the table. And then to insist on immediate action while remaining largely incapable of pointing to any imminent threat and unwilling to flesh out the operation actually being proposed reveals a troubling approach to our national security.

The administration has a responsibility to define what the threat is. Is it a link between the Iraqi Government and al-Qaida, or is it Iraq's pursuit of weapons of mass destruction?

So far I certainly would conclude that there is insufficient evidence to support the first charge about al-Qaida, but the administration keeps using it whenever they feel like without information. Why? Are they trying to gloss over the real possibility that this focus on Iraq, if not managed with diplomatic skill, will, indeed, do harm to the global campaign against terrorism?

The threat we know is real—Iraq's pursuit of weapons of mass destruction or WMD—is unquestionably a very serious issue. What is the mission? Is the mission on the table disarmament or is it regime change? Has anyone heard a credible plan for securing the weapons of mass destruction sites as part of a

military operation in Iraq? Has anyone heard any credible plan for what steps the United States intends to take to ensure that weapons of mass destruction do not remain a problem in Iraq beyond the facile ''get rid of Saddam Hussein'' rallying cry?

Saddam Hussein is a vile man with a reckless and brutal history, and I have no problem agreeing that the United States should support regime change. I agree with those who assert that Americans, Iraqis, and the people of the Middle East would be much better off if he were no longer in power. But he is not the sole personification of a destabilizing WMD program. Once Hussein's control is absent, we have either a group of independent, self-interested actors with access to WMD or an unknown quantity of a new regime. We may face a period of some chaos, wherein a violent power struggle ensues as actors maneuver to succeed Saddam.

Has anyone heard the administration articulate its plan for the day after? Is the administration talking about a long-term occupation? If we act unilaterally, that could mean a vast number of Americans on the ground in a region where, sadly, we are often regarded as an imperialistic enemy.

Given the disarray in Afghanistan and the less than concerted American response to it, why should anyone believe that we will take Iraq more seriously? Certainly, it is undesirable for the United States to do this alone, to occupy a Middle Eastern country, and make our troops the target of anti-American sentiment.

Of course, Mr. President, I am sure you and I would agree, none of these concerns is a rationale for inaction. Let me repeat that. None of these concerns is a rationale for inaction. This is not about being a hawk or a dove. This is not about believing that Saddam Hussein is somehow misunderstood. He is a monster. Iraq's weapons programs are real, and only a fool would believe that the United States should simply hope for the best and allow recent trends to continue.

Equally, Mr. President, only a person lacking in wisdom would send American troops wading into this mire with a half-baked plan premised on the notion that the Iraqis will welcome us with open arms; that somehow the WMD threat will disappear with Saddam, and that U.S. military action to overthrow the Government of Iraq will somehow bring the winds of democratic change throughout the entire Middle Eastern region.

We do not make decisions crucial to our national security on a leap of faith. Congress is the body constitutionally responsible for authorizing the use of our military forces in such a matter. We cannot duck these tough issues by simply assuring our constituents that somehow the administration will ''work it out.'' That is not good enough. We must not fail to demand a policy that makes sense.

Let me be clear about another important point: Maybe a policy that makes sense involves the United Nations, but maybe it does not. It is less important whether our actions have a formal U.N. seal of approval. What is important is whether or not action has international support. More important still is whether or not action will promote international hostility toward the United States.

In the context of this debate on Iraq, we are being asked to embrace a sweeping new national doctrine. I am troubled by the administration's emphasis on preemption and by its suggestion that, in effect, deterrence and containment are obsolete. What the administration is talking about in Iraq really sounds much more like prevention, and I wonder if they are not using these terms, ''preemption'' and ''prevention'' interchangeably. Preemption is knowing that an enemy plans an attack and not waiting to defend oneself.

Prevention is believing that another may possibly someday attack, or may desire to attack, and justifying the immediate use of force on those grounds. It is the difference between having information to suggest that an attack is imminent and believing that a given government is antagonistic toward the United States and continues to build up its military capacity.

It is the difference between having intelligence indicating that a country is in negotiations with an unquestionably hostile and violent enemy like al-Qaida to provide them with weapons of mass destruction and worrying, on the other hand, that someday that country might engage in such negotiations.

Of course, prevention does have an important role in our national security planning. It certainly should. We should use a range of tools in a focused way to tackle prevention—diplomatic, sometimes multilateral, economic. That is one of the core elements of any foreign policy, and I stand ready to work with my President and my colleagues to bolster those preventive measures and to work on the long-term aspects of prevention, including meaningful and sustained engagement in places that have been far too neglected.

Unilaterally using our military might to pursue a policy of prevention around the world is not likely to be seen as self-defense abroad, and I am not at all certain that casting ourselves in this role will make the United States any safer. Would a world in which the most powerful countries use military force in this fashion be a safer world? Would it be the kind of world in which our national values could thrive? Would it be one in which terrorism would wither or would it be one in which terrorist recruits will increase in number every day?

Announcing that we intend to play by our own rules, which look as if we will make up as we go along, may not be conducive to building a strong global coalition against terrorism, and it may not be conducive to combating the anti-American propaganda that passes for news in so much of the world.

Fundamentally, I think broadly applying this new doctrine is at odds with our historical national character. We will defend ourselves fiercely if attacked, but we are not looking for a fight. To put it plainly: Our country historically has not sought to use force to make over the world as we see fit.

I am also concerned this approach may be seen as a green light for other countries to engage in their own preemptive or preventive campaigns. Is the United States really eager to see a world in which such campaigns are launched in South Asia or by China or are we willing to say this strategy is suitable for us but dangerous in the hands of anybody else?

The United States does have to rethink our approach to security threats in the wake of September 11, but it is highly questionable to suggest that containment is dead, that deterrence is dead, particularly in cases in which the threat in question is associated with a state and not nonstate actors, and it is highly questionable to embark on this sweeping strategy of preventive military operations.

So as we seek to debate Iraq and other issues critical to our national security, I intend to ask questions, to demand answers, and to keep our global campaign against terrorism at the very top of the priority list. This Senate is responsible to all of the citizens of the United States, to the core values of this country, and to future generations of Americans. We will not flinch from defending ourselves and protecting our national security, but we will not take action that subordinates what this country stands for. It is a tall order, but I am confident that America will rise to the occasion.

I thank the Chair. I yield the floor, and 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. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, is the Senate in a period of morning business?

The ACTING PRESIDENT pro tempore. We are not.

Mr. REID. Mr. President, I ask, therefore, unanimous consent the Senate proceed to a period of morning business, with Senators allowed to speak therein for a period of 5 minutes each.

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

TRIBUTE TO U.S. COAST GUARD PORT SECURITY UNIT 308

Mr. LOTT. Mr. President, I rise today to honor U.S. Coast Guard Port Security Unit 308 from Gulfport, MS. Port

Security Unit 308 deployed to Southwest Asia for 6 months in support of Operation Southern Watch in March 2002 after the terrorist attack on the World Trade Center and Pentagon. The unit was able to quickly restructure and produce a 53-person detachment for harbor security operations in support of enhanced Force Protection of United States Assets in the Arabian Gulf.

The brave men and women of Port Security Unit 308 Detachment Foxtrot provided around the clock anti-terrorism Force Protection for all Fifth Fleet Naval assets located in the Mina Salmon area of responsibility. Waterside patrols logged over 4300 underway hours that included 291 escorts of U.S. Fifth Fleet Naval ships along with performing 1,481 intercepts. In addition to the escorts and intercepts, over 320 inspections were conducted. During the past six months while performing AT/FP, USCG PSU 308 Detachment Foxtrot was responsible for the safety of over 25,000 military personnel.

I would also like to recognize MK1 Eddie Spann and BM2 Billy Mcleod who were recognized for their outstanding performance by being selected as Sailors of the Month, June 2002, for Naval Security Forces, Naval Support Activity, Bahrain.

I ask all my colleagues to join me in a round of applause for the fine individuals who are dedicated to winning the war on terrorism.

The following members from Port Security Unit 308 deployed in support of Operation Southern Watch:

LTJG Edward Ahlstrand, PSC James Altiere, PS1 Michael Beshears, BM3 Shannon Brewer, PS2 Ronald Brown, QMC David Conner, BM3 William Courtenay, PS1 Blevin Davis, CAPT Ronald Davis, GM3 Robert Dambrino, BM3 Samuel Edwards, TCC Patrecia Geistfeld, LCDR Robert Grassino, MK1 Kenneth Hall, BM3 Charles Hartley, GM3 William Harvey, BM2 Roger Holland, PS2 Darrell Holsenback, BM3 John Hughes, YN1 Brian Hutchinson, HS1 Jason Jordan, BM2 Jim Kinney, MKCM Potenciano Ladut, BM3 Gene Lipps, BM3 Bradford Margherio, PS3 Marcella McDow, BM3 James McKnight, BM2 Billy McLeod, YN2 Tamara Mims, BM3 Paul Muscat, DC3 Jonathan Pajeaud, BM3 Jonathan Phillips, BMC Lisa Pilko, BM1 Darren Rankin, LCDR Michael Rost, SK1 George Scherff, BM3 Terry Sercovich, PS3 David Simonson, PS3 Russell Shoultz, PS3 Benjamin Smith, LT Robert Smyth, MK1 Eddie Spann, BM3 Jordan Stafford, ET2 Stephen Strausbaugh, BM3 James Strempel, PS2 Jon Traxler, ENS Ted Trujillo, LT Timothy Weisend, PS2 Danny Welch, GMC Edward West, GM3 Lewis West, PS3 David Wood, GM3 Joshua Yarborough.

TRIBUTE TO U.S. SENATOR STROM THURMOND

Mr. INOUYE. STROM THURMOND will go down in the history of our Nation as an extraordinary citizen and an extraordinary patriot.

Few people can match his record of achievements:

He was commissioned as an officer in the United States Army Reserve nearly 80 years ago. In 1959, he retired as a major general after serving 36 years in reserve and active duty.

On D-day, June 6, 1944, Lieutenant Colonel Thurmond boarded an Army CG4A glider and flew behind enemy lines into Normandy.

He served as Governor of South Carolina. Later, he was a candidate for President of the United States, receiving the third-largest independent electoral vote in U.S. History.

In 1954, he was elected to the U.S. Senate as a write-in candidate. Today, he is the oldest and longest serving Member of the Senate.

I have been privileged to know and work with Senator THURMOND for nearly 40 years. I wish to thank him for his wealth of wisdom. I will always cherish his friendship.

But Senator THURMOND is not only my colleague and friend, he is also my brother-in-arms. During World War II, anti-tank gunners from my regiment, the 442nd Regimental Combat Team, assaulted southern France in 1944. Like Senator THURMOND, they went into battle aboard gliders without armor. Glider-borne assaults were extremely dangerous and risky; some would even say they were suicidal missions. However, they were a necessary component of the United States' invasion and liberation of Nazi-occupied France.

Senator THURMOND demonstrated rare courage, patriotism, and leadership as gliderman of the 82nd Airborne Division. Most glider descents were ''controlled crashes,'' and that was the case when Senator THURMOND'S glider landed in Normandy. Although he was injured, he managed to safely lead his men to the 82nd Airborne Division headquarters at daybreak. The 82nd went on to accomplish its difficult objective of seizing and securing key positions in enemy territory.

I am pleased to report that Senator THURMOND'S distinguished military service will be honored with the naming of a new section of the Airborne and Special Operations Museum in Fayetteville, NC. The Thurmond Wing will house an exhibit dedicated to the courageous combat gliderman of World War II.

As a Senator, STROM THURMOND has often taken positions that were not universally supported. Yet one could always be certain that his decisions were honest. He is passionate in his beliefs, and his commitment to serving his constituents has been exemplary. At the end of our service in the Congress, we, his fellow Senate Members, can only hope that we will be able to say we have served our people with the diligence and devotion that Senator THURMOND has served his people. Indeed, Senator THURMOND can leave this Chamber and say, with confidence and without hesitation, that he has faithfully served the people of South Carolina.

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 April 20, 2001 in Brighton, MI. Two white men assaulted a black state trooper who was dancing with a white woman. The assailants, who did not believe that the state trooper should be dancing with a white woman, attacked the trooper and yelled racial slurs. The attackers were charged with assault with a dangerous weapon and ethnic intimidation in connection with the incident.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

THE DROP IN FEDERALLY LICENSED FIREARMS DEALERS IN AMERICA

Mr. LEVIN. Mr. President, earlier this week the Violence Policy Center, VPC, released a new study entitled ''The Drop in Federally Licensed Firearms Dealers in America.'' It found that the number of gun dealers holding Type 1 Federal Firearms Licenses, FFLs, a basic license to sell guns, dropped 74 percent from 245,628 in January 1994 to 63,881 in April 2002 or more than 181,000. The State of Michigan experienced the third largest reduction in the U.S., a drop of 75 percent from 12,076 dealers in 1994 to 3,016 in 2002.

According to the study, the decrease is the result of licensing and renewal criteria contained in the Brady Law and 1994 Federal crime bill. These changes were designed to reduce the number of private, unlicenced gun dealers who operate out of their homes and garages. I voted for the Brady Bill and Federal crime bill, and I am pleased that they appear to be working the way Congress intended. The study also suggests that enhanced enforcement and prosecution of gun laws at the federal, state, and local level have had a significant impact.

The drop in gun dealers is an important step in the effort to reduce firearms violence in the U.S. But despite this decline, private, unlicenced dealers are still supplying guns to gangs, drug dealers, and street criminals. In light of their findings, the Violence Policy Center proposed several recommendations to keep guns out of the hands of criminals. One of the VPC recommendations is to close the loophole

which allows dealers to shift firearms from their business inventory to their personal collections and then sell those guns without performing a background check. This proposal deserves serious consideration to evaluate whether it will help to keep guns out of the hands of criminals and those prohibited under law from possessing a gun.

I urge my colleagues to support commonsense gun safety legislation.

DEWINE NEXT GENERATION LIGHTING INITIATIVE

Mr. DORGAN. Mr. President, I am a cosponsor of the DeWine amendment to the Interior appropriations bill and am pleased to rise in support of it. The Next Generation Lighting Initiative is a research initiative designed to promote new, alternative, highly efficient technology for lighting to save energy and money, and reduce emissions. It would leapfrog over current technology. We use essentially the same light bulbs that Thomas Edison invented over 90 years ago. If successful, the Next Generation Lighting Initiative would make available new solid-state lighting that would be ten times more efficient than today's incandescent light bulbs. The concept is similar to fuel cells that also would leapfrog to a technology of the future and reduce our dependence on the traditional internal combustion engine.

I joined 22 other Senators in signing a letter to Appropriations Chairman BYRD and Ranking Member BURNS to support $30 million in increased funding for this new lighting technology research initiative.

The current Interior appropriations bill provides $4 million for this Initiative. The amendment being offered today would increase this funding to $10 million. While a sizable increase, this $10 million would still be only 33 percent of what we had initially sought.

Specifically, the increased funding is needed to overcome pre-competitive research hurdles associated with white light illumination from solid-state devices. It is important to fund new, clean energy technologies to provide sustainable economic development for the future.

Lighting consumes about 20 percent of the energy generated in the United States. Over the next 20 years, this new next generation lighting technology could reduce global electricity usage for lighting by 50 percent and reduce total global electricity consumption by 10 percent.

Many groups and Members support increased funding for this important initiative. Mr. President, I thank my colleagues from Ohio and New Mexico for their work on this effort, and the chairman of the Appropriations Committee for his assistance and for his good work on this bill.

DANIEL PATRICK MOYNIHAN LAKE CHAMPLAIN BASIN PROGRAM ACT OF 2002

Mrs. CLINTON. Mr. President, I am pleased to have joined with Senator JEFFORDS, as well as Senators LEAHY and SCHUMER, in introducing the ''Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002.''

I thank Chairman JEFFORDS, with whom I have the honor and pleasure of serving on the Senate Environment and Public Works Committee, for introducing this legislation and naming it in tribute to my predecessor, New York Senator Daniel Patrick Moynihan. Senator JEFFORDS is a great Chairman, a great environmental leader, and a great supporter of this natural and cultural resource that our states share—the Lake Champlain Basin and the Champlain Valley. I am proud also to be a sponsor of legislation authored by Senator JEFFORDS to establish the Champlain Valley National Heritage Partnership.

The Lake Champlain Basin is a unique and beautiful region, bounded by the Green Mountains of Vermont and the Adirondack Mountains of New York. It is a place of majestic mountain peaks; deep, blue waters; and abundant cultural, historic, and natural resources. The Lake is the sixth largest natural freshwater lake in the United States, and home to a many species of fish, birds and other wildlife.

We need to protect and enhance the environmental integrity and the social and economic benefits of the Lake Champlain basin. And that is precisely what we aim to do through this legislation, which will authorize $55 million over the nest 5 years for this purpose.

That this legislation and this program are being named after Senator Daniel Patrick Moynihan is a most fitting tribute. Senator Moynihan was, and still is, a great advocate of Lake Champlain and the Champlain Valley, whether supporting the rich heritage and history of the area, or protecting the environmental quality of the Lake and Basin.

Senator Moynihan appreciates that the environmental quality of the Lake and basin are key to the vitality of the area as a whole, and worked tirelessly during his tenure to protect the health of the basin. Naming the Lake Champlain Basin Program Act and the program itself after Senator Moynihan is a fitting tribute to his efforts to ensure that this natural treasure will survive for generations to come.

As we all remember, it was in 1990 that Senator Moynihan joined with Senator JEFFORDS, as I am joining with him today, in sponsoring the invaluable Lake Champlain Special Designation Act. The act outlined an unprecedented collaboration among broad interest groups to protect the environmentally sensitive Lake Champlain basin, as well as spark recreational activity and economic revitalization in the basin area. Under the act, the Lake Champlain Management Conference was created and charged with developing a comprehensive plan for pollution prevention and water quality restoration.

The legislation that we are introducing builds upon the Lake Champlain Special Designation Act of 1990, in which Senator Moynihan played a key role during the 101st Congress. It also builds upon the plan that came out of that 1990 legislation, entitled ''Opportunities for Action.'' The plan was approved by the Lake Champlain Steering Committee earlier this year and is the guiding document for this new legislation, which will provide new and important resources for countries in Vermont and for Clinton, Essex, Franklin, Hamilton, Warren and Washingotn counties in New York State.

This is important environmental legislation, but it is also important economic development legislation for key areas of upstate New York. Therefore, I am proud to sponsor this legislation with Chairman JEFFORDS, and to name this legislation after my illustrious and esteemed predecessor, Senator Daniel Patrick Moynihan.

SUPPORT OF RENEWABLE FUELS PROVISION

Mr. JOHNSON. Mr. President, I rise to urge the House-Senate Energy Bill conferees to resist any efforts from House Republican conferees to alter or weaken the renewable fuels standard that was included in the Senate energy bill. The new standard was crafted in a consensus manner and supported by a strong majority in the Senate. It must remain intact in the conference report.

Earlier this Congress, I introduced a bill with Senator CHUCK HAGEL of Nebraska, the Renewable Fuels for Energy Security Act of 2001, S. 1006, to ensure future growth for ethanol and biodiesel through the creation of a new, renewable fuels content standard in all motor fuel produced and used in the United States. The framework of this bill was included in the Senate energy bill, requiring that 5 billions gallons of transportation fuel be comprised of renewable fuel by 2012, nearly a tripling of the current ethanol production. While the House of Representatives version of the bill did not include a renewable fuels standard, this issue was thoroughly debated on the Senate floor during consideration of the energy bill. Several amendments were offered to weaken or eliminate the renewable fuels standard but all of those efforts were soundly defeated. And for good reason: increased renewable fuel production lessens our dependence upon foreign oil, strengthens energy security, increases farm income, creates jobs, helps the environment, helps our international balance of trade, and would lower annual federal farm payments by $6.6 billion.

In addition, the new standard boosts economic growth in rural America. I do not need to convince anyone in South

Dakota and other rural States of the benefits of ethanol to the environment and the economies of rural communities. Farmer-owned ethanol plants in South Dakota, and in neighboring States, demonstrate the hard work and commitment being expended to serve a growing market for clean domestic fuels.

In South Dakota, six ethanol plants are operating to produce approximately 116 million gallons per year. Four other ethanol projects are under construction, with a combined capacity to produce an additional 139 million gallons of ethanol annually.

Increasingly, modern ethanol plants in South Dakota are equipped to produce 40 million gallons of ethanol per year, such as the plants operating in Wentworth, Watertown, and near Milbank, as well as the proposed sites under construction in Chancellor and Groton. The economic benefits of one, 40 million gallon ethanol plant are significant, including an increase of household income for the community by $20 million annually.

The bill has other important provisions, including an orderly phase-down of MTBE use and removal of the oxygen content requirement for reformulated gasoline, RFG. The new standard has strong bipartisan support and is the result of long and comprehensive negotiations between farm groups, the oil industry and environmentalists. It is the first time that a substantive agreement has been reached on this issue.

Including the Senate-passed renewable fuels standard in the conference will go a long way towards increasing the Nation's domestic energy supply and making it more secure in the future. However, after no renewable fuels provision was included in the House energy bill, House Republican conferees, have chosen to introduce an unworkable alternative at the eleventh hour that has received no debate and has no consensus.

This is not acceptable. The conference should adopt the Senate-passed standard immediately. After a long debate, a consensus has been reached on this issue, demonstrating bipartisan support for a broader, deeper and more diverse energy portfolio, one that ensures we have clean, reliable and affordable domestic sources of energy. Let's move forward and enact the Senate language into law.

ADDITIONAL STATEMENTS

HOME SAFETY MISHAPS COST AMERICANS DEARLY

• Mr. EDWARDS. Mr. President, this morning on the National Mall a report entitled ''State of Home Safety in America'' was unveiled by David Oliver, Executive Director of the Home Safety Council. The study, conducted by Dr. Carol Runyan of the University of North Carolina at Chapel Hill and recognized by Dr. Sue Binder of the Center for Disease Control and Prevention, paints a picture of far too many Americans being hurt by unintentional injuries and deaths in this nation.

For instance, the study found that: Unintentional injuries are the fifth leading cause of death in the United States. Unintentional injuries in the home result in nearly 20,000 deaths and 13 million medical visits. Unintentional home injuries cost nearly $380 billion each year and account for an estimated 10 percent of all visits to emergency rooms.

The Home Safety Council, a not-for-profit organization devoted to home safety, has already been working to educate Americans on the risks they face every day in their own homes. The Great Safety Adventure is a traveling hands-on educational experience that teaches basic life skills to help children, families and communities.

Americans need to know the risks that exist in their homes and what they can do to prevent home injuries. This study will be an important resource for all Americans and will be a benchmark for examining future trends in home injury prevention.

I urge my colleagues to join me in this monumental effort to educate and save American lives by informing our constituents of the risks present in their homes and the steps they can take to prevent unintentional home injuries and keep families safe. More details are available through the Home Safety Council's Web site, www.homesafetycouncil.org.

For commissioning this important study and for raising the issue of home safety in the Congress, I congratulate the Home Safety Council and its distinguished board of directors.•

TRIBUTE TO THE GRADUATES OF THE BOSTON DIGITAL BRIDGE FOUNDATION TECHNOLOGY PROGRAMS

• Mr. KENNEDY. Mr. President, I welcome this opportunity to pay tribute to the impressive achievements of those who have graduated this year as part of the Boston Digital Bridge Foundation's Technology Goes Home and TechBoston programs.

This evening at Franklin Park in Dorchester, MA, the City and the Boston Digital Bridge Foundation are hosting ''Evening on the Bridge 2.0,'' a celebration honoring the graduates of these two programs.

Working with businesses, universities, schools, government, families and community-based organizations, the Boston Digital Bridge Foundation organizes and facilitates partnerships to link Boston public school students and their parents to the Internet. These programs have helped over 5,000 Boston Public School students and their families.

Technology Goes Home is a ten-week technology training program for low-income families. It has a rigorous selection process and a community service requirement at the completion of the program. Upon graduating from the program, each family receives a new computer, printer and Internet access.

TechBoston provides advanced technology courses for Boston Public School students at the middle and high-school level. They teach high-tech skills essential for success in careers and post-secondary education. Currently, over 2,500 Public School Students are enrolled in these classes.

Technology skills are no longer a luxury for students, they are a necessity. Without knowledge of computers and the Internet, today's students will have great difficulty competing in tomorrow's economy. When used effectively in the classroom and at home, modern technology can help level the playing field and open extraordinary new horizons and opportunities for all students and their parents.

That's why we are so strongly committed to the Boston Digital Bridge Foundation. The City is at the cutting edge of education technology and has become a national model, thanks to the leadership of Mayor Thomas M. Menino and the skillful work of the community partners involved in these two innovative programs. Over 4,000 participants in six Boston neighborhoods, every high school, and ten middle schools are enrolled in the programs.

We are all proud of the remarkable progress that Boston has made in helping to close the digital divide. A coalition of leaders in business, labor, education and government has worked successfully together to connect all of Boston public schools to the Internet, and is in the process of bringing this technology home to all Boston Public School families.

Dozens of large and small organizations have made donations to these programs. America Online, AT&T Broadband, the Barr Foundation, the Bill and Melinda Gates Foundation, the Boston Redevelopment Authority, FleetBoston Financial, Hewlett-Packard, HiQ Computers, Intel, Keane Inc., Lexmark, Microsoft, PARTNERS+simons, Sallie Mae Foundation, 3Com, Verizon and Xintra and others have done more than their share, donating products and services to schools, including wiring, network equipment, computers and other supplies. All the equipment donated by these firms is new, and Verizon and America Online have donated free Internet access. This kind of participation has become a model for the nation.

Thanks to the Boston Digital Bridge Foundation and its supporters, we can now guarantee that Boston Public School students and their families have access to the Internet and the opportunities that it creates. We are doing all we can to see that every student in every Boston neighborhood will soon have the same opportunity.

I commend these Boston families and students for their efforts and accomplishments in expanding employment opportunities, improving school grades,

and strengthening their community. To all involved, it is a job well done. I ask to have printed in the RECORD the names of this year's graduates of these programs of the Boston Digital Bridge Foundation.

The material is as follows:

2002 BOSTON DIGITAL BRIDGE FOUNDATION GRADUATES

ALLSTON BRIGHTON NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Mayram Antillon and Layla Antillon; Gabriella Campozano and Nicholas Campozano-Hill; Marta Gonzalez and Jonathan Ramos; Jie Lin and Pei Lin; Zaheruddin Mohammadi and Zaba Mohammadi; Berta Morales and Adriana Rodriguez; Sofia Nikollara and Teodor Nikollara; Tahera Amin and Shakir Amin; Diana Chaves and Julian Chaves; Kesi Garabilez and Jeanykay Simon; Magnolia Giraldo and David Mejia; Li Zhen Huang and Shirley Li; Wanda Jusino and Raul Jusino; Donna O'Brien and Derek O'Brien; Patricia Ready and Tyler Maddock; Selso Regalis and Glorisel Regalis; Rosetta Robinson and Quanasia Robinson; Clara Baez and Naiyelly Montero; Maria Berardi and Maria Santa; Foujia Chowdhury and Isteaque Chowdhury; Ana Gonzalez and Gisselle Gonzalez; Natasha Iftica and Kostian Iftica; Princess Johnson and Bianca Tsolias; Monica Montes De Oca and Savannah Cosby; Yaneth Pacheco and Melvin Alfredo Alas; Sandra Palomo and Charlie Palomo; Sherma Stewart and Desiree Joseph.

CODMAN SQUARE NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Carmen Bakhit and Lyla Bakhit; Rosalind Bogues and Robin Bogues; Kimberly Bordley and Geoffery Woodbery; Ernest Brown and Seth Brown; Amando Cruz and Tyra Robinson; Amelia Destouche and Donna-Lee Destouche; Darriel Dorsey and Darriel Dorsey III; Joy Gonzalez and Anntoinette Francis; Catherine Heraldo and Terqueena Heraldo; Sabrina Lawrence and Nekeya Mayhew; Suze Louis and Ornella Louis; Eduardo Martinez and Eduardo Jr. Martinez; Keesha Moody and Tashawn Moody-Whitley; Carolyn Muldrew and Shontia Taylor; Altonato Richelien and Daly Hamilton; The Strothers family; Judith Sylvestre-Piqu and Myriam Piquant; Euronna Taylor and Chace Taylor; Isaura Vega Samitt and Moises Geronimo; Mary White and Jonathan White; Venita Williams and Nadine Samuel; Virginia Bennett and Tiffany Bennett; Barbara Buryiak and Gregory Buryiak; Sandra Campbell and Laticie Allen; Cleta Capitolin and Jeanel Capitolin; Bridgette Curry and Deneena Curry; Marie Dimanche and Rachel Dimanche; Will Dunn and Chris Scott; Mabel DuVal and April Du Val; Althea Forde and Jason Forde; Danielle Francillon and Rodely Destine; Maurella Francois and Steve Philippe Blaise; Jessie Freeman and Christopher Freeman; Abigail Harding and Kern Timothy; Roger Houston and Jeffrey M. Houston; Sandra Johnson and Deanna Marie Johnson; Althea Jones and Dewanda Jones; Edmond Lewis and David Moloney; Evelyn Louis-Jean and Andy Louis-Jean; Marita Mcphail and Shameika Sandiford; Donnette Redmond and Dena Cattledge; Lorraine Riley and Bryan Trench; Charlene Townsend and DeAnde Townsend; Nam Truong and Minh Truong; Tira Brown and Damonte Brown; Annette Calloway and Zeyanna Defortunato; Anastasie Destouche and Vandel Fontaine; Soraida Flores and Angelina; Mary Hobson and Thanee Hobson; Judy Juba and Marlon Juba; Marguerite McClinton and Shayla McClinton; Latasha Ponlls and Toney Ponlls; Vonetta Smith and Natasha Smith; Denise Stevens and Jerry Stevens; Marva Stowe and Akim Callender.

GROVE HALL NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Ida Allen and Jessica Allen; Joyce Bowden and Rashad Bowden; Joseph Higginbottom and Dionne Higginbottom; Phyllis Langione and Malika Gordon; Debra Owens and Amanda Owens; Jennifer Queen and Durrell Queen; Bonnie Reynolds and Brandon Reynolds; Beverly Barclay and Cynthia Burrell; Sonia Galvez and Cecily Galvez; Kimberly Harrison and Ira Harrison; Sherri Marshall-White and Jasmine Miller; Diahanne Miller and Thuron Green; Helen Miskel and Dwayne Riley; Leontine Robinson and Nefitai Robinson; Shirley Straughter and Jasmine Harris; Dawn Thomas and Malcolm; Diane Valentine and Brandon Valentine; Wanda Aviles and Johnny D. Guante; Moni Bryant and Princess Bryant; Phyllis Clemons and Charles Clemons III; Muriel Cummins and Juelle Cummins; Crystal Edwards and Kennette Pannell; Mildred Freeman and Rasool Adkins; Tracey Green and Tiandra Wells; Annette Lavia and Shaniquewka Lavia; Deborha McRae and Shalaan Williams; Carlo Milfort and Christina Milfort; Angel Smiley and Angelica Smiley; Vivian Smith and Jaheem Smith-Garcia; Sharon Stephens and Sharon White; Brenda Trimble and Trevor Cargill; Regina Walker and Samara Walker; Tashema Woods and Mickiel James; Christine Brown and Phito Gondre; Cynthia Cornelius and Kennette Cornelius; Bettie Cutler and Tanzenia Smith; Tanya Gayle and Shakira Sanders; Sandra Good and Terrance Good; Larry Gray Sr. and Larry A. Gray Jr.; Ortiz Milvia and Dianilet Bautista; Brion Rock and Beverly A. Rock; Bridgette Sanders and Jamil Sanders; Maxine Underwood and Shelton T. Veale; Frances Valentine and Courtney Valentine; Keila Price and Keila Cooper.

LOWER ROXBURY NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Miosotty Baez and Ramon Baez; Lyda Cartwright and Cortland Cartwright; Sheryl DeBarros and Cortney Carter; Latonya Perry and Shakena Perry; Michelle Santos-Thomas and Tatiana Dancy; Stephanie Swan and Tanesha Swan; Scotland Williams and Scotland Williams, Jr.; Iris Yates and Nakia Weaver; Evander Young and Ebony Jones; Jewel Cash and Jewel Cash Van Stokes; Maryse L. Cazeau and Nastajha Cazeau; Deborah Coleman and Kyron Coleman; Ann Haynes and Latrecia Brown-Haynes; Troy Huff and Jovan Huff; Grace Johnson and Edwin Johnson; Michelle Jones and Deshon Jones; Gwendolyn McLean and Harold Kirkl; Francine Patterson and Brittany Patterson; Rochelle Reid and Kristien Reid; Velda Singleton and Travis Singleton; Alisha Beasley and Isah Beasley; Venitte Burke and Rushanna Gordan; Joynett Gray and Shereena Lee; Gloria Heckstall and Joshua Heckstall; Diane Joseph and Michael Cummings; Melvin Maldonado and Benjamin Cruz; Lorraine Maryland and Christina Maryl; Vashti Massaquoi and Shavaysha Massaquoi; Brenda Peeples and Deanna Peeples; Antoinette Ross and Isaiah Thomas; Cheryl Young and Terrance Hill; Julissa Diaz and Katrine Diaz; Helen Lopez and Nasha Padron; Mayra Munoz and Gabriella Ventura; Guadalupe Rodriguez and Nicolas Rodriguez; Joselin Ruiz and Perla Ruiz; Ibelisse Ruiz and Pamela Moquete; Ideana Tejeda and Jennifer Rodriguez; Jaqueline Zayas and Jacelyn Zayas; Eneida Figueroa-Lopez and Jeneida Felix; Vijay Bangari and Pamela Bangari; Kathy Byner and Shanquita Byner; Judy James and Charles Branden James; Evangelene Lacombe and Rashid Lacombe; Norma Yolanda Medina and Janick Rene Medina; Patricia Rogers and Dominique Rogers; Gloria Taylor and Brandon Taylor; June Wallace and Robert Leaster.

MISSION HILL/FENWAY NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Sentayehu Bezualam and Noah Tewelde; Carmen Cordero and Carmen Lopez; Thelma Cunningham and Charlie Haymon; Clara Ejogo and Nneka Lamarre; Abadit Ghidey and Bethlehem Ghidey; Charlene Hunt and Isiah Hunt; Diane Jackson and Dana Jackson; Latonia Miles and Zaira Miles; Leyda Rodriguez and Jose Lara; Andrea Turner and DeCosta Turner; Enid Williams and Shauntia Williams; Carmen Andino and Shey Carrasquillo; Edith Cotto and Nicholas Cotto; Albertha Davis and Charles Steed; Becsaida Flores and Andres Brea; Edith Jones and Keyarra Jones; Sobeida Martinez-Alston and Alea A. Martinez; Charline Perry and Amyna Perry; Carolyn Robles and Anthony Perry; Carmen Villinueva and Franchesca Castro; Rosemary Warren and Chimika Warren; Elsa Carrasquillo and Ashley Osorio; Diane Everett and Ivanna Everett; Anet Garcia and Jose Cosme; Michael Holley and Nora Holley & Nathalia Freeman; Abdulaziz Mohamed and Idil Osman; Ceila Perez and Athena Ellis; Sharon Pough and Ernest Pough II; Elaine Rodriguez and Johnathan Rodriguez; Nilsa Santiago and Lisette Santiago; Sobeida Soto and Omar Gonzalez; Delmy Suarez and Victoria Suarez.

UPHAMS CORNER NEIGHBORHOOD TECHNOLOGY COLLABORATIVE

Yubettys Baez and Paola Baez; Maria Barros and Jassira Barros; Lydia Becerril and Alheli Ortiz; Rosa DePina and Yara Goncalves; Maria Lobo and Dirma Lobo; Natia Mitchell and Debra McLean; Kathy Nollie and Ayesha McCray; Christine Porter and Jasyre Porter; Carmen Rodriguez and Janira Negron; Karen Sheers and Tinisha Wynn; Sonia Villaroel and Dashawn Triplett; Towanna Bowden and Dennis Privott; Tatasha Coles and Tashea Coles; Sandra Correa and Raymond Sanabia; Latoya Cromartie and Danielle Cromartie; Erica Daniels and Brittnay Walker; Vivian Izuchi and Lotachi Izuchi; Michael Latson and Jalonnie Heath; Ketley Mondesir and Kenny Mondesir; Sara Phillips and Paulette Phillips; Arlindo Pires and Arnaldo Pires; Maria Barbosa and Dulce Mendes; Annette Bonds and Jason Bloom; Delores Dell and Deshawn Dell; Sophia Rice and Dathan Rice; Seraphina Taylor and Gregory Taylor; Barbara Williams and Randy Williams; Jacqueline Rodriguez and Marione Silva; Dorothy Anderson and Lareek Anderson.●

TRIBUTE TO CARL THOMPSON

● Mr. FEINGOLD. Mr. President, today I pay tribute to the memory of Carl Thompson, one of the founders of Wisconsin's modern Democratic Party. I was proud to know Carl, and had the pleasure of serving with him in the Wisconsin State Senate. Wisconsin was lucky to have him as a leading voice for progressivism in our State.

Carl was the youngest delegate at the founding convention of the State Progressive Party in Wisconsin. From those early days he never wavered from his commitment to an honest Government that truly served the interests of the people.

Twice the Democratic candidate for Governor, Carl spent a lifetime dedicated to serving Wisconsin, whether he was running for the State's top office or serving 30 years in the Wisconsin State Senate. He also served as a member of the State's Labor and Industry Review Commission.

When I served with Carl in the 1980s, I was struck, as was everyone who knew Carl Thompson, by his dedication to the great State of Wisconsin, and to the people he served. He was a powerful advocate for veterans' housing, and was one of the State's leading voices on the importance of preserving our First Amendment freedoms. Carl Thompson was also a great storyteller with a wonderful wit and sense of humor.

I am deeply saddened by Carl Thompson's passing, but I know that his leadership has left a lasting mark on the Wisconsin Democratic Party, and our State. He will be remembered for many years to come.●

MESSAGE FROM THE HOUSE

At 11:17 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2982. An act to authorize the establishment of a memorial to victims who died as a result of terrorist acts against the United States or its people, at home or abroad.

H.R. 4691. An act to prohibit certain abortion-related discrimination in governmental activities.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 297. Concurrent resolution recognizing the historical significance of 100 years of Korean immigration to the United States.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 238. An act to authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon.

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

H.R. 640. An act to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

At 5:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2215) to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4600. An act to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on September 26, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 111. A joint resolution making continuing appropriations for the fiscal year 2003, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on September 26, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 111. A joint resolution making continuing appropriations for the fiscal year 2003, and for other purposes.

The joint resolution was signed subsequently by the President pro tempore (Mr. BYRD).

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2982. An act to authorize the establishment of a memorial to victims who died as a result of terrorist acts against the United States or its people, at home or abroad; to the Committee on Energy and Natural Resources.

H.R. 4600. An act to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; to the Committee on the Judiciary.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 297. Concurrent resolution recognizing the historical significance of 100 years of Korean immigration to the United States; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 4691. An act to prohibit certain abortion-related discrimination in governmental activities.

S. 3009. A bill to provide economic security for America's workers.

The following joint resolution was read the first time:

S.J. Res. 45. Joint resolution to authorize the use of United States Armed Forces against Iraq.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–308. A House joint memorial that was adopted by the Legislature of the State of Washington relative to the National Guard; to the Committee on Armed Services.

HOUSE JOINT MEMORIAL 4017

Whereas, Within days of the September 11, 2001, terrorist attacks in New York City and Washington D.C., the nation's governors activated National Guard soldiers and airmen to augment security at 422 of the nation's international airports; and

Whereas, In true state-federal partnership, National Guard forces are providing aerial port security under the command and control of the sovereign states, territories, and the District of Columbia and the federal government is funding such duties ''in the service of the United States'' under Title 32 U.S.C., Section 502(f), hereinafter referred to as ''Title 32 duty''; and

Whereas, Title 32 duty has been used, inter alia, for more than twenty years for National Guard full-time staffing, for National Guard support for local, state, and federal law enforcement agencies under Governors' Counter-Drug Plans for more than twelve years, for National Guard Civil Support Team technical assistance for local first responders for more than two years, and for aerial port security following the attacks of September 11. Of particular note, the National Guard Counter-Drug Program has long included Title 32 support for United States Customs, Border Patrol, and Immigration and Naturalization Service activities at United States Ports of Entry; and

Whereas, In the aftermath of the September 11 attacks, increased security and inadequate federal staffing have limited the flow of persons, goods, and services across our nation's borders. These factors have contributed to a serious weakening of the American and Canadian economies, especially in states such as Washington; and

Whereas, The governors of northern tier border states wrote President Bush in November 2001 offering to provide Title 32 National Guard augmentation for United States Customs, Border Patrol, and Immigration and Naturalization Service operations at United States ports of entry. Such relief could have been, and still can be, effected within days of acceptance by the federal government; and

Whereas, There is still no relief at our borders due to inaction on the governors' offer of Title 32 National Guard assistance and conflicting Department of Defense proposals to federalize the National Guard or otherwise enhance border security with active duty military personnel instead of Title 32 National Guard members; and

Whereas, Federalizing the National Guard under Title 10 U.S.C. would degrade the combat readiness of units from which Guardsmen would be mobilized, interfere with effective state force management, and prevent personal accommodations for soldiers and their civilian employers; and

Whereas, Stationing federal military forces at the United States-Canada border would be an unprecedented unilateral action by the United States; and

Whereas, The nation's border states need prompt relief which can best be provided by Title 32 National Guard forces being deployed to assist lead federal agencies at the borders ''in the service of the United States,'' but under continued state command and control; and

Whereas, The Washington State Legislature opposes federalization of the National Guard or assignment of federal military forces for United States border security: Now, therefore,

Your Memorialists respectfully pray that Congress assures prompt augmentation of

lead federal agencies at the borders by accepting the governors' offer of National Guard forces under state command and control pursuant to 32 U.S.C. Sec. 502(f); be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–309. A joint resolution adopted by the Legislature of the State of Alabama relative to ratifying the Seventeenth Amendment to the United States Constitution; to the Committee on the Judiciary.

HOUSE JOINT RESOLUTION 12

Whereas, the Seventeenth Amendment to the United States Constitution provides as follows:

''Amendment XVII.

''[Popular Election of Senators]

''The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

''When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

''This amendment shall not be construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.''; and

Whereas, the Seventeenth Amendment was ratified May 31, 1913; Now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That we hereby ratify the Seventeenth Amendment to the United States Constitution.

Resolved further, That a copy of this resolution be sent to the Archivist of the United States, and to the Speaker of the House of Representatives and the President of the Senate of the United States Congress.

POM–310. A joint resolution adopted by the Legislature of the State of Alabama relative to ratifying the Twenty-Third Amendment to the United States Constitution; to the Committee on the Judiciary.

HOUSE JOINT RESOLUTION 13

Whereas, the Twenty-Third Amendment of the United States Constitution provides as follows:

''Amendment XXIII

''Section 1.

''[Electors for President and Vice President in District of Columbia]

''The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

''A number of electors of president and vice president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state, they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

''Section 2.

''[Power to Enforce Article]

''The congress shall have the power to enforce this article by appropriate legislation.''; and

Whereas, the Twenty-Third Amendment was ratified April 13, 1961: Now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That we hereby ratify the Twenty-Third Amendment to the United States Constitution.

Resolved further, That a copy of this resolution be sent to the Archivist of the United States, and to the Speaker of the House of Representatives and the President of the Senate of the United States Congress.

POM–311. A joint resolution adopted by the Legislature of the State of Alabama a relative to ratifying the Twenty-Fourth Amendment to the United States Constitution; to the Committee on the Judiciary.

HOUSE JOINT RESOLUTION 14

Whereas, Twenty-Fourth Amendment to the United States Constitution provides as follows:

''Amendment XXIV.

''Section 1.

''[Poll Tax Payment Not Required to Vote in Federal Elections]

''The right of citizens of the United States to vote in any primary or other election for president or vice president, for electors for president or vice president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

''Section 2.

''[Power to Enforce Article]

''The congress shall have power to enforce this article by appropriate legislation.''; and

Whereas, Twenty-Fourth Amendment was ratified February 4, 1964: Now therefore, be it

Resolved by the Legislature of Alabama, both House thereof concurring, That we hereby ratify the Twenty-fourth Amendment to the United States Constitution.

Resolved further, That a copy of this resolution be sent to the Archivist of the United States, and to the Speaker of the House of Representatives and the President of the Senate of the United States Congress.

POM–312. A resolution adopted by the General Assembly of the State of New Jersey relative to federal funds authorized for highway purposes; to the Committee on Appropriations.

ASSEMBLY RESOLUTION

Whereas, In 1998 the Congress of the United States passed with significant bipartisan support H.R. 2400, the ''Transportation Equity Act for the 21st Century'' (TEA–21), which was subsequently signed into law as Public Law 105–178 by the President of the United States; and

Whereas, It was the intent of Congress to assure that guaranteed levels of federal funds for various highway purposes would be made available to the nation for a six-year period from federal fiscal year 1998 through federal fiscal year 2003; and

Whereas, Federal funds appropriated by Congress in recent years for highway purposes have reflected the intended levels of federal financial support authorized by TEA–21; and

Whereas, New Jersey and the several other states have developed highway master plans and initiated work on projects based, in part, on receiving the annual levels of federal funds authorized by TEA–21; and

Whereas, The President of the United States has proposed a level of federal funding for highway purposes in federal fiscal year 2003 that is almost 30 percent below the amount available to the various states in federal fiscal year 2002; and

Whereas, The proposed reduction in the federal fiscal year 2003 funding level for highway purposes is inconsistent with the level of federal funding authorized by TEA–21, places an undue financial burden on the various states by requiring them to defer plans and projects that were originally designed to provide timely, cost effective highway improvements for their citizens, and would establish an unfortunate financing precedent for Congress and the various states if the successor to TEA–21 is subsequently authorized at similar, lower funding levels: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The Congress of the United States is memorialized to appropriate funds out of the federal Highway Trust Fund for various highway purposes in federal fiscal year 2003 at a level that is no less than the amount authorized by TEA–21, and to assure timely distribution of these funds to all states.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the Majority and Minority leaders of the United States Senate and the United States House of Representatives, and all other Members of Congress.

POM–313. A resolution adopted by the General Assembly of the State of New Jersey relative to designating the fifteenth of May as National Senior Citizen's Day; to the Committee on the Judiciary.

ASSEMBLY RESOLUTION

Whereas, It is desirable to increase the nation's awareness of the accomplishments and experiences of the senior citizens of our country; and

Whereas, Senior citizens 65 years of age and older are in increasing segment of the population, currently comprising 12% of the nation's population, and 13% of New Jersey's population; and

Whereas, Younger generations benefit from the honoring and remembrance of the accomplishments, experiences and wisdom which senior citizens have amassed during their lives; and

Whereas, Senior citizens are deserving of a day of recognition honoring their numerous contributions to society and their survival through wartimes as well as their endurance of many hardships: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The Congress and the President of the United States are respectfully memorialized to enact legislation honoring all the senior citizens of the United States by designating May 15th as National Senior Citizens Day.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk of the General Assembly, shall be forwarded to the President of the United States, the Secretary of Health and Human Services of the United States, the presiding officers of the United States Senate and the House of Representatives, and each of the members of the Congress of the United States elected from the State of New Jersey.

POM–314. A resolution adopted by the General Assembly of the State of New Jersey relative to National Grandparents Day; to the Committee on the Judiciary.

ASSEMBLY RESOLUTION

Whereas, In 1979, Congress approved House Joint Resolution No. 244, which authorized and requested the President to issue annually a proclamation designating the first Sunday of September following Labor Day of each year as ''National Grandparents Day''; and

Whereas, In 1994, Congress approved Senate Joint Resolution No. 198, which recognized that grandparents bring a tremendous amount of love to their grandchildren's lives, deepen a child's roots, strengthen a child's development and often serve as the primary caregiver for their grandchildren by providing stable and supportive home environments, and designated 1995 as the ''Year of the Grandparent''; and

Whereas, In making these designations, Congress acknowledged the important role grandparents play within families and their many contributions which enhance and further the value of families and their traditions, and recognized that public awareness of and appreciation for grandparents' many contributions should be strengthened; and

Whereas, For both ''National Grandparents Day,'' and the ''Year of the Grandparent'' in 1995, Congress called on the people of the United States and interested groups and organizations to observe the day and year with appropriate ceremonies and activities; and

Whereas, Despite the acknowledgement of the tremendous contributions grandparents make to their families' lives, the permanent designation of a day to observe ''National Grandparents Day,'' the year-long designation of 1995 as the ''Year of the Grandparent,'' as well as the call for appropriate ceremonies and activities, the actual observance of appropriate ceremonies and activities has been lacking; and

Whereas, A wholehearted national effort to encourage people and organizations to celebrate ''National Grandparents Day'' by planning appropriate programs, ceremonies and activities would go a long way to commemorate and honor the wonderful and vital contributions that grandparents make to the lives of their families: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The Congress and President of the United States are respectfully memorialized to make a wholehearted national effort to encourage people and organizations to celebrate ''National Grandparents Day'' by planning appropriate programs, ceremonies and activities that commemorate and honor the wonderful and vital contributions that grandparents make to the lives of their families.

2. Duty authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk of the General Assembly, shall be forwarded to the President of the United States, the Secretary of Health and Human Services of the United States, the presiding officers of the United States Senate and the House of Representatives, and each of the members of the Congress of the United States elected from the State of New Jersey.

POM–315. A resolution adopted by the General Assembly of the State of New Jersey relative to the designation of a National Police, Firefighter and Emergency Services Personnel Recognition Day; to the Committee on the Judiciary.

ASSEMBLY RESOLUTION

Whereas, Police officers, firefighters and emergency services personnel throughout the nation are called upon to serve and protect their fellow citizens by responding to horrendous events and acting heroically to save the lives of others in spite of the clear danger to their own lives; and

Whereas, Police officers, firefighters and emergency services personnel are routinely thrown into extraordinarily dangerous situations, called upon to work overtime without proper sleep and spend time away from their families and loved ones; and

Whereas, Since the dastardly terrorist attacks on this nation of September 11, 2001, police officers, firefighters and emergency services personnel throughout the United States have been called upon to make even greater sacrifices to ensure the safety and security of Americans; and

Whereas, The third Sunday in May of each year has been designated ''Police, Firemen and First Aid Recognition Day'' in the State of New Jersey in recognition of the dedicated service the members of police and fire departments and the various first aid, ambulance and rescue services in the State have rendered to their fellow citizens; and

Whereas, Numerous other states throughout the country have designated an annual day whereby they recognize the services provided by their police officers, firefighters and emergency services personnel; and

Whereas, There is no national day of recognition to honor police officers, firefighters and emergency services personnel; and

Whereas, It is fitting and proper that a National Police, Firefighter and Emergency Services Personnel Recognition Day be established to salute the contributions of police officers, firefighters and emergency services personnel to the security and well-being of this country; Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The General Assembly of the State of New Jersey memorializes the Congress of the United States to adopt a resolution which designates one day each year as ''National Police, Firefighter and Emergency Services Personnel Recognition Day.''

2. Duly authenticated copies of this resolution, signed by the Speaker and attested by the Clerk thereof, shall be transmitted to the Vice President of the United States and the Speaker of the House of Representatives, and to each of the members of Congress elected from this State.

POM-316. A resolution adopted by the General Assembly of the State of New Jersey relative to Clean Air Act requirements; to the Committee on Environment and Public Works.

ASSEMBLY RESOLUTION

Whereas, Studies by the 37-state Ozone Transport Assessment Group have demonstrated that sulfur dioxide and nitrogen oxide can travel up to 500 miles in the right climatic conditions, and the transport of these pollutants, generally in a northeastern patter, can have significant impacts on the ozone problem in downwind northeast states such as New Jersey; and

Whereas, On December 3, 1999, then New Jersey Governor Whitman announced that the State would join the federal government and other states in taking legal action to require Midwestern power plants to clean up their emissions; and

Whereas, On February 14, 2002, President Bush announced his Clear Skies and Global Climate Change Initiatives which would replace current federal air pollution control rules with a national emissions cap and trade system, and as a result would likely provide Midwestern power plants, refineries and other industrial sources with an exemption from the New Source Review program; and

Whereas, Implementation of the New Source Review program would require installation of air pollution controls when older power plants refineries and other industrial facilities are expanded or significantly changed; and

Whereas, Earlier this year, New Jersey's largest utility agreed to install state-of-the-art pollution controls on two power plants in the State as part of a settlement with the United States Department of Justice and the Environmental Protection Agency regarding the New Source Review program; and

Whereas, While this action is a significant step in New Jersey's efforts to control air pollution from in-State sources, there must be strong federal enforcement of clean air standards in upwind states in order to protect the citizens of New Jersey, and out-of-State power plants should be required to install similar state-of-the-art pollution controls in order to achieve lasting improvements in air quality; and

Whereas, The current proposed federal regulatory changes to the Clean Air Act standards would significantly compromise the gains New Jersey and the nation have made in air pollution control, would undermine the efforts the United States Department of Justice has taken to enforce compliance with federal Clean Air Act requirements, and would be detrimental to the environment and the public health of citizens of this State; Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House urges the President of the United States and the Administrator of the United States Environmental Protection Agency to not weaken federal Clean Air Act requirements. The President and Administrator are further urged to support the lawsuits filed by the United States Department of Justice against power plants and other facilities who have violated the requirements of the federal Clean Air Act.

Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice-President of the United States, the Speaker of the United States House of Representatives, the majority and minority leaders of the United States Senate and the United States Congress elected from this State, the Administrator of the United States Environmental Protection Agency, and the Commissioner of the New Jersey Department of Environmental Protection.

POM–317. A resolution adopted by the General Assembly of the State of New Jersey relative to enacting legislation to permit retired members of the Armed Forces with service-connected disabilities to be paid both military retired pay and veterans' disability compensation; to the Committee on Armed Services.

ASSEMBLY RESOLUTION

Whereas, An obscure 19th Century law requires military retired pay to be offset, dollar for dollar, by the amount of disability compensation received from the Department of Veterans Affairs; and

Whereas, This longstanding inequity forces thousands of disabled career military retirees to fund their own veterans' disability compensation from their earned military retired pay; and

Whereas, Retired pay and veterans' disability compensation are two entirely different compensation elements—retired pay is provided to recognize a career of arduous, unformed service while Department of Veterans Affairs disability compensation is recompense for pain, suffering and lost future earning power due to service-connected disabilities; and

Whereas, Thousands of career officers must forfeit their entire military retired pay because this 19th Century law reduces their retirement benefit by the amount they receive in disability compensation; and

Whereas, Companion bills pending before the 107th Congress, S. 170 and H.R. 303, would 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; and

Whereas, There is significant support in the 107th Congress for this legislation to correct the inequity, as S. 170 has 77 cosponsors and H.R. 303 has 379 cosponsors: Now, therefore, be it

Resolved, by the General Assembly of the State of New Jersey:

1. The President of the United States and the Congress of the United States is respectfully memorialized to enact the ''Retired Pay Restoration Act of 2001'' as embodied in S. 170 and H.R. 303, now pending before the 107th Congress of the United States. These bills would amend Title 10 of the 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.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice President of the United States, the Majority and Minority Leader of the United States Senate, the Speaker and Minority Leader of the United States House of Representatives, and every member of Congress elected from this State.

POM–318. A resolution adopted by the General Assembly of the State of New Jersey relative to noise reduction of aircraft traffic patterns over New Jersey; to the Committee on Commerce, Science, and Transportation.

ASSEMBLY RESOLUTION

Whereas, Residents of New Jersey suffer from extreme and unwarranted levels of intrusive aircraft noise; and

Whereas, Aircraft noise deprives residents of the full use and benefit of their homes and living areas; and

Whereas, Aircraft noise contributes to the substantial lowering of property values on residences owned by New Jersey residents; and

Whereas, The Federal Aviation Administration, hereafter the ''FAA,'' is currently undertaking a major redesign of the aircraft traffic patterns over New Jersey; and

Whereas, The FAA's stated goals for the redesign include only reducing delays affecting airline schedules, and reducing pilot and air traffic controller workloads, while enhancing safety; and;

Whereas, The FAA, despite repeated public promises to substantially reduce aircraft noise as part of the redesign, has refused to include such noise reduction as a primary goal of the redesign: now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The President and the Congress of the United States are respectfully memorialized to direct the Federal Aviation Administration to include the reduction of aircraft noise as a major goal in the redesign of aircraft traffic patters over New Jersey.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and the Vice President of the United States, the Speaker of the United States House of Representatives, every member of Congress elected from this State, the Secretary of the United States Department of Transportation, and the Administrator of the Federal Aviation Administration.

POM–319. A resolution adopted by the General Assembly of the State of New Jersey relative to the federal court decision ruling that recitation of the Pledge of Allegiance in public schools in unconstitutional; to the Committee on the Judiciary.

ASSEMBLY RESOLUTION

Whereas, In a 2–1 decision, the 9th U.S. Circuit Court of Appeals ruled on June 26, 2002, that the Pledge of Allegiance cannot be recited in public schools because the phrase ''under God'' endorses religion; and

Whereas, The words of the pledge first appeared in the periodical, The Youth's Companion, in 1892, and the pledge was officially sanctioned by the United States Congress in 1942; and

Whereas, President Dwight D. Eisenhower approved adding the words ''under God'' to the pledge on Flag Day, June 14, 1954; and

Whereas, In authorizing the additional words, President Eisenhower wrote that ''millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our nation and our people to the Almighty''; and

Whereas, Circuit Judge Ferdinand Fernandez, in his dissenting opinion, noted that such phrases as ''under God'' have ''no tendency to establish religion in this country except in the eyes of those who most fervently would like to drive all tincture of religion out of the public life of our polity''; and

Whereas, The court decision has been roundly condemned by members of Congress from both sides of the aisle, and the Department of Justice has vowed to fight the ruling: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House strongly condemns the June 26, 2002, federal court decision declaring the Pledge of Allegiance to be unconstitutional and urges the Department of Justice to appeal the decision immediately and without reservation.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice-President of the United States, the Speaker of the House of Representatives, the federal Department of Justice, and every member of Congress elected from this State.

POM–320. A resolution adopted by the General Assembly of the State of New Jersey relative to Amtrak; to the Committee on Commerce, Science, and Transportation.

ASSEMBLY RESOLUTION

Whereas, President David Gunn of the National Rail Passenger Corporation, Amtrak, has warned that without a loan guarantee of $200 million or similar federal support, Amtrak will run out of operating funds in the near future and will have to shut down operations; and

Whereas, While Federal support appears to be forthcoming to provide a short-term reprieve for Amtrak that will permit it to continue operations until October 1, 2002, such short-term support begs the question of the long-term support for the continuation of national rail passenger service; and

Whereas, The Federal Government under the Constitution of the United States has the responsibility for the regulation of interstate commerce and has taken on the responsibility by legislation for the creation of an Interstate Highway System and a national airport system, both of which receive substantial financial support from federal appropriations; and

Whereas, With the formation of Amtrak, the Congress of the United States emphasized the importance of a federal commitment to a national rail passenger system, but now the President of the United States and the federal administration have begun to weaken the federal commitment in favor of actions by the individual states; and

Whereas, The United States is one Nation and can ill afford a fragmented and decentralized national rail passenger transportation system; and

Whereas, The dismantling of Amtrak will not only deprive the Nation as a whole of a national rail passenger system but will create an intolerable burden on the individual states, with the Northeastern states in particular being forced to assume responsibility for a $12 billion maintenance backlog on the Northeast Corridor; and

Whereas, The cost of continuing Amtrak and providing for proper maintenance and repair of its infrastructure is modest compared to the enormous sums spent for the support of the Nation's highways and aviation system; and

Whereas, In a time of national emergency, a national rail passenger system plays an important role in the national security of the United States, as manifested by the fact that during the September 11, 2001 crisis, the rail system was the only functioning practical interstate transportation operation nationally; and

Whereas, The dismantling of the Amtrak system would have a disastrous effect on the greater New York-New Jersey metropolitan region, leading to the overburdening of an already heavily burdened road system, the paralysis of the local rail transportation system affecting local commuting into and out of New York City, exacerbating problems of air pollution, leading to economic decline or stagnation which would deleteriously affect federal tax revenues from one of the most productive and vibrant economic regions of the country: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The General Assembly of the State of New Jersey, for the public policy reasons stated in the preamble of this resolution, memorializes the Congress and the President of the United States to enact a long-term solution to the Nation's rail crisis by providing for the continuation of national passenger rail service by Amtrak.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the Majority and Minority leaders of the United States Senate and the United States House of Representatives, and all other members of Congress.

POM–321. A resolution adopted by the General Assembly of the State of New Jersey relative to the cable television industry; to the Committee on Commerce, Science, and Transportation.

ASSEMBLY RESOLUTION

Whereas, The ''Cable Communication Policy Act of 1984'' totally deregulated the cable television industry and specifically prohibited the States from regulating either cable rates or cable programming; and

Whereas, Subsequent to the 1984 deregulation of the cable industry, rapidly escalating cable rates and declining levels of service led to the passage of the ''Cable Television Consumer Protection and Competition Act of 1992'' which essentially restored governmental rate regulation of the cable industry; and

Whereas, The federal ''Telecommunications Act of 1996'' was adopted to promote greater competition as a means of addressing the cable industry's problems and eliminated most of the ''Cable Television Consumer Protection and Competition Act of 1992'' by the end of 1999, including the phasing out of federal price controls over cable rates; and

Whereas, Following passage of the federal ''Telecommunications Act of 1996,'' cable programming service rates have increased by over 60 percent, or of which increase zero percent is attributable to State law, and which 60 percent increase represents about seven times the aggregate rate of inflation for the past three years, according to the New Jersey Board of Public Utilities, and federal price controls over most cable rates were terminated on March 31, 1999; and

Whereas, The cable rate increases over the past several years once again indicate that a competitive free market fails to restrain the predatory practices that occur when cable television companies enjoy de facto monopolies unregulated by the areas they serve; and

Whereas, In light of the cable rate increases of the past few years, it is appropriate for Congress to reconsider the deregulation of the cable television industry as enacted by the federal ''Telecommunications Act of 1996'' and the ''Cable Communications Policy Act of 1984'' and permit States to fully regulate the cable television industry, including the regulation of cable television rates, in order to curb the anti-consumer practices of the cable company, monopolies; and

Whereas, It is altogether fitting and proper for this House, as representatives of the residents of this State, which itself established a regulatory framework for cable television in the 1972 ''Cable Television Act,'' to call upon Congress to reconsider the deregulation of the cable television industry as enacted by the federal ''Telecommunications Act of 1996'' and the ''Cable Communications Policy Act of 1984'' and permit States to fully regulate the cable television industry, including the regulation of cable television rates: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The Congress of the United States is respectfully memorialized to reconsider the deregulation of the cable television industry and permit States to fully regulate the cable television industry.

2. That duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested to by the Clerk thereof, shall be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each Member of Congress from the State of New Jersey.

POM–322. A resolution adopted by the General Court of the Commonwealth of Massachusetts relative to anti-semitism; to the Committee on Foreign Relations.

RESOLUTIONS

Whereas, in 2002, 57 years after the Holocaust, anti-Semitism is still among the most enduring and pernicious forms of hate that humankind has known; and

Whereas, anti-Semitism is on the rise in Europe and many other places around the globe and Jews are being attacked in the streets, synagogues are being vandalized and cemeteries are being desecrated; and

Whereas, in many corners of the world, Jews are being demonized by political leaders, clergy and the mainstream media; and

Whereas, Jewish citizens and Jewish institutions in Massachusetts have been targeted for hate mail, hateful speech and hateful acts; and

Whereas, in the wake of this rising tide of anti-Semitism too many governments and institutions have been silent; and

Whereas, the time has come to speak out against the wave of hate: Therefore be it

Resolved, That the Massachusetts General Court urges the Congress of the United States to pass a resolution condemning anti-Semitism and asking other leaders, governments and citizens to speak strongly against the spread of hate; and be it further

Resolved, That copies of these resolutions be forwarded by the clerk of the House of Representatives to the President of the United States, the Presiding Officer of each branch of Congress and to the Members thereof from this Commonwealth.

POM–323. A Senate concurrent resolution adopted by Legislature of the State of Louisiana relative to imported seafood; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 16

Whereas, over the past few years there has been an influx of imported seafood being dumped into the United States of America; and

Whereas, the vast majority of these imported products have come from the countries of Thailand, India, Mexico, Ecuador and Indonesia; and

Whereas, the magazine, Quick Frozen Foods International noted in a January, 2002 article, that Asian shrimp tested in Germany had traces of an antibiotic called ''chloramphenicol''; and

Whereas, this antibiotic is banned in the European Union countries because it is believed to cause bone marrow damage; and

Whereas, because the United States does not require such testing, much of this imported shrimp flooded the American market for prices much lower than American shrimp and may be in violation of anti-dumping laws; and

Whereas, such flooding of the domestic market has greatly affected the price of American shrimp to levels not seen in twenty years; and

Whereas, Louisiana residents can help Louisiana fishermen by demanding and buying Louisiana shrimp: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to impose a quota on certain imported seafood such as shrimp; be it further

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to support, demand, and insist on testing of all imported seafood products before such products are allowed to enter the country and to require wholesalers to indicate the source and origin after purchase; be it further

Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–324. A Senate Joint Memorial adopted by the Legislature of the State of Colorado relative to the return of the USS Pueblo to the United States Navy; to the Committee on Foreign Relations.

SENATE JOINT MEMORIAL 02–001

Whereas, The USS Pueblo, which was attacked and captured by the North Korean Navy on January 23, 1968, was the first United States Navy ship to be hijacked on the high seas by a foreign military force in over 150 years; and

Whereas, One member of the USS Pueblo crew, Duane Hodges, was killed in the assault while the other 82 crew members were held in captivity, often under inhumane conditions, for 11 months; and

Whereas, The USS Pueblo, an intelligence collection auxiliary vessel, was operating in international waters at the time of the capture, and therefore did not violate North Korean territorial waters; and

Whereas, The capture of the USS Pueblo has resulted in no reprisals against the government or people of North Korea and no military action was taken at the time of the vessel's capture or at any later date; and

Whereas, The USS Pueblo, though still the property of the United States Navy, has been retained by North Korea for more than 30 years, was subjected to exhibition in the North Korean cities of Wonsan and Hungham, and is now on display in Pyongyang, the capital city of North Korea; and

Whereas, United States Senator Ben Nighthorse Campbell recently began a legislative effort in Congress to demand that North Korea return the USS Pueblo to the United States Navy: Now, therefore, be it

Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

That we, the members of the Sixty-third General Assembly, hereby memorialize Congress to demand that the USS Pueblo be returned to the United States Navy; be it further

Resolved, That copies of this Joint Memorial be transmitted to the President of the United States, George W. Bush; the United States Secretary of Defense, Donald Rumsfeld; the United States Secretary of State, Colin Powell; the United States House of Representatives; and to each member of Colorado's delegation of the United States Congress.

POM–325. A Resolution adopted by the House of the Commonwealth of Pennsylvania relative to funding for the National Park Service to purchase the Schwoebel Tract, which lies in the boundaries of the Valley Forge National Historical Park; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION NO. 401

Whereas, Approximately 460 acres of the 3,466 acres that comprise the Valley Forge National Historical Park are privately owned; and

Whereas, A 62-acre tract of the privately owned land is currently under consideration as the site of a subdivision for approximately 62 luxury homes; and

Whereas, The construction of homes within the Valley Forge National Historical Park will detract from the historic and cultural environment the park provides for millions of people who visit each year; and

Whereas, The owners of the 62-acre tract of land are willing to sell the land to the National park Service: Therefore be it

Resolved, That the Congress of the United States appropriate sufficient funds for the National Park Service to purchase the privately owned 62-acre tract of land, which will help to ensure the preservation of the park as a national historic site; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the United States Senate and to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–326. A Resolution adopted by the House of the Commonwealth of Pennsylvania relative to Federal relief for steel industry retiree health care costs; to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION NO. 488

Whereas, Much of the domestic steel industry is heavily burdened by overwhelming retiree health care costs, or legacy costs, due to the massive layoffs of the 1970s and 1980s which were necessary to make domestic steel producers some of the most efficient and competitive in this advanced global market; and

Whereas, These layoffs increased the retiree-to-employee ratio to nearly three to one and increased the difficulty for domestic steel producers to maintain benefits for retired employees; and

Whereas, An average of 10% of the costs of a ton of steel goes directly to retiree pension and health care funds for many of the largest producers of steel in the United States; and

Whereas, Approximately 600,000 retirees, surviving spouses and dependents receive health care benefits from domestic steel companies, with the largest and most vulnerable of these companies providing retiree health care benefits to approximately 100,000 retirees, surviving spouses and dependents; and

Whereas, Because 29 domestic steel companies have declared bankruptcy since the Asian financial crisis of 1998, retirees health care benefits are at risk as a cost-cutting measure; and

Whereas, Retirees displaced by plant shutdowns shoulder the burden of their medical costs as they may be unable to afford or qualify for private health insurance programs or may not qualify for Medicare coverage; and

Whereas, The United Steelworkers of America, realizing the risk to individuals and families, has called for Federal action to protect the health care benefits of domestic steelworker retirees: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the President and Congress of the United States to take all necessary action to preserve the health care benefits of steel industry retirees; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–327. A Joint Resolution adopted by the Assembly of the State of California relative to the Mexicali/Calexico border crossing; to the Committee on the Judiciary.

ASSEMBLY JOINT RESOLUTION NO. 35

Whereas, Persons wishing to cross the international border between Mexico and California have traditionally been subject to long wait times during peak periods; and

Whereas, An unfortunate byproduct of the heightened security regime implemented since the September 11, 2001, terrorist attacks on the United States has been an increase in already long wait times at the border; and

Whereas, The economic well-being of the border regions in both the United States and Mexico is dependent on flows of people and goods across the border with a minimum of delay; and

Whereas, The economy of Imperial County depends heavily on shoppers from Mexico; and

Whereas, Federal officials have successfully implemented reduced border crossing times for persons qualifying for use of the Secure Electronic Network For Travelers Rapid Inspection (SENTRI) program, which provides access to a dedicated commuter land and uses automated vehicle identification technology at a limited number of United States international border crossings, including the Otay Mesa crossing near Tijuana/San Diego; and

Whereas, Persons eligible for the SENTRI program have been previously identified as low risk persons who regularly use the border crossing; and

Whereas, The SENTRI program provides law enforcement with good, solid information about program participants, and avoids the need to continuously inspect these precleared individuals; and

Whereas, It would be beneficial to commerce and tourism on both sides of the border to implement the SENTRI program at the Mexicali/Calexico border crossing in order to decrease the border wait times for both United States and Mexican citizens; and

Whereas, The government of the State of Baja California has indicated its interest in expansion of the SENTRI program: Now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the United States Congress and federal agencies, including the Immigration and Naturalization Service and the United States Customs Service, to take the necessary steps to implement the SENTRI program at the Mexicali/Calexico border crossing; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Chairpersons of the House and Senate Judiciary Committees, to each Senator and Representative from California in the Congress of the United States, and to the Immigration and Naturalization Service and the United States Customs Service.

POM–328. A Senate Concurrent Resolution adopted by the Legislature of the State of Louisiana relative to the use of Title I funds to address the educational needs of students; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 22

Whereas, Title I of the reauthorized Elementary and Secondary Education Act, a federal aid program from which funds flow through the state education agencies to the local education agencies, is a significant funding mechanism of great value to the local school systems in Louisiana that aims to provide extra resources to improve high poverty schools and enable at-risk children to meet challenging state content and student performance standards; and

Whereas, Louisiana's total Title I allocation for 2001–2002 of over one hundred and ninety-one million dollars is distributed to local education agencies and targets eight hundred and seventy-three elementary and secondary schools with the highest percentages of children from low-income families to provide additional academic support and learning opportunities to address the academic needs for the benefit of approximately three hundred, eighty-four thousand and five hundred students throughout the state; and

Whereas, the state education agency is responsible for monitoring the effective use of Title I dollars through compliance reviews, and may, pursuant to federal regulation, temporarily withhold Title I payments to a local education agency if the state finds that a local education agency is in noncompliance with any applicable federal or state law or regulation or has been notified of a significant irregularity or problem with the administration of the funds based on a certified audit of such funds; and

Whereas, while a primary goal of Title I is to help disadvantaged students in elementary and secondary schools meet the same high standards expected of all students, continued funding is critical to the academic achievement of all children throughout the state, and any disruption or interruption of services can be devastating to financially strapped local school systems and may limit the opportunities for at-risk students to acquire the knowledge and skills necessary to succeed; and

Whereas, the Legislature of Louisiana recognizes it is ultimately the responsibility of the local education agencies to document and implement the effective use of federal dollars and meet compliance requirements through federal and state law; and

Whereas, the Legislature of Louisiana also recognizes that the consequences of any disruption of services will adversely impact the economically and educationally disadvantaged child—the child for whom the program is intended to serve: Therefore, be it

Resolved, That the Legislature of Louisiana hereby memoralizes the Congress of the United States to request the appropriate officials at the United States Department of Education to review the federal laws and guidelines with respect to assuring that the approved use of Title I funds to address the educational needs of students is not jeopardized in cases in which the management and implementation of such funds by a local education agency are being examined; be it further

Resolved, That a copy of this Resolution be forwarded to each member of the Louisiana Congressional delegation and to the presiding officers of the United States House of Representatives and the United States Senate.

POM–329. A Resolution adopted by the Senate of the Legislature of the State of Louisiana relative to a tax credit for companies for the cost of converting from groundwater to reclaimed water and to provide interest free loans to municipalities to construct waste water treatment/reclamation projects; to the Committee on Finance.

SENATE RESOLUTION NO. 27

Whereas, the Federal Energy Policy Bill is being debated in Congress and energy and electricity production are vital to Louisiana; and

Whereas, merchant power plants and other energy producers currently using groundwater should be encouraged to change to alternative sources; and

Whereas, the largest producers of waste water in the state are municipalities and many of those rural municipalities are facing tougher standards from the U.S. Environmental Protection Agency to update their waste water treatment systems yet these municipalities lack funding to do so; and

Whereas, by creating a market for the reclaimed water, the municipalities could justify the loans to build the waste water treatment facilities; and

Whereas, currently, companies have no incentive to spend the money necessary to convert to surface water or waste water because it is cheaper to mine the pure drinking water from the ground and allowing a tax credit to business to convert to reclaimed water would allow the companies to ultimately save money and to update their water collection/cooling systems;

Whereas, updating company technology would benefit the overall efficiency of the industrial facility and the environment; and

Whereas, Louisiana farmers would also benefit from increased water resources necessary for irrigation; and

Whereas, in order for a municipality to get the interest free loan, the municipality must agree to sell the reclaimed water to industry and other buyers at a cost lower than industry pays to mine groundwater: Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to provide a tax credit to companies for the cost of converting from groundwater to reclaimed water and provide interest free loans to municipalities to construct waste water treatment/reclamation projects; be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation of the United States Congress.

POM–330. A Resolution adopted by the Senate of the Legislature of the State of Alaska relative to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE RESOLVE NO. 2

Whereas this country was founded on religious freedom by founders, many of whom were deeply religious; and

Whereas the First Amendment to the United States Constitution embodies principles intended to guarantee freedom of religion both through the free exercise of religion and by prohibiting the government's establishing a religion; and

Whereas the Pledge of Allegiance was written by Francis Bellamy, a Baptist minister, and was first published in the September 8, 1892, issue of Youth's Companion; and

Whereas, in 1954, the United States Congress added the words ''under God'' to the Pledge of Allegiance; and

Whereas President Eisenhower, in adding these words, said ''These words will remind Americans that despite our great physical strength we must remain humble. They will help us to keep constantly in our minds and hearts the spiritual and moral principles which alone give dignity to man, and upon which our way of life is founded.''; and

Whereas, for nearly 50 years, the Pledge of Allegiance has included references to the United States flag and the country; this country, has been established as a union, ''under God'' being dedicated to securing ''liberty and justice for all''; and

Whereas, in 1954, the United States Congress believed it was acting constitutionally when it revised the Pledge of Allegiance; and

Whereas the Senate of the 107th United States Congress believes that the Pledge of Allegiance is not an unconstitutional expression of patriotism; and

Whereas patriotic songs, engravings on United States legal tender, engravings on federal buildings, and the Preamble to the Constitution of the State of Alaska also contain general references to ''God''; and

Whereas, in accordance with decisions of the United States Supreme Court, public school students cannot be forced to recite the Pledge of Allegiance without violating their First Amendment rights; and

Whereas the Congress expects that the United States Court of Appeals for the Ninth Circuit will rehear the case of Newdow v. U.S. Congress, en banc, and resolves to instruct the Senate Legal Counsel to seek to intervene in the case to defend the constitutionality of the Pledge of Allegiance; be it

Resolved, That the Alaska State Senate concurs with and supports the United States Senate in challenging the United States Court of Appeals for the Ninth Circuit in its decision of Newdow v. U.S. Congress, en banc.

POM–331. A Senate Concurrent Resolution adopted by the Legislation of the State of Louisiana relative to voluntary prayer in public schools; to the Committee on the Judiciary.

SENATE CONCURRENT RESOLUTION NO. 58

Whereas, one of the founding principles of the United States of America was the free exercise of religion and religious belief; and

Whereas, the First Amendment to the Constitution of the United States provides that Congress shall make no law establishing a religion, or prohibiting the free exercise of religion; and

Whereas, Article I, Section 8, of the Louisiana Constitution of 1974 similarly prohibits the enactment of law respecting an establishment of religion or prohibiting the free exercise of religion; and

Whereas, a Joint Resolution was introduced in the 107th Congress, 1st Session, proposing an amendment to the Constitution of the United States to provide that neither the United States, nor any state shall establish an official religion, but that the people's right to pray and to recognize their religious beliefs, heritage and traditions on public property, including schools, shall not be infringed; and

Whereas, the Legislature of Louisiana has repeatedly expressed its support for the concept of voluntary prayer in public schools, including, most recently, a House Concurrent Resolution memorializing Congress to adopt and submit to the states a proposed amendment to the United State Constitution permitting prayer in schools; and

Whereas, while the United States does not have a provision for a national referendum, Congress may vote to place a national referendum on a constitutional amendment to allow prayer in public schools, thus allowing the true will of the people to be heard: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to adopt and place on the ballot a national referendum on a constitutional amendment to allow voluntary prayer in public schools; be it further

Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–332. A Senate Concurrent Resolution adopted by the Legislature of the State of Louisiana relative to the creation of a Center of Excellence in Biological and Chemical Warfare Medicine in Louisiana; to the Committee on Health, Education, Labor, and Pensions.

SENATE RESOLUTION NO. 56

Whereas, with the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, and the anthrax attacks on Congress immediately following, Americans became acutely aware of the vulnerability of their homeland to attacks by terrorist organizations; and

Whereas, it is the duty of every level of government—federal, state, and local—to protect the citizens of this country from the consequences of all terrorist activities; and

Whereas, the resources necessary to provide this protection must be comprehensive so as to prevent, detect, or minimize any terrorist action and must be developed and be available for deployment as quickly as possible; and

Whereas, because of the state's significant investment in a public hospital system, the close proximity of the Louisiana State University and Tulane University Medical Schools, its widely recognized research facilities at the Pennington Biomedical Research Facility and the Louisiana State University Veterinary School and Agricultural Experiment Stations, Louisiana is uniquely positioned to conduct and coordinate research, clinical trials and applications, education, and outreach activities aimed at developing detection programs, prevention programs, and defenses that would mitigate and minimize the affect that biological and chemical agents would have on people, livestock, and agricultural crops; and

Whereas, the utilization of the vast compendium of research, clinical applications, and education resources that already exist in Louisiana would facilitate the rapid development of vaccines, pharmaceuticals, and antidotes for the protection of humans, livestock, and agricultural crops from biological and chemical agents deployed by terrorist groups; and

Whereas, United States Senator Mary Landrieu and members of the Louisiana Congressional Delegation have undertaken efforts to create a Center of Excellence in Biological and Chemical Warfare Medicine which would lead to significant investment of federal funds in public health, animal health, and agricultural crop clinical applications, education, and research infrastructure which already exist in Louisiana thereby making Louisiana the preeminent location in the country for the development of protocols for surveillance, detection, prevention, and treatment for the protection of human and animal life and agricultural crops; and

Whereas, the designation of Louisiana for such a center would maximize the opportunity for the immediate development of appropriate and effective responses to biological and chemical terrorist activity and, at the same time, provide new economic opportunities for the state in an area that is in the forefront of Louisiana's new economic vision; and

Whereas, the state of Louisiana has undertaken efforts to become a national leader in the area of biomedical research: Therefore, be it

Resolved, That the Senate of the Legislature of Louisiana hereby expresses full support to the efforts of the Louisiana Congressional Delegation for the creation of a Center of Excellence in Biological and Chemical Warfare Medicine in Louisiana; be it further

Resolved, That the Senate of the Legislature of Louisiana further expresses that, utilizing the state's vast array of public and private clinical, research, and educational facilities, such a facility is in the best interest of the citizens of this state and this nation; be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate, to the clerk of the United States House of Representatives, and to each member of the Louisiana delegation to the United States Congress.

POM–333. A Resolution adopted by the House of the General Assembly of the State of North Carolina relative to a Federal/State partnership to use local county veterans service officers to assist the United States Department of Veterans' Affairs in eliminating the veterans claims processing backlog; to the Committee on Veterans' Affairs.

HOUSE RESOLUTION 1780

Whereas, the United States presently has a population of over 25 million veterans from its previous wars, with the majority of that veteran population from World War II and the Korean War; and

Whereas, the World War II and Korean War veteran population is presently over 70 years of age, and that group is passing away at the rate of 1,000 veterans per day; and

Whereas, the United States government has acknowledged its responsibility to provide medical care or compensation for medical problems, as well as other benefits, to those veterans who served their country in time of war; and

Whereas, the United States Department of Veterans Affairs is charged with administering the federal benefits program for veterans; and

Whereas, there presently exists a backlog of over 601,000 claims, some of which have been outstanding for one year or more; and

Whereas, a significant portion of these claims involve World War II and Korean War veterans, and despite determined efforts by the United States Department of Veterans Affairs to eliminate this backlog, the backlog continues; and

Whereas, there exists a trained group of individuals known as county veterans service officers located in 37 of the 50 states, representing 700 countries and a workforce of over 2,400 full-time local government employees; and

Whereas, these county veterans service officers were established in 1945 after World War II for the purpose of helping returning veterans reenter civilian life, and have continued to do so for all veterans of all wars since then; and

Whereas, these county veterans service officers are highly trained individuals who have continued to provide assistance to all veterans for over 50 years and are already familiar with the United States Department of Veterans Affairs claim policies and procedures; and

Whereas, for example, in North Carolina county veterans service officers annually assist North Carolina veterans obtain monetary benefits in excess of $812,000,000 by assisting these veterans in filing over 50,000 claims annually with the United States Department of Veterans Affairs; and

Whereas, this claims processing backlog needs to be urgently reduced while our World War II and Korean War veterans are still with us; and

Whereas, the United States Department of Veterans Affairs could enter into a partnership with state and local governments to utilize these highly trained county veterans service officers to eliminate the present claims processing backlog by expanding the county veterans service officers' roles; and

Whereas, this would be a cost-effective way of reducing the claims processing backlog by eliminating the need for a substantial increase in federal employees; and

Whereas, these county veterans service officers, as represented by the North Carolina Association of County Veterans Service Officers and the National Association of County Veterans Service Officers, have offered to assist the United States Department of Veterans Affairs in exchange for block grants to the various states based upon each state's veterans population to compensate county veterans service officers for their expanded role; Now, therefore, be it

Resolved by the House of Representatives:

Section 1. The House of Representatives urges the Congress of the United States and the President to support and enact legislation that would establish a federal/state partnership to use the knowledge and skills of the local county veterans service officers to assist the United States Department of Veterans Affairs in eliminating the veterans claims processing backlog in order that America's veterans can take advantage of the benefits that the United States has authorized for them for their faithful and loyal service to a grateful nation.

Section 2. The Principal Clerk shall transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, the Majority Leader of the Senate, and to each Senator and Representative from North Carolina in the Congress of the United States.

Section 3. This resolution is effective upon adoption.

POM–334. A Resolution adopted by the Senate of the State of Alaska relative to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE RESOLVE NO. 2

Whereas this country was founded on religious freedom by founders, many of whom were deeply religious; and

Whereas the First Amendment to the United States Constitution embodies principles intended to guarantee freedom of religion both through the free exercise of religion and by prohibiting the government's establishing a religion; and

Whereas the Pledge of Allegiance was written by Francis Bellamy, a Baptist minister, and was first published in the September 8, 1892, issue of Youth's Companion; and

Whereas, in 1954, the United States Congress added the words ''under God'' to the Pledge of Allegiance; and

Whereas President Eisenhower, in adding these words, said ''These words will remind Americans that despite our great physical strength we must remain humble. They will help us to keep constantly in our minds and hearts the spiritual and moral principles which alone give dignity to man, and upon which our way of life is founded.''; and

Whereas, for nearly 50 years, the Pledge of Allegiance has included references to the United States flag and the country; this country, has been established as a union, ''under God'' being dedicated to securing ''liberty and justice for all''; and

Whereas, in 1954, the United States Congress believed it was acting constitutionally when it revised the Pledge of Allegiance; and

Whereas the Senate of the 107th United States Congress believes that the Pledge of Allegiance is not an unconstitutional expression of patriotism; and

Whereas patriotic songs, engravings on United States legal tender, engravings on federal buildings, and the Preamble to the Constitution of the State of Alaska also contain general references to ''God''; and

Whereas, in accordance with decisions of the United States Supreme Court, public school students cannot be forced to recite the Pledge of Allegiance without violating their First Amendment rights; and

Whereas the Congress expects that the United States Court of Appeals for the Ninth Circuit will rehear the case of Newdow v. U.S. Congress, en banc, and resolves to instruct the Senate Legal Counsel to seek to intervene in the case to defend the constitutionality of the Pledge of Allegiance; be it

Resolved, That the Alaska State Senate concurs with and supports the United States Senate in challenging the United States Court of Appeals for the Ninth Circuit in its decision of Newdow v. U.S. Congress, en banc.

POM–355. A Resolution adopted by the Senate of the State of Texas relative to bestowing the Congressional Medal of Honor to a citizen of the State of Texas; to the Committee on Armed Services.

SENATE RESOLUTION NO. 1206

Whereas, World War II hero Doris ''Dorie'' Miller exhibited unparalleled courage during the attack on Pearl Harbor, and this bravery has not received the just honors and recognition it merits; and

Whereas, A native Texan, Dorie was born in Waco in 1919 and enlisted in the United States Navy in 1939; and

Whereas, Dorie's ship, the USS *West Virginia* was among those attacked in the early morning of December 7, 1941; and

Whereas, With little regard for his own personal safety, the 22-year-old Dorie assisted his mortally wounded captain out of the line of fire to shelter; and

Whereas, While struggling back to the bridge amid heavy fire and detonating bombs, Dorie came upon a machine gun whose gunner had been killed; although Dorie had never been trained to use the weapon, he began firing at the Japanese planes with telling effect and continued firing until the crew was ordered to abandon the ship; and

Whereas, For his heroism on board the *West Virginia*, Dorie Miller received the Navy Cross, the United States Navy's highest honor, from Admiral Chester Nimitz during a ceremony on the flight deck of the USS *Enterprise* at Pearl Harbor on May 27, 1942; Dorie was the first African American to receive the award; and

Whereas, Later assigned to the USS *Liscome Bay* in the Pacific, Dorie was on board on November 24, 1943, when the light aircraft carrier was sunk by a submarine; 272 sailors survived but 646 were lost, and Dorie was officially presumed dead a year and a day after the carrier went down; and

Whereas, Citizens across the State of Texas believe that Dorie Miller should be awarded the highest honor that a member of the United States Armed Forces can receive, the Congressional Medal of Honor; a man of great gallantry, Dorie Miller is entitled to the respect and gratitude of our nation; Now, therefore, be it

Resolved, That the Senate of the State of Texas, 77th Legislature, hereby respectfully request the Congress of the United States of America to bestow on Doris Miller the Congressional Medal of Honor; and, be it further

. . . .

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

H.R. 2595: A bill to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

H.R. 4044: To authorize the Secretary of the Interior to provide assistance to the State of Maryland and the State of Louisiana for implementation of a program to eradicate or control nutria and restore marshland damaged by nutria.

H.R. 4727: A bill to reauthorize the national dam safety program, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

*Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

*Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

*Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. DAYTON (for himself and Mr. SESSIONS):

S. 3007. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain overseas pay of members of the Armed Forces of the United States, and for other purposes; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. STEVENS):

S. 3008. A bill to amend the Higher Education act of 1965 to expand the loan forgiveness and loan cancellation programs for teachers, to provide loan forgiveness and loan cancellation programs for nurses, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WELLSTONE (for himself, Mrs. CLINTON, Mr. KENNEDY, Ms. LANDRIEU, Mrs. CARNAHAN, Mr. SMITH of Oregon, Mr. BAYH, Mr. SARBANES, Mr. DASCHLE, Mr. ROCKEFELLER, Mr. TORRICELLI, Mr. DURBIN, Mr. BINGAMAN, Mr. KERRY, Mr. DODD, Mr. REED, Ms. CANTWELL, Mrs. BOXER, Mrs. FEINSTEIN, Mr. BIDEN , Mr. LEVIN, Mr. CORZINE, Mr. REID, Mr. SCHUMER, Ms. STABENOW, Mr. LEAHY, and Mr. LIEBERMAN):

S. 3009. A bill to provide economic security for America's workers; read the first time.

By Mr. BAYH:

S. 3010. A bill to provide information and advice to pension plan participants to assist them in making decisions regarding the investment of their pension plan assets, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS:

S. 3011. A bill to amend title 23, United States Code, to establish programs to encourage economic growth in the United States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DODD:

S. 3012. A bill to amend the Internal Revenue Code of 1986 to exclude from income and employment taxes and wage withholding property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders; to the Committee on Finance.

By Mr. KYL (for himself, Mr. MCCAIN, Mr. DOMENICI, and Mr. BINGAMAN):

S. 3013. A bill to amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of State and local funds expended for emergency health services furnished to undocumented aliens; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CAMPBELL:

S. 3014. A bill for the relief of Jesus Raul Apodaca-Madrid and certain of his family members; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. LOTT):

S.J. Res. 45. A joint resolution to authorize the use of United States Armed Forces against Iraq; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWNBACK (for himself and Mr. NELSON of Nebraska):

S. Con. Res. 148. A concurrent resolution recognizing the significance of bread in American history, culture, and daily diet; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 1226

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

S. 1655

At the request of Mr. MURKOWSKI, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1655, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 2215

At the request of Mr. SANTORUM, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2480

At the request of Mr. LEAHY, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

S. 2611

At the request of Mr. REED, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2611, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2678

At the request of Mr. BAUCUS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2678, a bill to amend the Internal Revenue Code of 1986 to transfer all excise taxes imposed on alcohol fuels to the Highway Trust Fund, and for other purposes.

S. 2700

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2700, a bill to amend titles II and XVI of the Social Security Act to limit the amount of attorney assessments for representation of claimants and to extend the attorney fee payment system to claims under title XVI of that Act.

S. 2770

At the request of Mr. DODD, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2770, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas.

S. 2816

At the request of Mr. BAUCUS, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2816, a bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

S. 2847

At the request of Mr. FEINGOLD, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 2847, a bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes.

S. 2869

At the request of Mr. KERRY, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 2869, a bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

S. 2897

At the request of Mr. JEFFORDS, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 2897, a bill to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

S. 2903

At the request of Mr. JOHNSON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2903, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care.

S. 2906

At the request of Mr. BINGAMAN, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. 2906, a bill to amend title 23, United States Code, to establish a program to make allocations to States for projects to expand 2-lane highways in rural areas to 4-lane highways.

S. 2936

At the request of Mr. ALLEN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2936, a bill to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percent relating to periods of receiving disability payments, and for other purposes.

S. RES. 270

At the request of Mr. CAMPBELL, the name of the Senator from Hawaii (Mr.

INOUYE) was added as a cosponsor of S. Res. 270, A resolution designating the week of October 13, 2002, through October 19 , 2002, as ''National Cystic Fibrosis Awareness Week''.

S. RES. 307

At the request of Mr. TORRICELLI, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Vermont (Mr. JEFFORDS) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. Res. 307, A resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 325

At the request of Mr. SESSIONS, the names of the Senator from Alaska (Mr. STEVENS), the Senator from California (Mrs. BOXER), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Virginia (Mr. WARNER), the Senator from Michigan (Ms. STABENOW), the Senator from Georgia (Mr. CLELAND), the Senator from New York (Mr. SCHUMER), the Senator from Minnesota (Mr. DAYTON), the Senator from Montana (Mr. BURNS), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Maine (Ms. COLLINS), the Senator from Maryland (Ms. MIKULSKI), the Senator from Indiana (Mr. BAYH), the Senator from Wisconsin (Mr. KOHL), the Senator from Rhode Island (Mr. REED), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Illinois (Mr. DURBIN), the Senator from Connecticut (Mr. DODD) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. Res. 325, Resolution designating the month of September 2002 as ''National Prostate Cancer Awareness Month''.

S. CON. RES. 11

At the request of Mrs. FEINSTEIN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. Con. Res. 11, A concurrent resolution expressing the sense of Congress to fully use the powers of the Federal Government to enhance the science base required to more fully develop the field of health promotion and disease prevention, and to explore how strategies can be developed to integrate lifestyle improvement programs into national policy, our health care system, schools, workplaces, families and communities.

S. CON. RES. 142

At the request of Mr. SMITH of Oregon, the names of the Senator from Idaho (Mr. CRAPO), the Senator from Colorado (Mr. ALLARD) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. Con. Res. 142, A concurrent resolution expressing support for the goals and ideas of a day of tribute to all firefighters who have died in the line of duty and recognizing the important mission of the Fallen Firefighters Foundation in assisting family members to overcome the loss of their fallen heroes.

S. CON. RES. 143

At the request of Mr. INHOFE, the names of the Senator from Arkansas (Mr. HUTCHINSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Connecticut (Mr. DODD), the Senator from Minnesota (Mr. DAYTON) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. Con. Res. 143, A concurrent resolution designating October 6, 2002, through October 12, 2002, as ''National 4–H Youth Development Program Week''.

S. CON. RES. 145

At the request of Mr. KENNEDY, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. Con. Res. 145, A concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

AMENDMENT NO. 4653

At the request of Mr. DURBIN, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of amendment No. 4653 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4731

At the request of Mr. ALLEN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of amendment No. 4731 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN (for himself and Mr. STEVENS):

S. 3008. A bill to amend the Higher Education Act of 1965 to expand the loan forgiveness and loan cancellation programs for teachers, to provide loan forgiveness and loan cancellation programs for nurses, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, today I, along with my good friend from Alaska, Senator STEVENS, am introducing legislation that will help bolster two critical components of Iowa's and the Nation's economic future: healthcare and education.

Across Iowa and America, we face a critical and worsening shortage of nurses and teachers. By 2010 there will be a shortage of 725,000 nurses. By 2020, that shortage will increase to 1.2 million as the baby boomers begin to retire and need more care.

It's much the same case for teachers. In Iowa, 40 percent of our teachers will be eligible to retire in the next 10 years. And 17 percent of Iowa first year teachers leave the classroom after only one year. This is almost twice the national average. We'll need more than 2 million teachers nationwide just to replace the teachers that retire or leave the profession.

Clearly, a shortage of nurses or teachers will have a profound impact on the quality of education for our children and the quality of health care for every Iowan. We have to do more to attract young people to these difficult yet rewarding careers.

One reason young people aren't taking on teaching or nursing is because they're buried in college loan debt. According to the ''Burden of Borrowing'', a report by the United States Public Interest Research Group, 64 percent of students graduated in 1999–2000 with Federal education loan debt. Further, the average student loan debt has nearly doubled over the past eight years to $16,928. Young people simply can't pursue careers that are critical to Iowa's and America's future because their college debt causes them to enter into unmanageable repayment plans.

Earlier this year, I spoke with college students from schools across central Iowa. Many of these students will walk away from college with a diploma in one hand and a $20,000 student loan bill in the other. When students loan debt keeps our kids from becoming Iowa's next teachers and nurses there's something very wrong with America's priorities.

That's why I, along with my good friend from Alaska, Senator STEVENS, am introducing a plan to offer up to $17,500 of loan forgiveness to students who go into teaching or nursing for at least 5 years. Under our plan, students would get needed relief from loan debt and Iowa and America would get its next generation of nurses and teachers. That's a good investment in education, health care, and our nation's future.

I think we've got a good chance of moving this proposal forward. President Bush has proposed a similar plan aimed just at teachers in a few subject areas. However, I am aware that school districts throughout the United States are faced with problems attracting and retaining teachers in more than just the areas of special education, math and science. Since the White House has embraced the general approach, I am hopeful they'll also support our broader plan for teachers and nurses. It's a common sense proposal that's focused on Iowa and America's future.

I ask unanimous consent that letters of support for our legislation be printed in the RECORD.

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

AMERICAN NURSES ASSOCIATION,
Washington, DC, August 30, 2002.

Hon. TOM HARKIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HARKIN: I write on behalf of the American Nurses Association (ANA) to express gratitude and support for your intent

to introduce legislation to provide loan forgiveness and loan cancellation programs for registered nurses.

ANA is the only full-service association representing the nation's registered nurses through its 54 constituent member nurse associations. The ANA represents registered nurses of all educational preparation in all practice settings.

ANA supports your legislation because it aims to address the impending nursing shortage. This shortage is projected to soon reach crisis proportions, just as the baby boom population begins to place great demands on the health care system.

A reason for the emerging nurse shortage is a decreasing number of young people entering the nursing profession. As you may well be aware, enrollments in nursing programs have dropped by 17 percent since 1995. Current projections show that the number of nurses per capita will fall 20 percent below requirements by 2020. Your legislation will help reverse the trend and encourage entry into the profession.

As nurses are the largest single group of health care professionals in America, the nurse shortage threatens the very fabric of our health care delivery system. An adequately prepared and supported nursing workforce is essential for the health of our nation.

ANA thanks you for your strong support of nursing issues and for introducing this important legislation.

Sincerely,

ROSE GONZALEZ,
Director, Government Affairs.

AMERICANS FOR NURSING SHORTAGE RELIEF,
August 19, 2002.

Hon. TOM HARKIN,
Hart Senate Office Building, U.S. Senate, Washington, DC.
Hon. TED STEVENS,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATORS HARKIN AND STEVENS: The undersigned members of the ANSR Alliance (Americans for Nursing Shortage Relief) strongly support your draft bill to amend the *Higher Education Act of 1965* and increase nursing education loan opportunities within the Department of Education. As delineated in the bill, this positive move to bring more individuals into the nursing profession and support the creation of nurse educators will be accomplished through loan cancellation and forgiveness after five years of service in a clinical setting or at an accredited school of nursing. We greatly appreciate your understanding of the need for multiple programs throughout the federal government to alleviate the critical nursing shortage that is facing us today and which will continue to do so unless we stem its growth.

A key issue in ensuring public access to high quality nursing services is the growing faculty shortage and implications for the preparation of new nursing professionals. The median age of nurse faculty is 52 years old, and the impending retirement of seasoned faculty over the next decade will significantly impact the ability of schools and universities to sustain quality nursing educational programs that prepare an adequate supply of nurses to meet the Nation's needs. The educational incentives described in the proposed legislation hold promise as effective tools to insure monies are available to train critically needed nurse faculty.

The ANSR Alliance thanks you for your commitment to advancing an innovative solution to help alleviate the nursing shortage in the United States. We look forward to working with you to ensure passage of this important piece of legislation.

Sincerely yours,

American Academy of Ambulatory Care Nursing.
American Academy of Nurse Practitioners.
American Association of Colleges of Nursing.
American Association of Critical Care Nurses.
American Association of Nurse Anesthetists.
American College of Nurse-Midwives.
American College of Nurse Practitioners.
American Nephrology Nurses Association.
American Organization of Nurse Executives.
American Society of Pain Management Nurses.
American Society of Perianesthesia Nurses.
American Society of Plastic Surgical Nurses.
Association of Faculties of Pediatric Nurse Practitioners.
Association of periOperative Registered Nurses.
Association of State and Territorial Directors of Nursing.
Association of Women's Health, Obstetric and Neonatal Nurses.
Emergency Nurses Association.
National Alaska Native American Indian Nurses Association.
National Association of Clinical Nurse Specialists.
National Association of Neonatal Nurses.
National Association of Orthopaedic Nurses.
National Association of Pediatric Nurse Practitioners.
National Association of School Nurses.
National Black Nurses Association, Inc.
National Conference of Gerontological Nurse Practitioners.
National Council of State Boards of Nursing, Inc.
National League for Nursing.
National Nursing Centers Consortium.
National Organization of Nurse Practitioner Faculties.
National Student Nurses' Association, Inc.
Nurses Organization of Veterans Affairs.
Oncology Nursing Society.
Society of Gastroenterology Nurses and Associates, Inc.
Society of Pediatric Nurses.

AMERICAN COUNCIL ON EDUCATION,
OFFICE OF THE PRESIDENT,
Washington, DC, September 25, 2002.

Re support of the Teacher and Nurse Support Act of 2002.

Hon. TOM HARKIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR HARKIN, On behalf of the American Council on Education (ACE) and the organization listed below, I thank you for introducing legislation to expand and extend loan forgiveness and cancellation programs for teachers and nurses. We are grateful to you for working so hard to alleviate the financial burden of America's students, particularly our teachers and nurses. These highly valued but underpaid professionals are educated and prepared in our institutions. We will work with you in building support for these good measures and we will wholeheartedly support your bill when it comes up for consideration.

Providing financial incentives to nursing and teaching students via federal loan programs is one of the best ways to attract and retain talented individuals to pursue academic study and careers in these important fields.

As individuals retire and the vacancies for nurses and teachers grow, the United States will need to replace and supplement these essential vocations with qualified personnel. These types of programs and incentives are especially helpful for individuals who choose to dedicate their time and energy to careers that are rarely financially lucrative.

Thank you again for your leadership on this important issues.

Sincerely,

DAVID WARD,
President.

On behalf of:
American Association of Colleges for Teacher Education.
American Association of Colleges of Nursing.
American Association of State Colleges and Universities.
American Council on Education.
Association of American Universities.
Association of Jesuit Colleges and Universities.
National Association for Equal Opportunity in Higher Education.
National Association of College and University Business Officers.
National Association of Independent Colleges and Universities.
National Association of State Universities and Land-Grant Colleges.
The State PIRGs' Higher Education Project.
United States Student Association.

NATIONAL EDUCATION ASSOCIATION,
Washington, DC, September 26, 2002.

Senator TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: On behalf of the National Education Association's (NEA) 2.7 million members, we would like to express our support for the Teacher and Nurse Support Act of 2002.

We are very pleased that your legislation seeks to address the nation's growing teacher shortage by providing student loan forgiveness for individuals who enter the profession. New teacher quality standards coupled with a national teacher shortage make attracting and retaining quality teachers even more important, particilary in high-poverty areas. Unfortunately, too many of today's students rely on loans in order to afford higher education. The resulting debt burden often limits career choices and prevents many talented students from pursuing careers in public service, including as teachers.

By expanding loan forgiveness and targeting it more toward teachers in high poverty schools, rather than toward limited academic disciplines, your bill will help encourage talented individuals to enter the teaching profession and to bring their skills to schools with the greatest need. In addition, by providing for mandatory spending, the bill will ensure that teachers who qualify will receive the loan forgiveness they need.

We thank you for your leadership on this important issue and look forward to continuing to work with you in support of children and public education.

Sincerely,

DIANE SHUST,
Director of Government Relations.
RANDALL MOODY,
Manager of Federal Policy and Politics.

By Mr. WELLSTONE (for himself, Mrs. CLINTON, Mr. KENNEDY, Ms. LANDRIEU, Mrs. CARNAHAN, Mr. SMITH of Oregon, Mr. BAYH, Mr. SARBANES, Mr. DASCHLE, Mr. ROCKEFELLER, Mr. TORRICELLI, Mr.

DURBIN, Mr. BINGAMAN, Mr. KERRY, Mr. DODD, Mr. REED, Ms. CANTWELL, Mrs. BOXER, Mrs. FEINSTEIN, Mr. BIDEN, Mr. LEVIN, Mr. CORZINE, Mr. REID, Mr. SCHUMER, Ms. STABENOW, Mr. LEAHY, and Mr. LIEBERMAN):

S. 3009. A bill to provide econonmic security for America's workers; read the first time.

Mr. WELLSTONE. Mr. President, I am proud to introduce, on behalf of myself and a large and bipartisan group of my colleagues, the Emergency Unemployment Compensation Act of 2002. I want to especially acknowledge the hard, really the relentless work, in particular of Senator CLINTON and Senator KENNEDY on this issue. They care deeply about the plight of hard-working men and women in their States and around the country, who are struggling, through no fault of their own, to deal with the effects of our flagging economy. I commend their work.

We cannot have a secure Nation if we do not address issues of our economic security as well.

Working men and women around the country and in Minnesota, blue collar and white collar, are hurting.

The economy, battered by corporate accountability scandals, plummeting stock prices, and now flagging consumer confidence, is deteriorating.

And the jobs simply are not there. Minnesota has lost more than 40,000 jobs in the past 18 months. There are currently 123,000 Minnesotans unemployed. In the second quarter of this year, unemployed workers in Minnesota looking for jobs outnumbered unfilled jobs by 2–1.

The national picture is no different. Nationally, more than 2 million jobs have been lost over the last 18 months. We have more than 8 million men and women out of work. This is the only Administration in the past 50 years that has presided over a decline in private sector jobs.

What's more, long term unemployment is up sharply. Nationally, nearly 1 in five of the 8 million unemployed workers have been out of work for 6 months or more. Between May and July of this year, around 900,000 workers exhausted the extended unemployment benefits made available through the unemployment insurance extension in March. By the end of 2002 we expect over 2 million workers to exhaust these benefits.

In Minnesota, through the end of July, over 17,000 workers had exhausted the benefits that we temporarily extended back in March of this year, with thousands more likely to exhaust in the future.

That is why we are announcing today the introduction of the ''Economic Security Act of 2002.'' It does the following: Extends, through July 2003, the temporary extended benefits program, due to expire on December 31st. Provides another 13 weeks of extended benefits for workers running out of benefits in all states and another 20 weeks in high unemployment states.

This mirrors the benefit extensions signed into law by Bush, Sr.

The triggers used to determine ''high unemployment'' are: A 4 percent Adjusted Insured Unemployment Rate (AUIR) or a 6 percent Total Unemployment Rate (TUR).

The AUIR and the TUR are exactly the same triggers used in the early 90's. The levels are different to reflect the new reality of a significantly lower natural unemployment rate. [In the 90's we used a 5 percent AUIR and a 9 percent TUR, virtually no states would trigger at these levels today].

In the 90's we extended benefits 5 times, by large bi-partisan votes. Three of those votes (91–2; 94–2; and 93–3) were during Bush 1.

And the need is even greater now. By year's end we expect 2.2 million workers to have exhausted. In 1992, for a comparable period, there were only 1.4 million workers who exhausted benefits.

The need is urgent—we should pass this measure immediately.

Mrs. CLINTON. Mr. President, on September 12, 2001, hundreds of thousands of New Yorkers woke up to a changed world, thousands had lost family, friends and co-workers to the terrorist attacks of September 11 and hundreds of thousands more New Yorkers had lost their jobs. America watched the scenes of New York and felt pride in the firefighters, the police officers, the emergency workers, and the construction workers who had all fled to Ground Zero to help with recovery.

The images that our Nation did not see as prominently were the faces of the hundreds of thousands of New Yorkers who were left jobless. There were the workers whose jobs were literally destroyed when the Twin Towers collapsed, the janitors, the doormen, the waiters and waitresses, the secretaries, and messengers. Or, the workers who did not work in lower Manhattan, but who felt the ripple effect of the so-called frozen zone, primarily the hotel workers and small businesses owners.

In the months following September 11, these individuals streamed into my office and called on the phone pleading for my assistance. At first, New York was able to offer displaced workers needed assistance through regular unemployment insurance, UI. And, for those workers who did not qualify for regular UI, either because they worked for a small business or they were new employees, they were able to receive Disaster Unemployment Assistance, DUA, provided through the Federal Emergency Management Administration, FEMA.

In September 2001, the unemployment rate in New York City was 6.3 percent. And, in the period following September 2001, this rate began to spike up such that we experienced unemployment rates that we had not seen since the recession of the early 1990s. In December 2001, the unemployment rate rose to 7.4 percent, 2.4 percent above the national average for the same period. In March 2002, the unemployment rate climbed to 7.5 percent and in June 2002 it reached 8 percent. New York City lost 150,000 jobs in the aftermath of September 11 and the City is not expected to rebound until 2004. New York City was not alone, New York State saw a climbing unemployment rate for the same period. In September 2001, the unemployment rate in the state was at 5.2 percent; it went up to 5.7 percent in December 2001, to 5.9 percent in March 2002, and to 6.1 percent in June 2002.

Once it became clear that the economy was not going to recover quickly and that it was going to take New York State and New York City years to rebuild the economy, I immediately began to fight for the extension of Unemployment Insurance and Disaster Unemployment Assistance so that New Yorkers could receive a small bit of short-term economic security while they searched for jobs. On November 1, 2001, I introduced a bill to extend Disaster Unemployment Assistance for an additional 13-weeks and, at the same time, I urged the Congressional Leadership to include an extension of regular unemployment insurance in the economic stimulus package.

After sustained work on these bills, I was pleased in March 2002 to join my colleagues in voting for an economic stimulus package that included a 13-week extension of Unemployment Insurance and, in the same month, I was pleased that we passed the bill to extend Disaster Unemployment Assistance for 13 more weeks.

These extensions, however, were short-lived. The economy continued to weaken with corporate scandals and little job growth.

In June, I started to hear from thousands of my constituents who were still out of work and concerned that their extended unemployment benefits would soon run out. They were frightened and unsettled and looking to me to help. I saw that this was a serious problem for many New Yorkers so I introduced a bill on July 19, 2002, to provide for another 13-week extension of unemployment insurance. This bill, S. 2714, garnered eight co-sponsors. I also introduced a companion bill, S. 2715, to extend Disaster Unemployment Assistance. Six of my colleagues joined me in co-sponsoring it. I also worked with my colleagues on the House to introduce a companion bill. Rep. CHARLIE RANGEL, from New York City, introduced H.R. 5089, which received 34 co-sponsors, including fourteen members of the New York Congressional delegation.

The need to help struggling workers in New York and throughout the Nation, however, was not breaking through. On September 13, 2002, I made my case for the need to extend unemployment insurance through an op-ed in the New York Times, which I would like to submit for the RECORD today. In this article, I refer to Felix Batista, a

father of four who lost his job as a result of September 11 and has not been able to get back on his feet. Felix came to Washington to testify at a HELP Committee hearing on September 12, 2002, and told his story to all the members of the Committee. I was pleased to meet with him and the hundreds of other unemployed New Yorkers who came to town to ask that Congress extend unemployment benefits.

On September 15, 2002, I appeared on Meet the Press with Tim Russert and again mentioned the dramatic rise in long-term unemployment and the need to extend benefits and help those who are suffering as a result of the economy. Last week, I delivered a floor statement on this bill to again reinforce the message that I have been trying to get out to all of my colleagues. And yesterday, I worked with Senator KENNEDY to organize a press conference to draw attention to this issue. There, I introduced Vera Matty, a former executive assistant at BMG who lost her job last November as a result of the recession.

Today, 24 of my colleagues and I are introducing a bill to extend Unemployment Insurance for another 13 weeks and 20 weeks for states like New York that are suffering from high unemployment. In addition, today the Environment and Public Works Committee approved my bill to extend Disaster Unemployment Assistance for another 13 weeks. I am pleased that the EPW Committee is taking action on this bill, S. 2715, and I hope that the Senate will move quickly to approve it.

New Yorkers are suffering. We have suffered a double blow as a result of September 11 and the recession. And September 20, 2002 there was an article in the New York Times stating that New York City's poverty rate is growing for the first time in five years.

This economy was in a recession on September 10. It was devastated on September 11 and the people who have exhausted their unemployment benefits need our help now.

Too many Americans are out of work and having a hard time providing for their families. Too many have lost their jobs and watched their pensions and retirement securities disappear because of the illegal and unethical and inexplicable behavior of corporate executives. And despite their steadfast efforts to find work and their overwhelming desire to get back to work, they remain out of work and struggle to make ends meet.

In New York, there are 135,000 New Yorkers who have exhausted their benefits. Across the country, the number of people who have been unemployed for 6 months or longer has almost doubled from 900,000 to 1.5 million in the last year. And that number is expected to increase to 2.2 million by December.

And what has Congress done to ease Americans financial burden during these uncertain times? We have extended benefits only once. Contrast that with the recession of the early 90's when Congress extended temporary benefits five times. This year, even in the wake of massive terrorist attacks on our own soil, we have extended benefits only once, and once is not enough.

Congress must extend unemployment insurance and disaster unemployment assistance, each for an additional 13 weeks. With more people losing their benefits every day, these extensions have to be passed before Congress adjourns.

Extending unemployment insurance is not just the right thing to do; it is also the smart thing. According to a 1999 Department of Labor study, unemployment insurance stimulates the economy. Every dollar spent on unemployment insurance adds $2.5 to the Gross Domestic Product. Unemployment Insurance acts as a stimulus because it puts money into the hands of people who are likely to spend it immediately? They have to buy food. They have to pay rent. They have to pay their car payments. So the money goes right into the economy, and it provides a stimulus.

Today, the outlook for job seekers is grim. When President Bush took office back in January of 2001, there was approximately 1 job seeker for every job. In just a little over a year, those numbers have changed to nearly 1 job opening for every 3 applicants. The number of people who cannot find jobs for six months or longer, has grown by almost 90 percent in the past year.

In fact, the share of the unemployed today who have been without work for more than 26 weeks exceeds that of the recessions of the early 90s and the early 80s. But only looking at the unemployment rate does not paint a complete picture of the economy. My constituents describe an endless job search—the hopeless feeling that comes from looking for a job for months and months without success.

Two years ago, America was on the right track when it came to the economy: 22 million new jobs, budget surpluses, and historic growth. For reasons that escape me, we threw all that good work away. Now we're back into deficits. We're not creating jobs. And we're not taking care of the unemployed.

It's time for us to extend benefits just as we did during the recession in the early 90's, and stimulate the economy. People are hurting and they are running out of benefits and they need Congress to act now. We must not adjourn until we pass these needed extensions of unemployment insurance.

I ask unanimous consent that the New York Times article of September 20, 2002 be printed in the RECORD.

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

[From the New York Times, Sept. 20, 2002]

HELPING THE JOBLESS

(By Hillary Rodham Clinton)

For 23 years, Felix Batista rode the elevator up 106 floors to work as a member of the wait staff at the Windows on the World restaurant. On Sept. 11, everything changed. Mr. Batista was on vacation with his family, and that decision saved his life. That day, he lost 73 coworkers and his job.

While the first anniversary of the Sept. 11 attacks has come and gone, in New York the needs born out of that tragedy remain. Each step that we take—whether it is investing $20.9 billion for cleanup and recovery or financing programs to track the health of rescue workers and volunteers at ground zero—will bring New York closer to recovery.

But today, the city's unemployment rate has skyrocketed to 8 percent. Across the state, 553,000 New Yorkers are out of work, with company layoffs and plant closings happening everywhere from Niagara Falls to Rochester. Now 135,000 New Yorkers like Mr. Batista have exhausted their unemployment benefits and are struggling to pay their bills.

At this time last year, 800,000 Americans had been out of work for six months or longer. That number has nearly doubled to 1.5 million and it is expected to increase to more than 2 million by December.

Congress must act quickly to extend unemployment insurance and disaster unemployment assistance, each for an additional 13 weeks. With more people losing their benefits every day, these extensions have to be passed before Congress adjourns.

During the recession of the early 90's, Congress extended temporary benefits five times. This year, even in the wake of massive terrorist attacks on our own soil, we have extended benefits only once, and once is not enough.

The economy was already in a recession on Sept. 1. It was devastated on Sept. 11, and is stalled now. Some forecasters say we are experiencing a ''jobless recovery''—one in which stockbrokers, electricians, insurance agents, computer technicians, textile workers and restaurant workers have formed lines many blocks long to attend job fairs. New revelations about corporate irresponsibility and illegality have added more doubt to an already weakened economy.

Extending unemployment insurance would put money into the hands of the very people who will turn right around and put it back into our economy. In 1999, the Department of Labor found that when unemployment insurance is extended, every dollar in benefits generates $2.15 in gross domestic product. Giving more purchasing power to the more than 8 million Americans who are currently unemployed would be a powerful stimulus for our economy.

After Sept. 11, it was clear we needed a serious push for homeland security. Now we need to restore a measure of economic security to all Americans, and extending unemployment benefits is a responsible and affordable way to do so.

By Mr. BAUCUS:

S. 3011. A bill to amend title 23, United States Code, to establish programs to encourage economic growth in the United States, and for other purposes; to the Committee on Environment and Public Works.

Mr. BAUCUS. Mr. President, I rise today to introduce the MEGA Safe Act. Maximum Economic Growth for America Through Safety Improvements.

Safer roads save lives. Improving traffic and roadway safety is one of the biggest challenges facing the government today. Traffic deaths are consistently one of the top ten causes of deaths each year. Accidents involving motor vehicles affect all of us.

This bill is only a beginning in our Nation's efforts to curb roadway accidents and deaths, in a way that best addresses the needs of our States.

A large cause of accidents is the poor quality of signs in and around crosswalks, school and bicycle crossings. Highway signs marking pedestrian, bicycle, and school zone crossings help to alert motorists to the increased risks associated with these locations.

This bill establishes a grant program to improve safety at pedestrian, school and bicycle crossings by marking them with fluorescent yellow-green, signs. FYG signs are currently the most reflective signs available.

The Secretary of Transportation is directed to set aside $25 million each fiscal year from the Surface Transportation Program to finance these safety improvement grants. The funds may be obligated for eligible projects located on any public road.

I've been hearing from County Commissioners from Montana as well as other States, about how much they need direct funding for local roads. These localities are hard pressed for funds and many of these roads are unsafe. This bill would establish a pilot program, at $200 million annually from fiscal year 2004–2009, to address safety on rural local roads. Funds could be used only on local roads and rural minor collectors, roads that are not Federal-aid highways.

The program does not affect distribution of funds among States, as funds will be distributed to each of the 50 States in accord with their relative formula share under 23 U.S.C. 105. Funds could be used only for projects or activities that have a safety benefit. By January 1, 2009 the Secretary of Transportation is to report on progress under the provision and whether any modifications are recommended.

This bill takes a different approach to the issue of aggressive driving. Rather than sanctioning drivers who display aggressive behavior, this section seeks to lessen that negative behavior by removing some of the frustration that causes that behavior.

This section applies to all Federal interstates. It names the left lane as the ''National Passing Lane.'' It requires all vehicles to use the left lane for passing only. It further requires that all drivers allow other vehicles to pass them in the left lane. I believe that one of the big frustrations of drivers in this country is being held up by someone going slow in the left lane. It contributes to driver aggression and to congestion. The MEGA Safe Act seeks to alleviate that.

An amount of no less than $1 million will be given to each State each year of the bill, 6 years, to educate the driving public about this new law and the proper behavior.

Each State will decide how to best enforce this law, for example, enforcement of ticketable offenses such as if a driver does not allow another to pass or the driver is holding up the left lane with a line of cars behind him.

Additionally, the bill funds a study to make recommendations on instituting measures that will help the federal government and states teach motorists and truck drivers how to effectively share the road with each other.

Recently the American Automobile Association, AAA, unveiled a study that shows that the majority of highway crashes that involved trucks are caused by the car or cars involved.

MEGA Safe would give $1 million to the American Trucking Associations, ATA, and AAA to issue a report making recommendations on how the Federal and State governments can better teach car drivers and more carriers how to share the road.

It requires a preliminary report in a year and the final report a year later.

Finally, the MEGA Safe Act would address Work Zone Safety by ensuring that, for each project that uses Federal funds, a trained and certified person would be given the responsibility for assuring that the traffic control plan is effectively administered. This would help reduce the number of deaths occurring in work zone safety areas.

The MEGA Safe Act is by no means a comprehensive safety proposal, but I believe that these ideas are a good foundation for our safety policies as we embark on the Reauthorization of TEA 21.

By Mr. DODD:

S. 3012. A bill to amend the Internal Revenue Code of 1986 to exclude from income and employment taxes and wage withholding property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders; to the Committee on Finance.

Mr. DODD. Mr. President, I am pleased to rise today with my colleague Senator LIEBERMAN to introduce legislation that would amend the Internal Revenue Code to exclude property tax abatements, provided by local governments to volunteer firefighters and emergency medical responders, from the definition of income and wages. Last week, Congressman JOHN LARSON of Connecticut, the chief author of this proposal, introduced identical legislation in the House.

This bill would allow local governments around the country the opportunity to provide incentives, such as property tax abatements, to their volunteer firefighters and emergency medical responders. These incentives will help local governments recruit local volunteer firefighters and emergency medical responders in order to ensure their communities are adequately prepared to respond to emergencies.

Police officers, firefighters, and emergency service workers are America's front-line defenders in the face of fires, medical emergencies, terrorist threats, incidents with hazardous materials and other emergencies. Many of them are salaried employees of their respective State or local government. Many of them are volunteers, as well. Many States and localities lack adequate resources to recruit these vital public servants and therefore to fully respond to the full range of possible threats this country faces.

Many small towns cannot afford full-time paid firefighters, therefore a majority of municipalities and counties throughout the country depend on volunteer firefighters and volunteer emergency service workers to cover their front lines. Every day, volunteers throughout the country make a commitment, on top of their work schedules, to put their lives on the line for their communities. Volunteer firefighters comprise 75 percent of firefighters in our country. Unfortunately, statistics show that the number of volunteer firefighters and emergency responders have been declining over the years at an alarming rate. The number of volunteer firefighters around the country has declined by 5 to 10 percent since 1983, while the number of emergency calls made has sharply increased.

Many local governments recruit and retain volunteer firefighters and emergency service workers by offering volunteers a property tax abatement that directly reduces their property taxes. For example, Connecticut enacted a law in 1999 allowing municipalities to offer abatements of up to $1,000 per year on local taxes to firefighters, emergency medical technicians, paramedics or ambulance drivers. This abatement has helped local fire department in their volunteer recruitment efforts throughout the state.

Despite these successful recruitment efforts, the IRS recently ruled that property tax abatements to volunteers should be treated as wages and income. This ruling would pose real hardship on firefighters and the communities where they live and work, in Connecticut and in many other States, as well. While State and local governments are working to increase incentives to volunteer, this ruling would undermine those efforts. Some may argue that volunteering for the community should be without any compensation, including abatements. However, the reality is that when both heads of household hold full-time employment, it is often too difficult for them to take time away from their families without some form of compensation. A $1,000 property tax break is not a large request for the great service these men and women provide to our communities. These men and women risk their lives for others. The least we can do is allow states and towns to offer them modest incentives to serve. For some, counting this abatement as income may put them in a higher tax bracket, therefore forcing them to pay substantially more in taxes. Also, because of the extra paperwork required and costs due to the IRS decision, some municipalities are having to reconsider providing abatement programs. For many towns and municipalities it would be entirely too expensive to have to both pay FICA taxes,

and lose property tax revenues. Municipalities across the nation have enough trouble recruiting volunteer firefighters and emergency medical personnel without also having to face obstacles from the IRS.

This ruling undermines the good intentions and creative efforts of many localities. If our municipalities are willing to forgo their local tax revenues in order to ensure they have enough volunteer firefighters and emergency service providers to protect their communities, and if members of the community are doing their part by volunteering, then we, the Federal government, should do our part and support local efforts to ensure that all our communities have adequate protection.

I hope that my colleagues will join me in supporting this legislation so that we can ensure that state and local governments have the flexibility to design and implement recruiting and retention programs that benefit not only the volunteer firefighters and emergency medical providers, but also the communities they protect.

By Mr. KYL (for himself, Mr. McCAIN, Mr. DOMENICI, and Mr. BINGAMAN):

S. 3013. A bill to amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of State and local funds expended for emergency health services furnished to undocumented aliens; to the Committee on Health, Education, Labor, and Pensions.

Mr. McCAIN. Mr. President, I am pleased to once again join my good friend from Arizona, Senator KYL, in introducing a bill to address a critical issue affecting our State, and other border States. Today we are introducing the Local Emergency Health Services Reimbursement Act of 2002 in order to provide appropriate Federal reimbursement to States and localities whose budgets are disproportionately affected by the emergency health costs associated with illegal immigration.

Arizona and other border States now face a medical and financial crisis. A report released today by the U.S./Mexico Border Counties Coalition found that our Nation's border hospitals spent close to $190 million in 2000 to provide health care to illegal immigrants—$31 million of which was spent by hospitals in Arizona alone. Clearly, the staggering cost of providing medical care to illegal immigrants further burdens an already challenged medical system.

The Federal Government maintains the sole authority to control immigration in this country. Despite that fact, the Federal Government often fails to take financial responsibility for the costs associated with immigration. Much of the financial burden has shifted to State and local governments.

Compounding the problem, Federal law requires hospital emergency rooms to accept and treat all patients in need of medical care, regardless of immigration status. Unfortunately, this mandate does not ensure that these hospitals receive adequate compensation for the care they provide. Recently, this growing problem in the Southwest has been exacerbated by the increasingly desperate measures taken by undocumented aliens to cross our border with Mexico.

The Local Emergency Health Services Reimbursement Act of 2002 would modify and extend federal funding to the States, local governments, and health care providers for medical costs that arise from the uncompensated treatment of illegal immigrants. Such funding previously flowed to all 50 States, the District of Columbia, and several U.S. territories. In fiscal year 2000 alone, approximately 360 local jurisdictions across the United States applied for these Federal monies. However these funds expired in 2001, and States and local governments are now suffering as a result.

I have long worked to bolster enforcement against illegal immigration along our Southwest border, and I will continue to do so. However, I believe that States and local communities should not be left to foot the bill for what is a Federal responsibility. Although our bill gives special consideration to States with unusually high concentrations of illegal aliens and States with high concentrations of apprehended undocumented aliens, it would benefit communities across the Nation. As my colleagues know, illegal immigrants who successfully transit our Southwest border rapidly disperse throughout the United States. Although this situation is most critical in our border regions, if left unaddressed, it will surely become a national emergency. I hope the Senate will act expeditiously on this important legislation to alleviate those pressures by compensating State and local governments and health care providers for the costs they incur as unwitting hosts to undocumented aliens.

Mr. KYL. 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. 3013

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 ''Local Emergency Health Services Reimbursement Act of 2002''.

SEC. 2. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

Section 4723 of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended to read as follows:

''SEC. 4723. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

''(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, $200,000,000 for each of fiscal years 2003 through 2007, for the purpose of making allotments under this section to States described in paragraph (1) or (2) of subsection (b).

''(b) STATE ALLOTMENTS.—

''(1) BASED ON HIGHEST NUMBER OF UNDOCUMENTED ALIENS.—

''(A) DETERMINATION OF ALLOTMENTS.—

''(i) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $134,000,000 of such amount to compute an allotment for each such fiscal year for each of the 17 States with the highest number of undocumented aliens.

''(ii) FORMULA.—The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under this paragraph for the fiscal year as the ratio of the number of undocumented aliens in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year.

''(iii) AVAILABILITY OF FUNDS.—The amount of an allotment provided to a State under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

''(B) DATA.—For purposes of subparagraph (A), the number of undocumented aliens in a State shall be determined based on estimates of the resident undocumented alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service as of October 1992 (or as of such later date if such date is at least 1 year before the beginning of the fiscal year involved).

''(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

''(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $66,000,000 of such amount to compute an allotment for each such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

''(B) DETERMINATION OF ALLOTMENTS.—The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under this paragraph for the fiscal year as the ratio of the number of undocumented alien apprehensions in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year.

''(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the 4 most recent quarterly apprehension rates for undocumented aliens in such States, as reported by the Immigration and Naturalization Service.

''(D) AVAILABILITY OF FUNDS.—The amount of an allotment provided to a State under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

''(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State that is described in both of paragraphs (1) and (2) from receiving an allotment under both such paragraphs for a fiscal year.

''(c) USE OF FUNDS.—The Secretary shall pay, from the allotments made for a State under paragraphs (1) and, if applicable, (2) of subsection (b) for a fiscal year, to each State and directly to local governments, hospitals, or other providers located in the State (including providers of services received through an Indian Health Service facility

whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act)) that provide uncompensated emergency health services furnished to undocumented aliens during that fiscal year, such amounts (subject to the total amount available from such allotments) as the State, local governments, hospitals, or providers demonstrate were incurred for the provision of such services during that fiscal year.

''(d) DEFINITIONS.—In this section:

''(1) HOSPITAL.—The term 'hospital' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)).

''(2) PROVIDER.—The term 'provider' includes a physician, any other health care professional licensed under State law, and any other entity that furnishes emergency health services, including ambulance services.

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(4) STATE.—The term 'State' means the 50 States and the District of Columbia.

''(e) ENTITLEMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts provided under this section.''.

By Mr. CAMPBELL:

S. 3014. A bill for the relief of Jesus Raul Apodaca-Madrid and certain of his family members; to the Committee on the Judiciary.

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

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

S. 3014

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

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Jesus Raul Apodaca-Madrid and the persons named in section 3, who are members of his family, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Jesus Raul Apodaca-Madrid and the persons named in section 3, as provided in section 1, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

SEC. 3. ADDITIONAL BENEFICIARIES FOR RELIEF.

The family members of Jesus Raul Apodaca-Madrid named in this section are the following: Adan Apodaca-Bejarano, Maria de Jesus Madrid-Tarango, Francisco Javier Apodaca-Madrid, Alma Delia Apodaca-Madrid, Maria Isabel Apodaca-Madrid, Laura Apodaca-Madrid, and Luis Bernardo Chavez-Apodaca.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 148—RECOGNIZING THE SIGNIFICANCE OF BREAD IN AMERICAN HISTORY, CULTURE AND DAILY DIET

Mr. BROWNBACK (for himself and Mr. NELSON of Nebraska) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 148

Whereas bread is a gift of friendship in the United States;

Whereas bread is used as a symbol of unity for families and friends;

Whereas the expression ''breaking bread together'' means sharing friendship, peace, and goodwill, and the actual breaking of bread together can help restore a sense of normalcy and encourage a sense of community;

Whereas bread, the staff of life, not only nourishes the body but symbolizes nourishment for the human spirit;

Whereas bread is used in many cultures to commemorate milestones such as births, weddings, and deaths;

Whereas bread is the most consumed of grain foods, is recognized by the Department of Agriculture as part of the most important food group, and plays a vital role in American diets;

Whereas Americans consume an average of 60 pounds of bread annually;

Whereas bread has been a staple of American diets for hundreds of years;

Whereas Americans are demonstrating a new interest in artisan and home-style types of breads, increasingly found in cafes, bakeries, restaurants, and homes across the country;

Whereas bread sustained the Pilgrims during their long ocean voyage to America and was used to celebrate their first harvest in the American wilderness; and

Whereas bread remains an important part of the family meal when Americans celebrate Thanksgiving, and the designation of November 2002 as National Bread Month would recognize the significance of bread in American history, culture, and daily diet: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the President should issue a proclamation—

(1) designating November 2002 as National Bread Month in recognition of the significance of bread in American history, culture, and daily diet; and

(2) calling on the people of the United States to observe such month with appropriate programs and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4753. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4754. Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4755. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4756. Mr. JEFFORDS (for himself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4757. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4758. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4759. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4760. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4761. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4762. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4763. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4764. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4765. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4766. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4767. Mr. GRASSLEY (for himself, Mr. LEVIN, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4768. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL,

Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4769. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4770. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. Hutchinson, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4771. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4772. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4773. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4774. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4775. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4776. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself , Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4777. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN TO THE BILL H.R. 5005, SUPRA; WHICH WAS ORDERED TO LIE ON THE TABLE.

SA 4778. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4779. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4780. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4781. Mr. AKAKA (for himself, Mr. GRASSLEY, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4782. Mr. AKAKA (for himself and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4783. Mrs. CLINTON (for herself, Mr. INHOFE, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4784. Mrs. CLINTON (for herself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4785. Mrs. CLINTON (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4786. Mrs. CLINTON (for herself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4787. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4788. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4789. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4790. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4791. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4792. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4793. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4794. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4795. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4796. Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4797. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4798. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4799. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4800. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4801. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4802. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4803. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4804. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4805. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4806. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4807. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4808. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4809. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4810. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr.GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4811. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4812. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4813. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4814. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4815. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4816. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4817. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4818. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4819. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4820. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4821. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4822. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4823. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4824. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4825. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4826. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4827. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4828. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4829. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4830. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4831. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4832. Mr. JEFFORDS (for himself, Mr. SMITH, of New Hampshire, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H .R. 5005, supra; which was ordered to lie on the table.

SA 4833. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H .R. 5005, supra; which was ordered to lie on the table.

SA 4834. Mr. JEFFORDS (for himself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4835. Mr. DEWINE (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. DOMENICI, Mr. THURMOND, Ms. CANTWELL, Mr. HELMS, Mr. ALLARD, Mr. LIEBERMAN, Mr. CARPER, and Mr. DODD) submitted an amendment intended to be proposed by him to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table.

SA 4836. Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. CARPER, and Mr. TORRICELLI) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4837. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 4085, To amend title 38, United States Code, to provide a cost-of-living increase in the rates of compensation for veterans with service-connected disability and dependency and indemnity compensation for surviving spouses of such veterans, to expand certain benefits for veterans and their survivors, and for other purposes.

SA 4838. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill S. 2237, to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

TEXT OF AMENDMENTS

SA 4753. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 173. FIRST RESPONDER PERSONNEL COSTS.

Local governments receiving Federal homeland security funding under this Act, whether directly or as a pass-through from the States, may use up to 20 percent of Federal funds received for first time responder personnel costs, including overtime costs.

SA 4754. Mr. JEFFORDS (for himself, and Mr. SMITH of New Hampshire, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

Subtitle G—First Responder Terrorism Preparedness

SEC. 199A. SHORT TITLE.

This subtitle may be cited as the ''First Responder Terrorism Preparedness Act of 2002''.

SEC. 199B. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government must enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(2) as a result of the events of September 11, 2001, it is necessary to clarify and consolidate the authority of the Federal Emergency Management Agency to support first responders.

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

(1) to establish within the Federal Emergency Management Agency the Office of National Preparedness;

(2) to establish a program to provide assistance to enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(3) to address issues relating to urban search and rescue task forces.

SEC. 199C. DEFINITIONS.

(a) MAJOR DISASTER.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

(b) WEAPON OF MASS DESTRUCTION.—Section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(a)) is amended by adding at the end the following:

''(11) WEAPON OF MASS DESTRUCTION.—The term 'weapon of mass destruction' has the meaning given the term in section 2302 of title 50, United States Code.''.

SEC. 199D. ESTABLISHMENT OF OFFICE OF NATIONAL PREPAREDNESS.

Subtitle A of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196 et seq.) is amended by adding at the end the following:

''SEC. 616. OFFICE OF NATIONAL PREPAREDNESS.

''(a) IN GENERAL.—There is established in the Federal Emergency Management Agency an office to be known as the 'Office of National Preparedness' (referred to in this section as the 'Office').

''(b) APPOINTMENT OF ASSOCIATE DIRECTOR.—

''(1) IN GENERAL.—The Office shall be headed by an Associate Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(2) COMPENSATION.—The Associate Director shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(c) DUTIES.—The Office shall—

''(1) lead a coordinated and integrated overall effort to build, exercise, and ensure viable terrorism preparedness and response capability at all levels of government;

''(2) establish clearly defined standards and guidelines for Federal, State, tribal, and local government terrorism preparedness and response;

''(3) establish and coordinate an integrated capability for Federal, State, tribal, and local governments and emergency responders to plan for and address potential consequences of terrorism;

''(4) coordinate provision of Federal terrorism preparedness assistance to State, tribal, and local governments;

''(5) establish standards for a national, interoperable emergency communications and warning system;

''(6) establish standards for training of first responders (as defined in section 630(a)), and for equipment to be used by first responders, to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(7) carry out such other related activities as are approved by the Director.

''(d) DESIGNATION OF REGIONAL CONTACTS.—The Associate Director shall designate an officer or employee of the Federal Emergency Management Agency in each of the 10 regions of the Agency to serve as the Office contact for the States in that region.

''(e) USE OF EXISTING RESOURCES.—In carrying out this section, the Associate Director shall—

''(1) to the maximum extent practicable, use existing resources, including planning documents, equipment lists, and program inventories; and

''(2) consult with and use—

''(A) existing Federal interagency boards and committees;

''(B) existing government agencies; and

''(C) nongovernmental organizations.''.

SEC. 199E. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) IN GENERAL.—Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) is amended by adding at the end the following:

''SEC. 630. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' means—

''(A) fire, emergency medical service, and law enforcement personnel; and

''(B) such other personnel as are identified by the Director.

''(2) LOCAL ENTITY.—The term 'local entity' has the meaning given the term by regulation promulgated by the Director.

''(3) PROGRAM.—The term 'program' means the program established under subsection (b).

''(b) PROGRAM TO PROVIDE ASSISTANCE.—

''(1) IN GENERAL.—The Director shall establish a program to provide assistance to States to enhance the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.

''(2) FEDERAL SHARE.—The Federal share of the costs eligible to be paid using assistance provided under the program shall be not less than 75 percent, as determined by the Director.

''(3) FORMS OF ASSISTANCE.—Assistance provided under paragraph (1) may consist of—

''(A) grants; and

''(B) such other forms of assistance as the Director determines to be appropriate.

''(c) USES OF ASSISTANCE.—Assistance provided under subsection (b)—

''(1) shall be used—

''(A) to purchase, to the maximum extent practicable, interoperable equipment that is

necessary to respond to incidents of terrorism, including incidents involving weapons of mass destruction;

''(B) to train first responders, consistent with guidelines and standards developed by the Director;

''(C) in consultation with the Director, to develop, construct, or upgrade terrorism preparedness training facilities;

''(D) to develop, construct, or upgrade emergency operating centers;

''(E) to develop preparedness and response plans consistent with Federal, State, and local strategies, as determined by the Director;

''(F) to provide systems and equipment to meet communication needs, such as emergency notification systems, interoperable equipment, and secure communication equipment;

''(G) to conduct exercises; and

''(H) to carry out such other related activities as are approved by the Director; and

''(2) shall not be used to provide compensation to first responders (including payment for overtime).

''(d) ALLOCATION OF FUNDS.—For each fiscal year, in providing assistance under subsection (b), the Director shall make available—

''(1) to each of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, $3,000,000; and

''(2) to each State (other than a State specified in paragraph (1))—

''(A) a base amount of $15,000,000; and

''(B) a percentage of the total remaining funds made available for the fiscal year based on criteria established by the Director, such as—

''(i) population;

''(ii) location of vital infrastructure, including—

''(I) military installations;

''(II) public buildings (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612));

''(III) nuclear power plants;

''(IV) chemical plants; and

''(V) national landmarks; and

''(iii) proximity to international borders.

''(e) PROVISION OF FUNDS TO LOCAL GOVERNMENTS AND LOCAL ENTITIES.—

''(1) IN GENERAL.—For each fiscal year, not less than 75 percent of the assistance provided to each State under this section shall be provided to local governments and local entities within the State.

''(2) ALLOCATION OF FUNDS.—Under paragraph (1), a State shall allocate assistance to local governments and local entities within the State in accordance with criteria established by the Director, such as the criteria specified in subsection (d)(2)(B).

''(3) DEADLINE FOR PROVISION OF FUNDS.—Under paragraph (1), a State shall provide all assistance to local government and local entities not later than 45 days after the date on which the State receives the assistance.

''(4) COORDINATION.—Each State shall coordinate with local governments and local entities concerning the use of assistance provided to local governments and local entities under paragraph (1).

''(f) ADMINISTRATIVE EXPENSES.—

''(1) DIRECTOR.—For each fiscal year, the Director may use to pay salaries and other administrative expenses incurred in administering the program not more than the lesser of—

''(A) 5 percent of the funds made available to carry out this section for the fiscal year; or

''(B)(i) for fiscal year 2003, $75,000,000; and

''(ii) for each of fiscal years 2004 through 2006, $50,000,000.

''(2) RECIPIENTS OF ASSISTANCE.—For each fiscal year, not more than 10 percent of the funds retained by a State after application of subsection (e) may be used to pay salaries and other administrative expenses incurred in administering the program.

''(g) MAINTENANCE OF EXPENDITURES.—The Director may provide assistance to a State under this section only if the State agrees to maintain, and to ensure that each local government that receives funds from the State in accordance with subsection (e) maintains, for the fiscal year for which the assistance is provided, the aggregate expenditures by the State or the local government, respectively, for the uses described in subsection (c)(1) at a level that is at or above the average annual level of those expenditures by the State or local government, respectively, for the 2 fiscal years preceding the fiscal year for which the assistance is provided.

''(h) REPORTS.—

''(1) ANNUAL REPORT TO THE DIRECTOR.—As a condition of receipt of assistance under this section for a fiscal year, a State shall submit to the Director, not later than 60 days after the end of the fiscal year, a report on the use of the assistance in the fiscal year.

''(2) EXERCISE AND REPORT TO CONGRESS.—As a condition of receipt of assistance under this section, not later than 3 years after the date of enactment of this section, a State shall—

''(A) conduct an exercise, or participate in a regional exercise, approved by the Director, to measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(B) submit a report on the results of the exercise to—

''(i) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

''(i) COORDINATION.—

''(1) WITH FEDERAL AGENCIES.—The Director shall, as necessary, coordinate the provision of assistance under this section with activities carried out by—

''(A) the Administrator of the United States Fire Administration in connection with the implementation by the Administrator of the assistance to firefighters grant program established under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) (as added by section 1701(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360));

''(B) the Attorney General, in connection with the implementation of the Community Oriented Policing Services (COPS) Program established under section 1701(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(a)); and

''(C) other appropriate Federal agencies.

''(2) WITH INDIAN TRIBES.—In providing and using assistance under this section, the Director and the States shall, as appropriate, coordinate with—

''(A) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and other tribal organizations; and

''(B) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) and other Alaska Native organizations.''.

(b) COST SHARING FOR EMERGENCY OPERATING CENTERS.—Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c) is amended—

(1) by inserting ''(other than section 630)'' after ''carry out this title''; and

(2) by inserting ''(other than section 630)'' after ''under this title''.

SEC. 199F. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199E(a)) is amended by adding at the end the following:

''SEC. 631. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' has the meaning given the term in section 630(a).

''(2) HARMFUL SUBSTANCE.—The term 'harmful substance' means a substance that the President determines may be harmful to human health.

''(3) PROGRAM.—The term 'program' means a program described in subsection (b)(1).

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more harmful substances are being, or have been, released in an area that the President has declared to be a major disaster area under this Act, the President shall carry out a program with respect to the area for the protection, assessment, monitoring, and study of the health and safety of first responders.

''(2) ACTIVITIES.—A program shall include—

''(A) collection and analysis of environmental and exposure data;

''(B) development and dissemination of educational materials;

''(C) provision of information on releases of a harmful substance;

''(D) identification of, performance of baseline health assessments on, taking biological samples from, and establishment of an exposure registry of first responders exposed to a harmful substance;

''(E) study of the long-term health impacts of any exposures of first responders to a harmful substance through epidemiological studies; and

''(F) provision of assistance to participants in registries and studies under subparagraphs (D) and (E) in determining eligibility for health coverage and identifying appropriate health services.

''(3) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study under subparagraph (D) or (E) of paragraph (2) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(4) COOPERATIVE AGREEMENTS.—The President may carry out a program through a cooperative agreement with a medical or academic institution, or a consortium of such institutions, that is—

''(A) located in close proximity to the major disaster area with respect to which the program is carried out; and

''(B) experienced in the area of environmental or occupational health and safety, including experience in—

''(i) conducting long-term epidemiological studies;

''(ii) conducting long-term mental health studies; and

''(iii) establishing and maintaining environmental exposure or disease registries.

''(c) REPORTS AND RESPONSES TO STUDIES.—

''(1) REPORTS.—Not later than 1 year after the date of completion of a study under subsection (b)(2)(E), the President, or the medical or academic institution or consortium of such institutions that entered into the cooperative agreement under subsection (b)(4),

shall submit to the Director, the Secretary of Health and Human Services, the Secretary of Labor, and the Administrator of the Environmental Protection Agency a report on the study.

''(2) CHANGES IN PROCEDURES.—To protect the health and safety of first responders, the President shall make such changes in procedures as the President determines to be necessary based on the findings of a report submitted under paragraph (1).''.

SEC. 199G. URBAN SEARCH AND RESCUE TASK FORCES.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199F) is amended by adding at the end the following:

''SEC. 632. URBAN SEARCH AND RESCUE TASK FORCES.

''(a) DEFINITIONS.—In this section:

''(1) URBAN SEARCH AND RESCUE EQUIPMENT.—The term 'urban search and rescue equipment' means any equipment that the Director determines to be necessary to respond to a major disaster or emergency declared by the President under this Act.

''(2) URBAN SEARCH AND RESCUE TASK FORCE.—The term 'urban search and rescue task force' means any of the 28 urban search and rescue task forces designated by the Director as of the date of enactment of this section.

''(b) ASSISTANCE.—

''(1) MANDATORY GRANTS FOR COSTS OF OPERATIONS.—For each fiscal year, of the amounts made available to carry out this section, the Director shall provide to each urban search and rescue task force a grant of not less than $1,500,000 to pay the costs of operations of the urban search and rescue task force (including costs of basic urban search and rescue equipment).

''(2) DISCRETIONARY GRANTS.—The Director may provide to any urban search and rescue task force a grant, in such amount as the Director determines to be appropriate, to pay the costs of—

''(A) operations in excess of the funds provided under paragraph (1);

''(B) urban search and rescue equipment;

''(C) equipment necessary for an urban search and rescue task force to operate in an environment contaminated or otherwise affected by a weapon of mass destruction;

''(D) training, including training for operating in an environment described in subparagraph (C);

''(E) transportation;

''(F) expansion of the urban search and rescue task force; and

''(G) incident support teams, including costs of conducting appropriate evaluations of the readiness of the urban search and rescue task force.

''(3) PRIORITY FOR FUNDING.—The Director shall distribute funding under this subsection so as to ensure that each urban search and rescue task force has the capacity to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

''(c) GRANT REQUIREMENTS.—The Director shall establish such requirements as are necessary to provide grants under this section.

''(d) ESTABLISHMENT OF ADDITIONAL URBAN SEARCH AND RESCUE TASK FORCES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Director may establish urban search and rescue task forces in addition to the 28 urban search and rescue task forces in existence on the date of enactment of this section.

''(2) REQUIREMENT OF FULL FUNDING OF EXISTING URBAN SEARCH AND RESCUE TASK FORCES.—Except in the case of an urban search and rescue task force designated to replace any urban search and rescue task force that withdraws or is otherwise no longer considered to be an urban search and rescue task force designated by the Director, no additional urban search and rescue task forces may be designated or funded until the 28 urban search and rescue task forces are able to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.''.

SEC. 199H. AUTHORIZATION OF APPROPRIATIONS.

Section 626 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197e) is amended by striking subsection (a) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this title (other than sections 630 and 632).

''(2) PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.—There are authorized to be appropriated to carry out section 630—

''(A) $3,340,000,000 for fiscal year 2003; and

''(B) $3,458,000,000 for each of fiscal years 2004 through 2006.

''(3) URBAN SEARCH AND RESCUE TASK FORCES.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out section 632—

''(i) $160,000,000 for fiscal year 2003; and

''(ii) $42,000,000 for each of fiscal years 2004 through 2006.

''(B) AVAILABILITY OF AMOUNTS.—Amounts made available under subparagraph (A) shall remain available until expended.''.

SA 4755. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 68, strike lines 14 through 23 and insert the following:

SEC. 134. FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) HOMELAND SECURITY DUTIES.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall be responsible for the emergency preparedness and response functions of the Department.

(2) FUNCTION.—Except as provided in paragraph (3) and subsections (b) through (e), nothing in this Act affects the administration or administrative jurisdiction of the Federal Emergency Management Agency as in existence on the day before the date of enactment of this Act.

(3) DIRECTOR.—In carrying out responsibilities of the Federal Emergency Management Agency under all applicable law, the Director of the Federal Emergency Management Agency shall report—

(A) to the President directly, with respect to all matters relating to a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) to the Secretary, with respect to all other matters.

On page 69, strike lines 1 through 7 and insert the following:

(b) SPECIFIC RESPONSIBILITIES.—The Director of the Federal Emergency Management Agency shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities of the Department.

SA 4756. Mr. JEFFORDS (for himself, and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 11, line 8, strike ''terrorism, natural disasters,'' and insert ''terrorism''.

On page 11, strike lines 6 through 13 and insert the following:

homeland threats within the United States; and

(C) reduce the vulnerability of the United States to terrorism and other homeland threats.

On page 12, line 23, strike ''emergency preparedness and response,''.

On page 13, strike lines 3 through 5 and insert the following:

transportation security and critical infrastructure protection.

On page 15, line 14, insert ''and the Director of the Federal Emergency Management Agency'' after ''Defense''.

On page 16, strike lines 13 through 16.

On page 16, line 17, strike ''(15)'' and insert ''(14)''.

On page 16, line 20, strike ''(16)'' and insert ''(15)''.

On page 16, line 24, strike ''(17)'' and insert ''(16)''.

On page 17, line 4, strike ''(18)'' and insert ''(17)''.

On page 17, line 8, strike ''(19)'' and insert ''(18)''.

Beginning on page 68, strike line 14 and all that follows through page 75, line 3.

On page 75, line 3, strike ''135'' and insert 134''.

On page 103, line 13, strike ''136'' and insert 135''.

On page 103, line 17, strike ''137'' and insert 136''.

On page 109, line 10, strike ''of the Department''.

On page 112, line 5, strike ''138'' and insert 137''.

On page 112, line 10, strike ''139'' and insert 138''.

On page 112, between lines 4 and 5, insert the following:

(f) COORDINATION WITH FEDERAL EMERGENCY MANAGEMENT AGENCY.—

(1) IN GENERAL.—In carrying out all responsibilities of the Secretary under this section, the Secretary shall coordinate with the Director of the Federal Emergency Management Agency.

(2) CONFORMING AMENDMENT.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

On page 114, line 6, strike ''140'' and insert 139''.

On page 114, strike lines 13 and 14.

On page 115, line 3, strike ''in the Department'' and insert ''within the Federal Emergency Management Agency''.

On page 116, line 21, strike ''Department'' and insert ''Federal Emergency Management Agency''.

Beginning on page 128, strike line 22 and all that follows through page 129, line 5, and insert the following:

(a) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this section.

(b) PUBLIC HEALTH EMERGENCY.—During the

On page 129, strike lines 15 and 16 and insert the following:

(c) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving,

On page 186, line 25, and page 187, line 1, strike ''emergency preparation and response,''.

On page 187, insert ''emergency preparedness and response,'' after ''assets,''.

Beginning on page 161, strike line 19 and all that follows through page 162, line 2, and insert the following:

(b) BIENNIAL REPORT.—Not later than 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary shall submit to Congress a report assessing the resources and requirements of executive agencies relating to border security.

SA 4757. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 4438 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 156, between lines 11 and 12, insert the following:

Subtitle H—Identity Theft

SEC. 771. SHORT TITLE.

This subtitle may be cited as the ''Identity Theft Victims Assistance Act of 2002''.

SEC. 772. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL.—Chapter 47 title 18, United States Code, is amended by adding after section 1028 the following:

''§ 1028A. Treatment of identity theft mitigation

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'business entity' means any corporation, trust, partnership, sole proprietorship, or unincorporated association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), telecommunications, utilities, or other service provider;

''(2) the term 'consumer' means an individual;

''(3) the term 'financial information' means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

''(A) account numbers and balances;

''(B) nonpublic personal information, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

''(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;

''(4) the term 'financial information repository' means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;

''(5) the term 'identity theft' means an actual or potential violation of section 1028 or any other similar provision of Federal or State law;

''(6) the term 'means of identification' has the same meaning given the term in section 1028; and

''(7) the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or to aid or abet, identity theft or any other violation of law.

''(b) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a commercial transaction, provided credit, provided, for consideration, products, goods, or services, accepted payment, or otherwise done business for consideration with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), and in compliance with subsection (d), provide, without charge, a copy of all application and business transaction information related to the transaction being alleged as an identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

''(2) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law.

''(c) VERIFICATION OF IDENTITY AND CLAIM.—Unless a business entity, at its discretion, is otherwise able to verify the identity of a victim making a request under subsection (b)(1), the victim shall provide to the business entity—

''(1) as proof of positive identification, at the election of the business entity—

''(A) the presentation of a government-issued identification card;

''(B) if providing proof by mail, a copy of a government-issued identification card;

''(C) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

''(D) personally identifying information that the business entity typically requests from new applicants or for new transactions at the time of the victim's request for information; and

''(2) as proof of a claim of identity theft, at the election of the business entity—

''(A) a copy of a police report evidencing the claim of the victim of identity theft;

''(B) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(C) any affidavit of fact that is acceptable to the business entity for that purpose.

''(d) VERIFICATION STANDARD.—Prior to releasing records pursuant to subsection (b), a business entity shall take reasonable steps to verify the identity of the victim requesting such records.

''(e) LIMITATION ON LIABILITY.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other business entities, law enforcement authorities, victims, or any person alleging to be a victim, if—

''(1) the business entity complies with subsection (c); and

''(2) such disclosure was made—

''(A) for the purpose of detection, investigation, or prosecution of identity theft; or

''(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

''(f) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

''(1) this section does not require disclosure of the information;

''(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information; or

''(3) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

''(g) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(h) ENFORCEMENT.—

''(1) CIVIL ACTIONS.—

''(A) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance of this section;

''(iii) obtain damages—

''(I) in the sum of actual damages, restitution, and other compensation on behalf of the residents of the State; and

''(II) punitive damages, if the violation is willful or intentional; and

''(iv) obtain such other equitable relief as the court may consider to be appropriate.

''(B) NOTICE.—Before bringing an action under subparagraph (A), the attorney general of the State involved shall provide to the Attorney General of the United States—

''(i) written notice of the action; and

''(ii) a copy of the complaint for the action.

''(C) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(i) the business entity has made a reasonably diligent search of its available business records; and

''(ii) the records requested under this section do not exist or are not available.

''(D) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

''(2) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice of an action under paragraph (1)(B), the Attorney General of the United States shall have the right to intervene in that action.

''(B) EFFECT OF INTERVENTION.—If the Attorney General of the United States intervenes in an action under this subsection, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

''(C) SERVICE OF PROCESS.—Upon request of the Attorney General of the United States, the attorney general of a State that has filed an action under this subsection shall, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Government with—

''(i) a copy of the complaint; and

''(ii) written disclosure of substantially all material evidence and information in the

possession of the attorney general of the State.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under this subsection, nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State—

''(A) to conduct investigations;

''(B) to administer oaths or affirmations; or

''(C) to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States for a violation of this section, no State may, during the pendency of that action, institute an action under this subsection against any defendant named in the complaint in that action for violation of that practice.

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under this subsection may be brought in the district court of the United States—

''(i) where the defendant resides;

''(ii) where the defendant is doing business; or

''(iii) that meets applicable requirements relating to venue under section 1391 of title 28.

''(B) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

''(i) resides;

''(ii) is doing business; or

''(iii) may be found.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

''1028A. Treatment of identity theft mitigation.''.

SEC. 773. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

(a) CONSUMER REPORTING AGENCY BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681*i*) is amended by adding at the end the following:

''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

''(1) BLOCK.—Except as provided in paragraphs (4) and (5) and not later than 30 days after the date of receipt of proof of the identity of a consumer and an official copy of a police report evidencing the claim of the consumer of identity theft, a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

''(2) REINVESTIGATION.—A consumer reporting agency shall reinvestigate any information that a consumer has requested to be blocked under paragraph (1) in accordance with the requirements of subsections (a) through (d).

''(3) NOTIFICATION.—A consumer reporting agency shall, within the time period specified in subsection (a)(2)(A)—

''(A) provide the furnisher of the information identified by the consumer under paragraph (1) with the information described in subsection (a)(2); and

''(B) notify the furnisher—

''(i) that the information may be a result of identity theft;

''(ii) that a police report has been filed;

''(iii) that a block has been requested under this subsection; and

''(iv) of the effective date of the block.

''(4) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may at any time decline to block, or may rescind any block, of consumer information under this subsection if—

''(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

''(I) the block was issued, or the request for a block was made, based on a misrepresentation of fact by the consumer relevant to the request to block; or

''(II) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions;

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

''(iii) the consumer reporting agency determines—

''(I) that the consumer's dispute is frivolous or irrelevant in accordance with subsection (a)(3); or

''(II) after completion of its reinvestigation under subsection (a)(1), that the information disputed by the consumer is accurate, complete, and verifiable in accordance with subsection (a)(5).

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified, in the same manner and within the same time period as consumers are notified of the reinsertion of information under subsection (a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

''(5) EXCEPTIONS.—

''(A) NEGATIVE INFORMATION DATA.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

''(i) dishonored checks;

''(ii) accounts closed for cause;

''(iii) substantial overdrafts;

''(iv) abuse of automated teller machines; or

''(v) other information which indicates a risk of fraud occurring.

''(B) RESELLERS.—The provisions of this subsection do not apply to a consumer reporting agency if the consumer reporting agency—

''(i) does not maintain a file on the consumer from which consumer reports are produced;

''(ii) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

''(iii) informs the consumer, by any means, that the consumer may report the identity theft to the Federal Trade Commission to obtain consumer information regarding identity theft.''.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(j) Any person who knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681*i*(e)(1)) shall be fined under this title, imprisoned not more than 3 years, or both.''.

(c) STATUTE OF LIMITATIONS.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

''SEC. 618. JURISDICTION OF COURTS; LIMITATION ON ACTIONS.

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than 2 years from the date of the defendant's violation of any requirement under this title.

''(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be disclosed to an individual under this title, and the information misrepresented is material to the establishment of the liability of the defendant to that individual under this title, an action to enforce a liability created under this title may be brought at any time within 2 years after the date of discovery by the individual of the misrepresentation.

''(c) IDENTITY THEFT.—An action to enforce a liability created under this title may be brought not later than 4 years from the date of the defendant's violation if—

''(1) the plaintiff is the victim of an identity theft; or

''(2) the plaintiff—

''(A) has reasonable grounds to believe that the plaintiff is the victim of an identity theft; and

''(B) has not materially and willfully misrepresented such a claim.''.

SEC. 774. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) in subsection (b), by striking ''and the Commissioner of Immigration and Naturalization'' and inserting ''the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service,''; and

(2) in subsection (c), by striking ''2 years after the effective date of this Act.'' and inserting ''on December 28, 2004.''.

(b) CONSULTATION.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

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

''(d) CONSULTATION.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 773 of the Identity Theft Victims Assistance Act of 2002), including telecommunications and utility companies, and organizations representing consumers.''.

(c) REPORT DISTRIBUTION AND CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

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

''(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end

of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

''(A) the Committee on the Judiciary of the Senate;

''(B) the Committee on the Judiciary of the House of Representatives;

''(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(D) the Committee on Financial Services of the House of Representatives.'';

(2) in subparagraph (E), by striking ''and'' at the end; and

(3) by striking subparagraph (F) and inserting the following:

''(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;

''(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft;

''(H) a comprehensive description of how the Federal Government can best provide State and local law enforcement agencies with timely and current information regarding terrorists or terrorist activity where such information specifically relates to identity theft; and

''(I) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

''(i) facilitate more effective investigation and prosecution of cases involving—

''(I) identity theft; and

''(II) the creation and distribution of false identification documents;

''(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies; and

''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.''.

SA 4758. Mr. HATCH submitted an amendment intended to be proposed by him to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike line 13 and all that follows through page 99, line 7, and insert the following:

(4) ASSISTANCE IN ESTABLISHING DEPARTMENT.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) OFFICE OF TECHNOLOGY TRANSFER AND STANDARDS.—

(1) ESTABLISHMENT.—There is established within the Directorate of Science and Technology the Office of Technology Transfer and Standards (in this subsection referred to as the ''OTTS'').

(2) ASSISTANT SECRETARY.—

(A) APPOINTMENT.—There shall be an Assistant Secretary for Technology Transfer and Standards (in this subsection referred to as the ''Assistant Secretary''), who shall report to the Under Secretary for Science and Technology, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(B) PRINCIPAL RESPONSIBILITY.—The principal responsibility of the Assistant Secretary shall be to effectively and efficiently manage technology transfer and standards development and utilization within the Department.

(3) OTHER RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—The Assistant Secretary shall—

(A) encourage and coordinate the use of cooperative research and development agreements or other partnerships authorized by law within all Directorates of the Department, including—

(i) all cooperative research and development agreements under section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710);

(ii) the licensing of intellectual property in accordance with Federal law; and

(iii) all licensing agreements with nongovernmental organizations;

(B) establish the criteria, and make recommendations to the Under Secretary of Science and Technology, regarding the licensing or transfer of intellectual property to nongovernmental organizations;

(C) coordinate, in consultation with the Chief Information Officer, all standards utilized by the Department in the development of technology for homeland security, including—

(i) participation in standards development organizations within and outside of the Federal Government;

(ii) coordination of all efforts within the Department to ensure expeditious implementation and consistency of standards within and outside of the Department; and

(D) promulgate regulations and procedures necessary to accomplish the duties of the OTTS.

SA 4759. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, between lines 12 and 13, insert the following:

(n) UNIVERSITY-BASED CENTERS FOR TECHNOLOGY RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall administer research, development, demonstration, testing, and evaluation programs to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate; and

(B) distribute funds through grants, cooperative agreements, and contracts consistent with the policies and methods in this Act.

(2) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish, within 1 year of the date of enactment of this Act, a university-based center or centers for homeland security.

(3) PURPOSE.—The purpose of the center or centers established pursuant to paragraph (2) shall be to create a coordinated, university-based system to enhance the Nation's homeland security.

(4) SELECTION CRITERIA.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider each institution's—

(i) demonstrated expertise in the training of first responders;

(ii) demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare;

(iii) demonstrated expertise in emergency medical services;

(iv) demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures;

(v) strong affiliations with animal and plant diagnostic laboratories;

(vi) demonstrated expertise in food safety;

(vii) affiliation with Department of Agriculture laboratories or training centers;

(viii) demonstrated expertise in water and wastewater operations;

(ix) demonstrated expertise in port and waterway security;

(x) demonstrated expertise in multi-modal transportation;

(xi) nationally recognized programs in information security;

(xii) nationally recognized programs in engineering;

(xiii) demonstrated expertise in educational outreach and technical assistance;

(xiv) demonstrated expertise in border transportation and security; and

(xv) demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(5) DISCRETION OF THE SECRETARY.—The Secretary shall have the discretion to—

(A) determine the number of centers for homeland security that will be established; and

(B) consider additional criteria as necessary to meet the evolving needs of homeland security.

(6) REPORT.—The Secretary shall report to Congress concerning the implementation of this subsection, as necessary.

(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SA 4760. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 217, line 6, insert ''(other than the proviso in section 103(a)(1) of the Immigration and Nationality Act)'' after ''appears''.

On page 226, strike lines 19 and 20.

On page 226, line 21, strike ''(C)'' and insert ''(B)''.

On page 226, line 23, strike ''(D)'' and insert ''(C)''.

On page 243, line 10, strike ''All functions'' and insert ''Except as provided in title XIII, or any amendment made by that title, all functions''.

Beginning on page 252, strike line 22 and all that follows through line 5 on page 253.

Beginning on page 304, strike line 1 and all that follows through line 15 on page 312 and insert the following:

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1302.

SEC. 1302. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–

208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act as may be necessary to carry out the authorities and functions of immigration judges, administrative law judges, and to carry out such immigration appellate review functions as may be necessary, under this Act through the Executive Office of Immigration Review of the Department of Justice.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

SEC. 1303. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1302, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

SA 4761. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I of division A, add the following:

SEC. 172. ADMINISTRATIVE SUBPOENAS FOR TERRORISM INVESTIGATIONS.

Section 3486(a)(1)(A)(i)(I) of title 18, United States Code, is amended—

(1) by striking ''; or (II)'' and inserting '', (II)''; and

(2) by inserting ''or (III) any investigation under chapter 113B,'' after ''children,''.

SA 4762. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I of division A, add the following:

SEC. 172. ADMINISTRATIVE SUBPOENAS TO APPREHEND FUGITIVES.

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

''§ 1075. Administrative subpoenas to apprehend fugitives

''(a) DEFINITIONS.—In this section:

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

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

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

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

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

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

''(b) SUBPOENAS AND WITNESSES.—

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

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

''(c) SERVICE.—

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

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

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

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

''(d) CONTUMACY OR REFUSAL.—

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

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

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

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

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

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

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

''(e) GUIDELINES.—

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

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

''(f) NONDISCLOSURE REQUIREMENTS.—

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

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

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

''(B) flight from prosecution;

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

''(D) intimidation of potential witnesses; or

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

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

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

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

SA 4763. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for

other purposes; which was ordered to lie on the table; as follows:

Insert after section 312, the following:

SEC. 313. PROTECTIONS FOR HUMAN RESEARCH SUBJECTS.

The Secretary shall ensure that all research conducted or supported by the Department complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by the Secretary.

SA 4764. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike sections 304 and 305 and insert the following:

SEC. 304. RESEARCH PROJECTS.

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary to ensure consistency with the national policies and strategic plans for such activities.

SA 4765. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In section 503, strike paragraph (6) and insert the following:

(b) STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.—

(1) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(A) in subsection (a)(1)—

(i) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(ii) by inserting ''the Secretary of Health and Human Services and'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(iii) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(B) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SA 4766. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III, insert the following:

SEC. . ESTABLISHMENT OF ENTITY TO INVEST IN NEW TECHNOLOGIES.

The Secretary may provide financial support, to a nonprofit, nongovernment enterprise established by the Secretary for the purpose of identifying and investment mew technology that show promise for homeland security applications.

SA 4767. Mr. GRASSLEY (for himself, Mr. LEVIN, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 3 and 4, and insert the following:

''(B)(i) any provision of section 2302, relating to prohibited personnel practices; or

''(ii) any provision of law implementing any provision of law referred to in paragraphs (8) and (9) of section 2302(b);''.

SA 4768. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, strike line 20 and all that follows through page 90, line 2, and insert the following:

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit to the President of the Senate, the Speaker of the House of Representatives, and appropriate committees and subcommittees of Congress, a copy of such notice and a written response to such notice that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information that Congress or the committee seeks.

(e) OVERSIGHT RESPONSIBILITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.''.

SA 4769. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 24, after paragraph (19), insert the following:

(20) Developing and implementing a system of Interagency Homeland Security Fusion Centers, including regional centers, which shall—

(A) be responsible for coordinating the interagency fusion of tactical homeland security intelligence;

(B) facilitate information sharing between all of the participating agencies;

(C) provide intelligence cueing to the appropriate agencies concerning threats to the homeland security of the United States;

(D) be composed of individuals designated by the Secretary, and may include representatives of—

(i) the agencies described in clauses (i) and (ii) of subsection (a)(1)(B);

(ii) agencies within the Department;

(iii) any other Federal, State, or local agency the Secretary deems necessary; and

(iv) representatives of such foreign governments as the President may direct;

(E) be established in an appropriate number to adequately accomplish their mission;

(F) operate in conjunction with or in place of other intelligence or fusion centers currently in existence; and

(G) have an implementation plan submitted to Congress no later than 1 year after the date of enactment of this Act.

SA 4770. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

SEC. ——. REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.

No later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's

Integrated Deepwater System for 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SA 4771. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

SEC. . REQUIREMENT TO BUY CERTAIN ARTICLES FROM AMERICAN SOURCES.

(a) REQUIREMENT.—Except as provided in subsections (c) through (g), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code.

(f) EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(h) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(i) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

SA 4772. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REVIEW OF FOOD SAFETY.

(a) REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SA 4773. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) DEFINITION.—In this section, the term ''enterprise architecture''—

(1) means—

(A) a strategic information asset base, which defines the mission;

(B) the information necessary to perform the mission;

(C) the technologies necessary to perform the mission; and

(D) the transitional processes for implementing new technologies in response to changing mission needs; and

(2) includes—

(A) a baseline architecture;

(B) a target architecture; and

(C) a sequencing plan.

(b) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall—

(1) endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable;

(2) in furtherance of paragraph (1), oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation;

(3) as the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (2); and

(4) report to Congress on the development and implementation of the enterprise architecture under paragraph (2) in—

(A) each implementation progress report required under this Act; and

(B) each biennial report required under this Act.

(c) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(A) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(B) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(2) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan under paragraph (1).

(3) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall—

(A) ensure the implementation of the enterprise architecture developed under paragraph (1)(A); and

(B) coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (1)(A).

(4) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under paragraph (1), as necessary.

(5) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan under paragraph (1).

(6) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan under paragraph (1).

(7) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget, whose primary responsibility shall be to carry out the duties of the Director under this subsection.

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (c).

(e) CONTENT.—The enterprise architecture developed under subsection (c), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

SA 4774. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Subtitle ____—National Emergency Preparedness Enhancement

SEC. ____1. SHORT TITLE.

This subtitle may be cited as the ''National Emergency Preparedness Enhancement Act of 2002''.

SEC. ____2. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the ''Clearinghouse''). The Clearinghouse shall be headed by a Director.

(b) CONSULTATION.—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to the Strategy.

(c) DUTIES.—

(1) DISSEMINATION OF INFORMATION.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) CENTER.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) PUBLIC AWARENESS CAMPAIGN.—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section ____4. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. ____3. PILOT PROGRAM.

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. ____4. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is ''National Emergency Preparedness Week''.

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) FEDERAL AGENCY ACTIVITIES.—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

SA 4775. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 76, line 9, insert after the comma ''the Commandant of the Coast Guard,''.

SA 4776. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 152, line 24, insert after the word ''assets'' and before the comma insert the following—''(including ships, aircraft, helicopters, vehicles, the National Distress Response System, and other command/control/communications/computers/intelligence/surveillance/reconnaissance capabilities)''.

SA 4777. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 153, line 10, strike the words ''and vehicles' and insert in lieu thereof ''vehicles, the National Distress Response System, and other command/control/communications/computers/intelligence/surveillance/reconnaissance capabilities)''.

SA 4778. Mr. STEVENS (for himself, Ms. COLLINS, Ms. SNOWE, and Mr. HOLLINGS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 156, between lines 11 and 12 insert the following—

(i) COORDINATION WITH DEPARTMENT OF TRANSPORTATION.—The Coast Guard shall continue to coordinate with the Department of Transportation concerning regulatory matters that will remain under the authority of the Department of Transportation, but for which the Coast Guard has enforcement or other authority.

(j) CONSULTATION WITH COMMISSION ON OCEAN POLICY.—The Secretary shall consult with the Commission on Ocean Policy not later than February 1, 2003 regarding plans for integration and maintenance of living marine resources, marine environmental protection, and aids to navigation missions within the Department, and with respect to coordination with other federal agencies having authority in such areas.

(k) RESOURCE EVALUATION.—

(1) IN GENERAL.—No later than 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit a report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives, that—

(A) compares Coast Guard expenditures by mission area on an annualized basis before and after the terrorist attacks of September 11, 2001;

(B) estimates—

(i) annual funding amounts and personnel levels that would restore all Coast Guard mission areas to the readiness levels that existed before September 11, 2001;

(ii) annual funding amounts and personnel levels required to fulfill the Coast Guard's additional responsibilities for homeland security missions after September 11, 2001; and

(C) generally describes the services provided by the Coast Guard to the Department of Defense after September 11, 2001, states the cost of such services and identifies the Federal agency or agencies providing funds for those services.

(2) ANNUAL REPORT.—Within 30 days after the end of each fiscal year, the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House a report identifying resource allocations on an hourly and monetary basis for each nonhomeland security and homeland security Coast Guard mission for the fiscal year just ended.

(l) STRATEGIC PLAN.—(1) Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit a strategic plan to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House identifying mission targets for each Coast Guard mission for fiscal years 2003, 2004 and 2005 and the specific steps necessary to achieve those targets. Such plan shall also provide an analysis and recommendations for maximizing the efficient use of Federal resources and technologies to achieve all mission requirements.

(2) The Commandant shall consult with the Secretary of Commerce and other relevant agencies to ensure the plan provides for, e.g. coordinated development and application of communications and other technologies for use in meeting non-homeland security mission targets, such as conservation and management of living marine resources, and for setting priorities for fisheries enforcement.

(3) The Inspector General shall review the final plan, and provide an independent report with its views to the Committees within 90 days after the plan has been submitted by the Commandant.

(m) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—No later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard shall submit a report to the Committee on Commerce, Science, and Transportiaton of the Senate, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SA 4779. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAHAM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit facilities and equipment.

(2) review all available information on vulnerabilities on the aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit modes of transportation to terrorist attack; and

(3) review the steps taken by public and private entities since September 11, 2001, to improve aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security to determine their effectiveness at protecting passengers, freight (including hazardous materials), and transportation infrastructure from terrorist attack.

(b) Report.

(1) CONTEXT.—Not later than 1 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress, the Secretary, and the Secretary of Transportation a comprehensive report, without compromising national security, containing—

(A) the findings and conclusions from the reviews conducted under subsection (a); and

(B) proposed steps to improve any deficiencies found in aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security, including, to the extent possible the cost of implementing the steps.

(2) FORMAT.—The Comptroller General may submit the reporting in both classified and redacted format if the Comptroller General determines that such action is appropriate or necessary.

(c) RESPONSE OF THE SECRETARY.

(1) IN GENERAL.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(A) the response of the Department to the recommendations of the report; and

(B) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

(2) FORMATS.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is necessary or appropriate.

(d) REPORTS PROVIDED TO COMMITTEES.—In furnishing the report required by subsection (b), and the Secretary's response and recommendations under subsection (c), to the Congress, the Comptroller General and the Secretary, respectively, shall ensure that the report, response, and recommendations are transmitted to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, and the House of Representatives Committee on Transportation and Infrastructure.

SA 4780. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking ''Secretary of Transportation'' in the first sentence of subsection (a) and inserting ''Secretary concerned'';

(2) by striking ''Secretary'' each place it appears (except the first sentence of subsection (a)) and inserting ''Secretary concerned'';

(3) by striking ''Secretary's duties under chapters 203–213 of this title'' in subsection (d) and inserting ''duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)'';

(4) by striking ''chapter.'' in subsection (f) and inserting ''chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).''; and

(5) by adding at the end the following new subsection:

''(g) Definitions.—In this section—

''(1) the term 'safety' includes security; and

''(2) the term 'Secretary concerned' means—

''(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

''(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.''

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after ''1970.'' the following: ''When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.''

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting ''and laws, regulations, and order related to railroad security'' after ''safety'' in the first sentence;

(2) by inserting ''or security'' after ''safety'' each place it appears after the first sentence; and

(3) by striking ''Transportation'' in the second sentence and inserting ''Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),''.

SEC. . HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking ''transportation'' the first place it appears in subsection (b)(1) and inserting ''transportation, including security,'';

(2) by striking ''aspects'' in subsection (b)(1)(B) and inserting ''aspects, including security,''; and

(3) by adding at the end the following:

''(c) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.''.

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking ''chapter or a regulation prescribed under this chapter'' in subsection (a)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security'';

(2) by striking ''chapter or a regulation prescribed under this chapter.'' in subsection (a)(2) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.''; and

(3) by striking ''chapter or a regulation prescribed under this chapter,'' in subsection (b)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,''.

SA 4781. Mr. AKAKA (for himself, Mr. GRASSLEY, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking ''(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law,'' and inserting the following:

''(d) SCREENER PERSONNEL.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (except as provided under paragraph (2))''; and

(2) by adding at the end the following:

''(2) WHISTLEBLOWER PROTECTION.—

''(A) DEFINITION.—In this paragraph, the term ''security screener'' means—

''(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code, or

''(ii) an applicant for the position of a security screener under that subsection.

''(B) IN GENERAL.—Notwithstanding paragraph (1)—

''(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

''(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

''(C) COVERED POSITION.—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.''.

SEC. . WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) IN GENERAL.—Section 4212(a) of title 49, 12 United States Code, is amended—

(1) by striking ''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier'' and inserting the following:

''(a) DISCRIMINATION AGAINST EMPLOYEES.—

''(1) IN GENERAL.—No air carrier, contractor, subcontractor, or employer described under paragraph (2)'';

(2) by redesignating paragraph (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

''(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

''(A) an air carrier or contractor or subcontractor of an air carrier;

''(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

''(C) an employer of private screening personnel described in section 44919 or 44920 of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''; and (2) in clause (iii), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''.

SA 47782. Mr. AKAKA (for himself and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the director of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel, or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organization structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each director shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SA 4783. Mrs. CLINTON (for herself, Mr. INHOFE, Mr. LEAHY, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 81, between lines 12 and 13, insert the following:

(7) coordinating existing mental health services and interventions to ensure that the Department of Health and Human Services, the Department of Education, the Department of Justice, the Department of Defense, the Federal Emergency Management Agency, and the Department of Veterans Affairs, including the National Center for Post-Traumatic Stress Disorder, in conjunction with

the Department, assess, prepare, and respond to the psychological consequences of terrorist attacks or major disasters; and

SA 4784. Mrs. CLINTON (for herself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 81, between lines 12 and 13, insert the following:

(7) coordinating existing mental health services and interventions to ensure that the Department of Health and Human Services, the Department of Education, the Department of Justice, the Department of Defense, the Federal Emergency Management Agency, and the Department of Veterans Affairs, in conjunction with the Department, assess, prepare, and respond to the psychological consequences of terrorist attacks or major disasters; and

SA 4785. Mrs. CLINTON (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, between lines 7 and 8, insert the following:

(6) increase the security of the border between the United States and Canada and the ports of entry located along that border, and improving the coordination between the agencies responsible for maintaining that security; and

SA 4786. Mrs. CLINTON (for herself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 24, insert between lines 5 and 6 the following:

In this subsection, the term ''key resources'' includes National Park Service sites identified by the Secretary of the Interior that are so universally recognized as symbols of the United States and so heavily visited by the American and international public that such sites would likely be identified as targets of terrorist attacks, including the Statue of Liberty, Independence Hall and the Liberty Bell, the Arch in St. Louis, Missouri, Mt. Rushmore, and memorials and monuments in Washington, D.C.

SA 4787. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 135, between lines 10 and 11, insert the following:

SEC. 739C. LABOR STANDARDS.

(a) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act, except for Federal funds expended for disaster relief as provided in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), other than pursuant to section 405 (42 U.S.C. 5171), shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SA 4788. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. CONGRESSIONAL APPROVAL REQUIREMENT FOR TIPS.

Any and all activities of the Federal Government to implement the proposed component program of the Citizens Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited, unless expressly authorized by statute.

SA 4789. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, strike lines 10 and 11 and insert the following:

TITLE VI—LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2002

SEC. 601. SHORT TITLE.

This title may be cited as the ''Law Enforcement Officers Safety Act of 2002''.

SEC. 602. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

''§ 926B. Carrying of concealed firearms by qualified law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified law enforcement officer' means an employee of a governmental agency who—

''(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

''(2) is authorized by the agency to carry a firearm;

''(3) is not the subject of any disciplinary action by the agency;

''(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm; and

''(5) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

''926B. Carrying of concealed firearms by qualified law enforcement officers.''.

SEC. 603. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

''§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who—

''(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

''(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

''(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

''(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

''(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

''(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms; and

''(6) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

''926C. Carrying of concealed firearms by qualified retired law enforcement officers.''.

SA 4790. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 14, insert ''tribal,'' after ''State,''.

On page 7, after line 25, insert the following:

(8) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 8, line 1, strike ''(8)'' and insert ''(9)''.

On page 8, strike lines 5 through 8 and insert the following:

(10) LOCAL GOVERNMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''local government'' has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(B) EXCLUSION.—The term ''local government'' does not include an Indian tribe or tribal government.

On page 8, line 9, strike ''(10)'' and insert ''(11)''.

On page 8, line 13, strike ''(11)'' and insert ''(12)''.

On page 8, line 15, strike ''(12)'' and insert ''(13)''.

On page 8, strike line 17 and insert the following:

(14) TRIBAL GOVERNMENT.—The term ''tribal government'' means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.

(15) UNITED STATES.—The term ''United

On page 10, line 22, insert '', tribal,'' after ''State''.

On page 17, line 24, insert '', tribal,'' after ''State''.

On page 19, line 1, insert '', tribal,'' after ''State''.

On page 19, line 9, insert '', tribal,'' after ''State''.

On page 19, line 20, insert '', tribal,'' after ''State''.

On page 20, line 7, insert '', tribal,'' after ''State''.

On page 20, line 16, insert '', tribal,'' after ''State''.

On page 20, line 22, insert '', tribal,'' after ''State''.

On page 21, line 13, insert '', tribal,'' after ''State''.

On page 22, line 10, insert '', tribal,'' after ''State''.

On page 23, line 13, insert '', tribal,'' after ''State''.

On page 23, line 21, insert ''tribal,'' after ''State,''.

On page 31, line 1, insert '', tribal,'' after ''State''.

On page 34, line 12, insert '', tribal,'' after ''State''.

On page 34, line 13, insert '', tribal,'' after ''State''.

On page 34, line 23, insert '', tribal,'' after ''State''.

On page 35, line 8, insert '', tribal,'' after ''State''.

On page 38, line 1, strike ''state,'' and insert ''State, tribal,''.

On page 42, line 5, insert ''and the Indian Health Service'' after ''Service''.

On page 42, line 23, insert ''and the Indian Health Service'' after ''Service''.

On page 52, line 3, insert '', tribal,'' after ''State''.

On page 81, line 7, insert ''tribal,'' after ''State,''.

On page 83, line 17, insert ''tribal,'' after ''State,''.

On page 83, line 21, insert ''and the Indian Health Service'' after ''Service''.

On page 87, line 12, insert '', tribal,'' after ''State''.

On page 87, line 15, insert '', tribal,'' after ''State''.

On page 87, line 22, insert '', tribal,'' after ''State''.

On page 88, line 2, insert '', tribal,'' after ''State''.

On page 88, line 6, insert '', tribal,'' after ''State''.

On page 136, line 14, insert ''**, tribal,**'' after ''**state**''.

On page 136, line 20, insert '', a tribal government,'' after ''State''.

On page 137, line 1, insert '', a tribal government,'' after ''State''.

On page 137, line 11, insert '', tribal,'' after ''State''.

On page 137, line 19, insert ''**, tribal,**'' after ''**state**''.

On page 137, line 23, insert '', Indian tribes,'' after ''States''.

On page 138, line 12, insert '', TRIBAL,'' after ''STATE''.

On page 138, line 16, insert '', tribal government,'' after ''State''.

On page 138, line 23, insert '', Indian tribes,'' after ''States''.

On page 139, line 4, insert '', Indian tribes,'' after ''States''.

On page 139, line 11, insert ''or Indian tribe'' after ''State''.

On page 139, line 21, insert '', Indian tribe,'' after ''State''.

On page 140, line 6, insert '', Indian tribes,'' after ''States''.

On page 140, line 11, insert '', Indian tribes,'' after ''States''.

On page 140, line 14, insert ''or Indian tribe'' after ''State''.

On page 141, line 2, insert ''or Indian tribe'' after ''State''.

On page 141, lines 6 and 7, strike ''State and localities within the State'' and insert ''State or Indian tribe''.

On page 141, line 9, insert '', Indian tribe,'' after ''State''.

On page 141, line 11, insert '', Indian tribe,'' after ''State''.

On page 143, between lines 7 and 8, insert the following:

(4) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 143, line 8, strike ''(4)'' and insert ''(5)''.

On page 143, line 13, strike ''(5)'' and insert ''(6)''.

On page 143, lines 16 through 18, strike ''an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior''.

SA 4791. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REORGANIZATION AUTHORITY.

(a) EXPEDITED PROCEDURES.—

(1) DEFINITIONS.—As used in this section, the following definitions shall apply:

(A) AGENCY.—The term ''agency'' shall have the meaning given such term in section 181(1).

(B) IMPLEMENTATION BILL.—The term ''implementation bill'' means a bill—

(i) introduced as provided under subsection (e)(1); and

(ii) containing the proposed legislation included in the reorganization plan submitted to Congress under paragraph (3).

(C) CALENDAR DAY.—The term ''calendar day'' means a calendar day other than one on which either House is not in session because of an adjournment of more than 3 days to a date certain.

(2) IN GENERAL.—During the first 2 years after the date of enactment of this Act, if the President determines that changes in the organization of the Department, requiring a change in law, are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan, including proposed legislation to implement the plan, specifying the reorganizations that the President determines are necessary. Any such plan may only provide for—

(A) the abolition of all or a part of an agency transferred into the Department, provided that all functions vested by law in the agency are preserved within the Department;

(B) the elimination of a statutory position transferred into the Department, provided that all functions vested by law in the position are preserved within the Department;

(C) the creation of a new agency or subagency within the Department;

(D) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department, provided that all functions vested by law in the affected agencies are preserved within the Department; or

(E) the transfer within the Department of functions that were transferred into the Department.

(3) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit to Congress the reorganization plan, which shall include a detailed explanation.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day

and to each House while it is in session, except that no more than 2 plans may be pending before Congress at one time.

(4) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(ii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency; and

(iii) describe any improvements in homeland security management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(5) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any legislation has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section, except the President may not modify the proposed legislation included in the plan. The President, or the designee of the President, may withdraw the plan at any time, without prejudice to the right to resubmit a modified plan.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares that, by reason of a reorganization made by the plan, the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECT ON OTHER LAWS, PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (e) through (h) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementation bills with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3)); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(e) INTRODUCTION, REFERRAL, AND REPORT OR DISCHARGE.—

(1) INTRODUCTION.—On the first calendar day on which both Houses are in session, on or immediately following the date on which a reorganization plan is submitted to Congress under subsection (a)(3), a single implementation bill shall be introduced (by request)—

(A) in the Senate—

(i) by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate; or

(ii) by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate; and

(B) in the House of Representatives—

(i) by the Majority Leader of the House of Representatives, for himself and the Minority Leader of the House of Representatives; or

(ii) by Members of the House of Representatives designated by the Majority Leader and Minority Leader of the House of Representatives.

(2) REFERRAL.—

(A) IN GENERAL.—The implementation bills introduced under paragraph (1) shall be referred to the appropriate committee of jurisdiction in the Senate and the appropriate committee with primary jurisdiction in the House of Representatives.

(B) COMMITTEE MAY REPORT WITH AMENDMENTS.—A committee to which an implementation bill is referred under subparagraph (A) may report such bill to the respective House with amendments proposed to be adopted.

(C) GERMANENESS REQUIREMENT.—No amendment under subparagraph (B) may be proposed unless such amendment is—

(i) germane to the implementation bill; and

(ii) within the scope of the criteria listed in subparagraphs (A) through (D) of subsection (a)(2).

(3) REPORT ON DISCHARGE.—If a committee to which an implementation bill is referred has not reported such bill by the end of the 75th calendar day after the date of introduction of such bill—

(A) a motion to have the implementation bill discharged shall be in order and highly privileged, with debate limited to 1 hour equally divided; and

(B) upon being reported or discharged from the committee, such bill shall be placed on the appropriate calendar.

(f) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (e)) from further consideration of, an implementation bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the implementation bill. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the implementation bill is agreed to, the implementation bill shall remain the unfinished business of the respective House until disposed.

(2) DEBATE.—

(A) IMPLEMENTATION BILL.—Debate on the implementation bill, and on all debatable amendments, motions, and appeals in connection therewith, shall be limited to not more than 20 hours, which shall be divided equally between individuals favoring and individuals opposing the implementation bill.

(B) AMENDMENTS.—Debate on amendments offered on the floor shall be limited to not

more than 10 hours, to be divided equally between individuals favoring and opposing the bill.

(C) GERMANENESS REQUIREMENT.—No amendment shall be in order which is not germane to the bill and within the scope of the criteria listed in subparagraphs (A) through (D) of subsection (a)(2).

(D) SUBSEQUENT MOTIONS.—A motion to recommit the implementation bill is not in order. A motion to reconsider the vote by which the implementation bill is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the implementation bill, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the implementation bill shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to an implementation bill shall be decided without debate.

(g) CONFERENCE.—

(1) APPOINTMENT OF CONFEREES.—In the Senate, a motion to elect or to authorize the appointment of conferees by the presiding officer shall not be debatable.

(2) CONFERENCE REPORT.—Not later than 20 calendar days after the appointment of conferees, the conferees shall report to their respective Houses.

(h) COAST GUARD FUNCTIONS AND PERSONNEL.—Implementation bills shall not be considered subsequent Acts for the purposes of section 131(e) of this Act.

SA 4792. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Insert on page 24, line 4, of the Gramm-Miller Amendment No. 4738 to Lieberman Amendment No. 4471, a new (d)(19) to read as follows:

(d) RESPONSIBILITIES OF UNDER SECRETARY.—

(19) On behalf of the Secretary, pursuant to regulations promulgated in consultation with the statutory members of the National Security Council and advisors thereto, directing the intelligence community agencies as defined in this section, and other federal agencies to provide intelligence information, analyses of intelligence information and such other intelligence-related information that may be collected, possessed or prepared by the agency, subject to the disapproval of the President.

Insert on page 24, line 6, of the Gramm-Miller Amendment No. 4738 to Lieberman Amendment No. 4471, a new section 202 entitled ''HOMELAND SECURITY ASSESSMENT CENTER.'' After inserting the title, insert attached text with designated edits. Then strike page 24, line 6, through page 25, line 17 of the Gramm-Miller Amendment No. 4738 to Lieberman Amendment No. 4471, and renumber sections, subsections, paragraphs and subparagraphs accordingly, beginning the renumbering with ''FUNCTIONS TRANSFERRED'' which is currently on page 25, line 18, of the Gramm-Miller Amendment No. 4738 to Lieberman Amendment No. 4471.

SEC. 202. HOMELAND SECURITY ASSESSMENT.

(a) ESTABLISHMENT.—There is established in the Department the Homeland Security Assessment Center.

(b) HEAD.—The Assistant Secretary of Homeland Security for Information Analysis shall be the head of the Center.

(c) RESPONSIBILITIES.—The responsibilities of the Center shall be as follows:

(1) To assist the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection in discharging the responsibilities under section 201.

(2) To provide intelligence and information analysis and support to other elements of the Department.

(3) To perform such other duties as the Secretary shall provide.

(d) STAFF

(1) IN GENERAL.—The Secretary shall provide the Center with a staff of analysts having appropriate expertise and experience to assist the Center in discharging the responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(e) COOPERATION WITHIN DEPARTMENT.—The Secretary shall ensure that the Center cooperates closely with other officials of the Department having responsibility for infrastructure protection in order to provide the Secretary with a complete and comprehensive understanding of threats to homeland security and the actual or potential vulnerabilities of the United States in light of such threats.

(f) SUPPORT.—

(1) IN GENERAL.—The following elements of the Federal government shall provide personnel and resource support to the Center:

(A) Other elements of the Department designated by the Secretary for that purpose.

(B) The Federal Bureau of Investigation.

(C) Other elements of the intelligence community, as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(D) Such other elements of the Federal Government as the President considers appropriate.

(2) MEMORANDA OF UNDERSTANDING.—The Secretary may enter into one or more memoranda of understanding with the head of an element referred to in paragraph (1) regarding the provision of support to the Center under that paragraph.

(g) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Center in discharging the responsibilities under subsection 70(c), personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Other elements of the intelligence community as defined in this section.

(H) Any other agency of the Federal Government that the Secretary considers appropriate.

(3) COOPERATIVE AGREEMENTS.—Personnel shall be detailed under this subsection pursuant to cooperative agreements entered into for that purpose by the Secretary and the head of the agency concerned.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Center concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

SA 4793. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN TO THE BILL H.R. 5005, TO ESTABLISH THE DEPARTMENT of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 38, between lines 20 and 21, insert the following:

(11) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department; and

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SA 4794. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 48 after line 25, insert the following:

(c) LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT.

(i) AUTHORIZATION.—Government-owned, contractor-operated laboratories that receive funds available to the Department for national security programs are authorized to carry out laboratory-directed research and development, as defined in section 3132 of the National Defense Authorization Act for Fiscal Year 1991 (42 U.S.C. 7257a(d)).

(ii) REGULATIONS.—The Secretary shall prescribe regulations for the conduct of laboratory-directed research and development at laboratories under subsection (a).

(iii) FUNDING.—Of the funds provided by the Department to laboratories under subsection (a) for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

SA 4795. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the

bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 48, between lines 8 and 9, insert the following:

(e) OPERATIONAL TEST AND EVALUATION—

(1) PRINCIPAL OFFICIAL FOR OPERATIONAL TEST AND EVALUATION.—The Under Secretary is the official within the Department who, under the Secretary, is responsible for operational test and evaluation activities of the Department. As such, the Under Secretary is the principal adviser to the Secretary regarding such activities and, subject to the authority, direction, and control of the Secretary, shall, with respect to the conduct of such activities, prescribe policies and procedures, engage in monitoring and review, require prompt reporting and disclosure within the Department, and coordinate joint operational testing involving two or more Under Secretaries.

(2) ANNUAL REPORT TO CONGRESS.—The Under Secretary shall submit an annual report to Congress not later than February 15 of each year on the conduct of operational test and evaluation activities of the Department, which shall include an assessment of the operational test and evaluation infrastructure of the Department and, for each major system operationally tested and evaluated during the year covered by the report, information regarding the major system's mission, background technical and programmatic data, and the results of tests and evaluations performed thereon.

(3) DEFINITIONS.—In this paragraph:

(A) MAJOR SYSTEM.—The term ''major system'' has the meaning given such term in section 4(9) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(9)).

(B) OPERATIONAL TEST AND EVALUATION.—The term ''operational test and evaluation,'' means a test, under realistic conditions, of any item (or key component) of a technology, of a device, or of equipment for the purpose of determining the effectiveness and suitability of the technology, device, or equipment for use by typical users to meet homeland security needs or objectives, together with an evaluation of the results of such test.

SA 4796. Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 220, insert before line 16 the following:

SEC. 1124. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

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

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SA 4797. Mr. FEINGOLD (for himself, and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 707. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 708. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 709. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights

and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4798. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or

grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4799. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4800. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 707. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 708. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 709. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

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

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4801. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 706. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 707. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 708. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

SEC. 709. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

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

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4802. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment

SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place add the following:

( ) SEC. . Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1542) is amended—

(1) in subsection (a)(2)(A)(ii)—

(A) by striking ''February 17, 1999,'' and inserting ''May 17, 1996, May 7, 1997, February 17, 1999, October 22, 1999, December 15, 1999 (or who has or could have been subsequently joined in a suit filed on December 15, 1999 pursuant to Fed. R. Civ. P. 20(a)),'' and

(B) by striking ''or July 27, 2000'' and inserting ''April 3, 2000, October 27, 2000, or July 27, 2000'';

(2) by amending subsection (b)(1) to read as follows:

''(b)(1) JUDGMENTS AGAINST DESIGNATED STATE SPONSORS OF TERRORISM.—For purposes of funding the payments under subsection (a) in the case of judgments and sanctions entered against a government of a designated state sponsor of terrorism or its entities, the President shall vest and liquidate up to and not exceeding the amount of property of such government (including the agencies or instrumentalities controlled in fact by such government or in which such government owns directly or indirectly controlling interest) and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, or regulation issued thereunder.''

(3) by amending subsection (b)(2)(B) to read as follows:

''(B) the Iran Foreign Military Sales Program Account within the Foreign Military Sales Fund on the date of enactment of this Act (less amounts therein as to which the United States has an interest in subrogation arising prior to the date of enactment of this Act);''; and

(4) in subsection (c)—

(A) by inserting after the phrase ''to the extent of the payments'' the phrase ''made prior to the date of enactment of this Act''.

SA 4808. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, insert between lines 7 and 8 the following:

SEC. 702. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to be headed by a director, which shall oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland;

(4) develop a process for receiving meaningful input from State and local government to assist the development of homeland security activities; and

(5) prepare an annual report, that contains—

(A) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(B) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(C) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(D) proposals to increase the coordination of Department priorities within each State and between the States.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) DESIGNATION.—The Secretary shall designate in each State and the District of Columbia not less than 1 employee of the Department to serve as the Homeland Security Liaison Officer in that State or District.

(2) DUTIES.—Each Homeland Security Liaison Officer designated under paragraph (1) shall—

(A) provide State and local government officials with regular information, research, and technical support to assist local efforts at securing the homeland;

(B) provide coordination between the Department and State and local first responders, including—

(i) law enforcement agencies;

(ii) fire and rescue agencies;

(iii) medical providers;

(iv) emergency service providers; and

(v) relief agencies;

(C) notify the Department of the State and local areas requiring additional information, training, resources, and security;

(D) provide training, information, and education regarding homeland security for State and local entities;

(E) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(F) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(G) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner;

(H) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security;

(I) consult with State and local government officials, including emergency managers, to coordinate efforts and avoid duplication; and

(J) coordinate with Homeland Security Liaison Officers in neighboring States to—

(i) address shared vulnerabilities; and

(ii) identify opportunities to achieve efficiencies through interstate activities .

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS AND STATE, LOCAL, AND CROSS-JURISDICTIONAL ISSUES.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders and State, Local, and Cross-jurisdictional Issues (in this section referred to as the ''Interagency Committee'', that shall—

(A) ensure coordination, with respect to homeland security functions, among the Federal agencies involved with—

(i) State, local, and regional governments;

(ii) State, local, and community-based law enforcement;

(iii) fire and rescue operations; and

(iv) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee shall be composed of—

(A) a representative of the Office for State and Local Government Coordination;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee shall meet—

(A) at the call of the Secretary; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Interagency Committee (in this section referred to as the ''Advisory Council'').

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee.

(B) DUTIES.—The Advisory Council shall—

(i) develop a plan to disseminate information on first response best practices;

(ii) identify and educate the Secretary on the latest technological advances in the field of first response;

(iii) identify probable emerging threats to first responders;

(iv) identify needed improvements to first response techniques and training;

(v) identify efficient means of communication and coordination between first responders and Federal, State, and local officials;

(vi) identify areas in which the Department can assist first responders; and

(vii) evaluate the adequacy and timeliness of resources being made available to local first responders.

(C) REPRESENTATION.—The Interagency Committee shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee not less frequently than once every 3 months.

SA 4809. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 21, strike all through page 125, line 5 and insert the following:

SEC. ___. REORGANIZATIONS AND DELEGATIONS.

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) EXPEDITED PROCEDURES.—

(1) DEFINITIONS.—In subsections (b) through (i), the following definitions shall apply:

(A) AGENCY.—The term ''agency'' shall have the meaning given such term in section 181(1).

(B) IMPLEMENTATION BILL.—The term ''implementation bill'' means a bill—

(i) introduced as provided under subsection (f)(1); and

(ii) containing the proposed legislation included in the reorganization plan submitted to Congress under subsection (b)(3).

(C) CALENDAR DAY.—The term ''calendar day'' means a calendar day other than one on which either House is not in session because of an adjournment of more than 3 days to a date certain.

(2) IN GENERAL.—During the first 2 years after the date of enactment of this Act, if the President determines that changes in the organization of the Department, requiring a change in law, are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan, including proposed legislation to implement the plan, specifying the reorganizations that the President determines are necessary. Any such plan may only provide for—

(A) the abolition of all or a part of an agency transferred into the Department, provided that all functions vested by law in the agency are preserved within the Department;

(B) the elimination of a statutory position transferred into the Department, provided that all functions vested by law in the position are preserved within the Department;

(C) the creation of a new agency or subagency within the Department;

(D) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department, provided that all functions vested by law in the affected agencies are preserved within the Department; or

(E) the transfer within the Department of functions that were transferred into the Department.

(3) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit to Congress the reorganization plan, which shall include a detailed explanation.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(4) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(ii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency; and

(iii) describe any improvements in homeland security management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(5) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any legislation has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section, except the President may not modify the proposed legislation included in the plan. The President, or the designee of the President, may withdraw the plan at any time, without prejudice to the right to resubmit a modified plan.

(c) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares that, by reason of a reorganization made by the plan, the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances and other funds only if such balances are used for the purposes for which the appropriation was originally made.

(d) EFFECT ON OTHER LAWS, PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the

function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementation bills with respect to any reorganization plans transmitted to Congress (in accordance with subsection (b)(3)); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(f) INTRODUCTION, REFERRAL, AND REPORT OR DISCHARGE.—

(1) INTRODUCTION.—On the first calendar day on which both Houses are in session, on or immediately following the date on which a reorganization plan is submitted to Congress under subsection (b)(3), a single implementation bill shall be introduced (by request)—

(A) in the Senate—

(i) by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate; or

(ii) by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate; and

(B) in the House of Representatives—

(i) by the Majority Leader of the House of Representatives, for himself and the Minority Leader of the House of Representatives; or

(ii) by Members of the House of Representatives designated by the Majority Leader and Minority Leader of the House of Representatives.

(2) REFERRAL.—

(A) IN GENERAL.—The implementation bills introduced under paragraph (1) shall be referred to the appropriate committee of jurisdiction in the Senate and the appropriate committee with primary jurisdiction in the House of Representatives.

(B) COMMITTEE MAY REPORT WITH AMENDMENTS.—A committee to which an implementation bill is referred under subparagraph (A) may report such bill to the respective House with amendments proposed to be adopted.

(C) GERMANENESS REQUIREMENT.—No amendment under subparagraph (B) may be proposed unless such amendment is—

(i) germane to the implementation bill; and

(ii) within the scope of the criteria listed in subparagraphs (A) through (D) of subsection (b)(2).

(3) REPORT ON DISCHARGE.—If a committee to which an implementation bill is referred has not reported such bill by the end of the 75th calendar day after the date of introduction of such bill—

(A) a motion to have the implementation bill discharged shall be in order and highly privileged, with debate limited to 1 hour equally divided; and

(B) upon being reported or discharged from the committee, such bill shall be placed on the appropriate calendar.

(g) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (f)) from further consideration of, an implementation bill, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the implementation bill. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the implementation bill is agreed to, the implementation bill shall remain the unfinished business of the respective House until disposed.

(2) DEBATE.—

(A) IMPLEMENTATION BILL.—Debate on the implementation bill, and on all debatable amendments, motions, and appeals in connection therewith, shall be limited to not more than 20 hours, which shall be divided equally between individuals favoring and individuals opposing the implementation bill.

(B) AMENDMENTS.—Debate on amendments offered on the floor shall be limited to not more than 10 hours, to be divided equally between individuals favoring and opposing the bill.

(C) GERMANENESS REQUIREMENT.—No amendment shall be in order which is not germane to the bill and within the scope of the criteria listed in subparagraphs (A) through (D) of subsection (b)(2).

(D) SUBSEQUENT MOTIONS.—A motion to recommit the implementation bill is not in order. A motion to reconsider the vote by which the implementation bill is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the implementation bill, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the implementation bill shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to an implementation bill shall be decided without debate.

(h) CONFERENCE.—

(1) APPOINTMENT OF CONFEREES.—In the Senate, a motion to elect or to authorize the appointment of conferees by the presiding officer shall not be debatable.

(2) CONFERENCE REPORT.—No later than 20 calendar days after the appointment of conferees, the conferees shall report to their respective Houses.

(i) COAST GUARD FUNCTIONS AND PERSONNEL.—Implementation bills shall not be considered subsequent Acts for the purposes of section 131(e) of this Act.

(j) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SA 4810. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 16, strike line 1 and all that follows through page 31, line 2, and insert the following:

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

SEC. 201. DIRECTORATE OF INTELLIGENCE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—

(A) IN GENERAL.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(B) SUPPORT TO DIRECTORATE.—The Directorate of Intelligence shall communicate, coordinate, and cooperate with—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community, as defined under section 3 of the National Security Act of 1947 (50 U.S.C. 401a), including the Office of the Director of Central Intelligence, the National Intelligence Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(C) INFORMATION ON INTERNATIONAL TERRORISM.—

(i) DEFINITIONS.—In this subparagraph, the terms ''foreign intelligence'' and ''counterintelligence'' shall have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(ii) PROVISION OF INFORMATION TO COUNTERTERRORIST CENTER.—In order to ensure that the Secretary is provided with appropriate analytical products, assessments,

and warnings relating to threats of terrorism against the United States and other threats to homeland security, the Director of Central Intelligence (as head of the intelligence community with respect to foreign intelligence and counterintelligence), the Attorney General, and the heads of other agencies of the Federal Government shall ensure that all intelligence and other information relating to international terrorism is provided to the Director of Central Intelligence's Counterterrorist Center.

(iii) ANALYSIS OF INFORMATION.—The Director of Central Intelligence shall ensure the analysis by the Counterterrorist Center of all intelligence and other information provided the Counterterrorist Center under clause (ii).

(iv) ANALYSIS OF FOREIGN INTELLIGENCE.—The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1)(A) Receiving and analyzing law enforcement and other information from agencies of the United States Government, State and local government agencies (including law enforcement agencies), and private sector entities, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the Director of Central Intelligence's Counterterrorist Center in order to—

(i) identify and assess the nature and scope of threats to the homeland; and

(ii) detect and identify threats of terrorism against the United States and other threats to homeland security.

(B) Nothing in this paragraph shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—

(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Representing the Department in procedures to establish requirements and priorities in the collection of national intelligence for purposes of the provision to the executive branch under section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) of national intelligence relating to foreign terrorist threats to the homeland.

(4) Consulting with the Attorney General or the designees of the Attorney General, and other officials of the United States Government to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats, such as terrorism, to the homeland.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department and the appropriate officers of the agencies described under subsection (a)(1)(B), a secure communications and information technology infrastructure, and advanced analytical tools, to carry out the mission of the Directorate.

(7) Developing, in conjunction with the Chief Information Officer of the Department and appropriate officers of the agencies described under subsection (a)(1)(B), appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—

(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purposes of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interest of United States persons as defined under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(9) Providing, through the Secretary, to the appropriate law enforcement or intelligence agency, information and analysis relating to threats.

(10) Coordinating, or where appropriate providing, training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department, including training and support under section 908 of the USA PATRIOT Act of 201 (Public Law 107–56).

(11) Reviewing, analyzing and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the United States Government and between the United States Government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Unless otherwise directed by the President, the Secretary shall have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organizations, and to other areas of responsibility as described in this division, that may be collected, possessed, or prepared, by any other United States Government agency.

(2) ADDITIONAL INFORMATION.—As the President may further provide, the Secretary shall receive additional information requested by the Secretary from the agencies described under subsection (a)(1)(B).

(3) OBTAINING INFORMATION.—All information shall be provided to the Secretary consistent with the requirements of subsection (b)(8) unless otherwise determined by the President.

(4) COOPERATIVE ARRANGEMENTS.—The Secretary may enter into cooperative arrangements with agencies described under subsection (a)(1)(B) to share material on a regular or routine basis, including arrangements involving broad categories of material, and regardless of whether the Secretary has entered into any such cooperative arrangement, all agencies described under subsection (a)(1)(B) shall promptly provide information under this subsection.

(d) AUTHORIZATION TO SHARE LAW ENFORCEMENT INFORMATION.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, or national security official for purposes of information sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(e) ADDITIONAL RISK ANALYSIS AND RISK MANAGEMENT RESPONSIBILITIES.—The Under Secretary for Intelligence shall, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, be responsible for—

(1) developing analysis concerning the means and methods terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) supporting experiments, tests, and inspections to identify weaknesses in homeland defenses;

(3) developing countersurveillance techniques to prevent attacks;

(4) conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks, the probability of successful attacks, and the feasibility of specific countermeasures.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intelligence shall be staffed, in part, by analysts as requested by the Secretary and assigned by the agencies described under subsection (a)(1)(B). The analysts shall be assigned by reimbursable detail for periods as determined necessary by the Secretary in conjunction with the head of the assigning agency. No such detail may be undertaken without the consent of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN DEPARTMENT.—The Secretary may assign employees of the Department by reimbursable detail to the Directorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The President, or the designee of the President, shall prescribe regulations to provide that service described under paragraph (1) or (2), or service by employees within the Directorate, shall be considered a positive factor for selection to positions of greater authority within all agencies described under subsection (a)(1)(B).

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central

Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section 32 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

SEC. 202. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments are provided by the Department or others) to identify priorities and support protective measures by the Department, by the other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) Developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate. This shall include, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, establishing procedures, mechanisms, or units for the purpose of utilizing intelligence to identify vulnerabilities and protective measures in—

(A) public health infrastructure;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;

SA 4811. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following:

DIVISION E—E-GOVERNMENT ACT OF 2002

SEC. 3001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''E-Government Act of 2002''.

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

Sec. 3001. Short title; table of contents.
Sec. 3002. Findings and purposes.
TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES
Sec. 3101. Management and promotion of electronic Government services.
Sec. 3102. Conforming amendments.
TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES
Sec. 3201. Definitions.
Sec. 3202. Federal agency responsibilities.
Sec. 3203. Compatibility of Executive agency methods for use and acceptance of electronic signatures.
Sec. 3204. Federal Internet portal.
Sec. 3205. Federal courts.
Sec. 3206. Regulatory agencies.
Sec. 3207. Accessibility, usability, and preservation of Government information.
Sec. 3208. Privacy provisions.
Sec. 3209. Federal Information Technology workforce development.
Sec. 3210. Common protocols for geographic information systems.
Sec. 3211. Share-in-savings program improvements.
Sec. 3212. Integrated reporting study and pilot projects.
Sec. 3213. Community technology centers.
Sec. 3214. Enhancing crisis management through advanced information technology.
Sec. 3215. Disparities in access to the Internet.
Sec. 3216. Notification of obsolete or counterproductive provisions.
TITLE XXXIII—GOVERNMENT INFORMATION SECURITY
Sec. 3301. Information security.
TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES
Sec. 3401. Authorization of appropriations.
Sec. 3402. Effective dates.

SEC. 3002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The use of computers and the Internet is rapidly transforming societal interactions and the relationships among citizens, private businesses, and the Government.

(2) The Federal Government has had uneven success in applying advances in information technology to enhance governmental functions and services, achieve more efficient performance, increase access to Government information, and increase citizen participation in Government.

(3) Most Internet-based services of the Federal Government are developed and presented separately, according to the jurisdictional boundaries of an individual department or agency, rather than being integrated cooperatively according to function or topic.

(4) Internet-based Government services involving interagency cooperation are especially difficult to develop and promote, in part because of a lack of sufficient funding mechanisms to support such interagency cooperation.

(5) Electronic Government has its impact through improved Government performance and outcomes within and across agencies.

(6) Electronic Government is a critical element in the management of Government, to be implemented as part of a management framework that also addresses finance, procurement, human capital, and other challenges to improve the performance of Government.

(7) To take full advantage of the improved Government performance that can be achieved through the use of Internet-based technology requires strong leadership, better organization, improved interagency collaboration, and more focused oversight of agency compliance with statutes related to information resource management.

(b) PURPOSES.—The purposes of this division are the following:

(1) To provide effective leadership of Federal Government efforts to develop and promote electronic Government services and processes by establishing an Administrator of a new Office of Electronic Government within the Office of Management and Budget.

(2) To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

(3) To promote interagency collaboration in providing electronic Government services, where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal electronic Government processes, where this collaboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Government to achieve agency missions and program performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services.

(6) To reduce costs and burdens for businesses and other Government entities.

(7) To promote better informed decision-making by policy makers.

(8) To promote access to high quality Government information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations.

(11) To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

SEC. 3101. MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES.

(a) IN GENERAL.—Title 44, United States Code, is amended by inserting after chapter 35 the following:

''CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

''Sec.
''3601. Definitions.
''3602. Office of Electronic Government.
''3603. Chief Information Officers Council.
''3604. E-Government Fund.
''3605. E-Government report.

''§ 3601. Definitions

''In this chapter, the definitions under section 3502 shall apply, and the term—

''(1) 'Administrator' means the Administrator of the Office of Electronic Government established under section 3602;

''(2) 'Council' means the Chief Information Officers Council established under section 3603;

''(3) 'electronic Government' means the use by the Government of web-based Internet applications and other information technologies, combined with processes that implement these technologies, to—

''(A) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or

''(B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation;

''(4) 'enterprise architecture'—

''(A) means—

''(i) a strategic information asset base, which defines the mission;

''(ii) the information necessary to perform the mission;

''(iii) the technologies necessary to perform the mission; and

''(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

''(B) includes—

''(i) a baseline architecture;

''(ii) a target architecture; and

''(iii) a sequencing plan;

''(5) 'Fund' means the E-Government Fund established under section 3604;

''(6) 'interoperability' means the ability of different operating and software systems, applications, and services to communicate and exchange data in an accurate, effective, and consistent manner;

''(7) 'integrated service delivery' means the provision of Internet-based Federal Government information or services integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction; and

''(8) 'tribal government' means the governing body of 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.

''§ 3602. Office of Electronic Government

''(a) There is established in the Office of Management and Budget an Office of Electronic Government.

''(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

''(c) The Administrator shall assist the Director in carrying out—

''(1) all functions under this chapter;

''(2) all of the functions assigned to the Director under title XXXII of the E-Government Act of 2002; and

''(3) other electronic government initiatives, consistent with other statutes.

''(d) The Administrator shall assist the Director and the Deputy Director for Management and work with the Administrator of the Office of Information and Regulatory Affairs in setting strategic direction for implementing electronic Government, under relevant statutes, including—

''(1) chapter 35;

''(2) division E of the Clinger-Cohen Act of 1996 (division E of Public Law 104–106; 40 U.S.C. 1401 et seq.);

''(3) section 552a of title 5 (commonly referred to as the Privacy Act);

''(4) the Government Paperwork Elimination Act (44 U.S.C. 3504 note);

''(5) the Government Information Security Reform Act; and

''(6) the Computer Security Act of 1987 (40 U.S.C. 759 note).

''(e) The Administrator shall work with the Administrator of the Office of Information and Regulatory Affairs and with other offices within the Office of Management and Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to—

''(1) capital planning and investment control for information technology;

''(2) the development of enterprise architectures;

''(3) information security;

''(4) privacy;

''(5) access to, dissemination of, and preservation of Government information;

''(6) accessibility of information technology for persons with disabilities; and

''(7) other areas of electronic Government.

''(f) Subject to requirements of this chapter, the Administrator shall assist the Director by performing electronic Government functions as follows:

''(1) Advise the Director on the resources required to develop and effectively operate and maintain Federal Government information systems.

''(2) Recommend to the Director changes relating to Governmentwide strategies and priorities for electronic Government.

''(3) Provide overall leadership and direction to the executive branch on electronic Government by working with authorized officials to establish information resources management policies and requirements, and by reviewing performance of each agency in acquiring, using, and managing information resources.

''(4) Promote innovative uses of information technology by agencies, particularly initiatives involving multiagency collaboration, through support of pilot projects, research, experimentation, and the use of innovative technologies.

''(5) Oversee the distribution of funds from, and ensure appropriate administration and coordination of, the E-Government Fund established under section 3604.

''(6) Coordinate with the Administrator of General Services regarding programs undertaken by the General Services Administration to promote electronic government and the efficient use of information technologies by agencies.

''(7) Lead the activities of the Chief Information Officers Council established under section 3603 on behalf of the Deputy Director for Management, who shall chair the council.

''(8) Assist the Director in establishing policies which shall set the framework for information technology standards for the Federal Government under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), to be developed by the National Institute of Standards and Technology and promulgated by the Secretary of Commerce, taking into account, if appropriate, recommendations of the Chief Information Officers Council, experts, and interested parties from the private and nonprofit sectors and State, local, and tribal governments, and maximizing the use of commercial standards as appropriate, as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(9) Sponsor ongoing dialogue that—

''(A) shall be conducted among Federal, State, local, and tribal government leaders on electronic Government in the executive, legislative, and judicial branches, as well as leaders in the private and nonprofit sectors, to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, using, and managing information resources;

''(B) is intended to improve the performance of governments in collaborating on the use of information technology to improve the delivery of Government information and services; and

''(C) may include—

''(i) development of innovative models—

''(I) for electronic Government management and Government information technology contracts; and

''(II) that may be developed through focused discussions or using separately sponsored research;

''(ii) identification of opportunities for public-private collaboration in using Internet-based technology to increase the efficiency of Government-to-business transactions;

''(iii) identification of mechanisms for providing incentives to program managers and other Government employees to develop and implement innovative uses of information technologies; and

''(iv) identification of opportunities for public, private, and intergovernmental collaboration in addressing the disparities in access to the Internet and information technology.

''(10) Sponsor activities to engage the general public in the development and implementation of policies and programs, particularly activities aimed at fulfilling the goal of using the most effective citizen-centered strategies and those activities which engage multiple agencies providing similar or related information and services.

''(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(12) Coordinate with the Administrator of the Office of Federal Procurement Policy to ensure effective implementation of electronic procurement initiatives.

''(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

''(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

''(B) ensuring compliance with those standards through the budget review process and other means.

''(14) Oversee the development of enterprise architectures within and across agencies.

''(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes.

''(16) Administer the Office of Electronic Government established under section 3602.

''(17) Assist the Director in preparing the E-Government report established under section 3605.

''(g) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all

functions under the E-Government Act of 2002.

"§ 3603. Chief Information Officers Council

''(a) There is established in the executive branch a Chief Information Officers Council.

''(b) The members of the Council shall be as follows:

''(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

''(2) The Administrator of the Office of Electronic Government.

''(3) The Administrator of the Office of Information and Regulatory Affairs.

''(4) The chief information officer of each agency described under section 901(b) of title 31.

''(5) The chief information officer of the Central Intelligence Agency.

''(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

''(7) Any other officer or employee of the United States designated by the chairperson.

''(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

''(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

''(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

''(3) The Administrator of General Services shall provide administrative and other support for the Council.

''(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.

''(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

''(f) The Council shall perform functions that include the following:

''(1) Develop recommendations for the Director on Government information resources management policies and requirements.

''(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

''(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

''(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title XXXII of the E-Government Act of 2002.

''(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) and promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(6) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management.

''(7) Work with the Archivist of the United States to assess how the Federal Records Act can be addressed effectively by Federal information resources management activities.

"§ 3604. E-Government Fund

''(a)(1) There is established in the Treasury of the United States the E-Government Fund.

''(2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by the Administrator of the Office of Electronic Government, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically.

''(3) Projects under this subsection may include efforts to—

''(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments);

''(B) make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and

''(C) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.

''(b)(1) The Administrator shall—

''(A) establish procedures for accepting and reviewing proposals for funding;

''(B) consult with interagency councils, including the Chief Information Officers Council, the Chief Financial Officers Council, and other interagency management councils, in establishing procedures and reviewing proposals; and

''(C) assist the Director in coordinating resources that agencies receive from the Fund with other resources available to agencies for similar purposes.

''(2) When reviewing proposals and managing the Fund, the Administrator shall observe and incorporate the following procedures:

''(A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agency-wide authority on behalf of the head of the agency, who shall report directly to the head of the agency.

''(B) Projects shall adhere to fundamental capital planning and investment control processes.

''(C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would be coordinated with support from the Fund, and include plans for potential continuation of projects after all funds made available from the Fund are expended.

''(D) After considering the recommendations of the interagency councils, the Director, assisted by the Administrator, shall have final authority to determine which of the candidate projects shall be funded from the Fund.

''(E) Agencies shall assess the results of funded projects.

''(c) In determining which proposals to recommend for funding, the Administrator—

''(1) shall consider criteria that include whether a proposal—

''(A) identifies the group to be served, including citizens, businesses, the Federal Government, or other governments;

''(B) indicates what service or information the project will provide that meets needs of groups identified under subparagraph (A);

''(C) ensures proper security and protects privacy;

''(D) is interagency in scope, including projects implemented by a primary or single agency that—

''(i) could confer benefits on multiple agencies; and

''(ii) have the support of other agencies; and

''(E) has performance objectives that tie to agency missions and strategic goals, and interim results that relate to the objectives; and

''(2) may also rank proposals based on criteria that include whether a proposal—

''(A) has Governmentwide application or implications;

''(B) has demonstrated support by the public to be served;

''(C) integrates Federal with State, local, or tribal approaches to service delivery;

''(D) identifies resource commitments from nongovernmental sectors;

''(E) identifies resource commitments from the agencies involved;

''(F) uses web-based technologies to achieve objectives;

''(G) identifies records management and records access strategies;

''(H) supports more effective citizen participation in and interaction with agency activities that further progress toward a more citizen-centered Government;

''(I) directly delivers Government information and services to the public or provides the infrastructure for delivery;

''(J) supports integrated service delivery;

''(K) describes how business processes across agencies will reflect appropriate transformation simultaneous to technology implementation; and

''(L) is new or innovative and does not supplant existing funding streams within agencies.

''(d) The Fund may be used to fund the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(e) None of the funds provided from the Fund may be transferred to any agency until 15 days after the Administrator of the General Services Administration has submitted to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the appropriate authorizing committees of the Senate and the House of Representatives, a notification and description of how the funds are to be allocated and how the expenditure will further the purposes of this chapter.

''(f)(1) The Director shall report annually to Congress on the operation of the Fund, through the report established under section 3605.

''(2) The report under paragraph (1) shall describe—

''(A) all projects which the Director has approved for funding from the Fund; and

''(B) the results that have been achieved to date for these funded projects.

''(g)(1) There are authorized to be appropriated to the Fund—

''(A) $45,000,000 for fiscal year 2003;

''(B) $50,000,000 for fiscal year 2004;

''(C) $100,000,000 for fiscal year 2005;

''(D) $150,000,000 for fiscal year 2006; and

''(E) such sums as are necessary for fiscal year 2007.

''(2) Funds appropriated under this subsection shall remain available until expended.

"§ 3605. E-Government report

''(a) Not later than March 1 of each year, the Director shall submit an E-Government status report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(b) The report under subsection (a) shall contain—

''(1) a summary of the information reported by agencies under section 3202(f) of the E-Government Act of 2002;

''(2) the information required to be reported by section 3604(f); and

''(3) a description of compliance by the Federal Government with other goals and provisions of the E-Government Act of 2002.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

"36. Management and Promotion of Electronic Government Services .. 3601".

SEC. 3102. CONFORMING AMENDMENTS.

(a) ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.—

(1) IN GENERAL.—The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by inserting after section 112 the following:

"SEC. 113. ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.

''The Administrator of General Services shall consult with the Administrator of the Office of Electronic Government on programs undertaken by the General Services Administration to promote electronic Government and the efficient use of information technologies by Federal agencies.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for the Federal Property and Administrative Services Act of 1949 is amended by inserting after the item relating to section 112 the following:

''Sec. 113. Electronic Government and information technologies.''.

(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS.—Section 503(b) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), and (9), as paragraphs (6), (7), (8), (9), and (10), respectively; and

(2) by inserting after paragraph (4) the following:

''(5) Chair the Chief Information Officers Council established under section 3603 of title 44.''.

(c) OFFICE OF ELECTRONIC GOVERNMENT.—

(1) IN GENERAL.—Chapter 5 of title 31, United States Code, is amended by inserting after section 506 the following:

"§ 507. Office of Electronic Government

''The Office of Electronic Government, established under section 3602 of title 44, is an office in the Office of Management and Budget.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 31, United States Code, is amended by inserting after the item relating to section 506 the following:

''507. Office of Electronic Government.''.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

SEC. 3201. DEFINITIONS.

Except as otherwise provided, in this title the definitions under sections 3502 and 3601 of title 44, United States Code, shall apply.

SEC. 3202. FEDERAL AGENCY RESPONSIBILITIES.

(a) IN GENERAL.—The head of each agency shall be responsible for—

(1) complying with the requirements of this division (including the amendments made by this Act), the related information resource management policies and guidance established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

(2) ensuring that the information resource management policies and guidance established under this division by the Director, and the information technology standards promulgated under this division by the Secretary of Commerce are communicated promptly and effectively to all relevant officials within their agency; and

(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an integrated Internet-based system of delivering Federal Government information and services to the public under section 3204.

(b) PERFORMANCE INTEGRATION.—

(1) Agencies shall develop performance measures that demonstrate how electronic government enables progress toward agency objectives, strategic goals, and statutory mandates.

(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

(3) Areas of performance measurement that agencies should consider include—

(A) customer service;

(B) agency productivity; and

(C) adoption of innovative information technology, including the appropriate use of commercial best practices.

(4) Agencies shall link their performance goals to key groups, including citizens, businesses, and other governments, and to internal Federal Government operations.

(5) As appropriate, agencies shall work collectively in linking their performance goals to groups identified under paragraph (4) and shall use information technology in delivering Government information and services to those groups.

(c) AVOIDING DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable—

(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and

(2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet.

(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this division shall be in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e) SPONSORED ACTIVITIES.—Agencies shall sponsor activities that use information technology to engage the public in the development and implementation of policies and programs.

(f) CHIEF INFORMATION OFFICERS.—The Chief Information Officer of each of the agencies designated under chapter 36 of title 44, United States Code (as added by this Act) shall be responsible for—

(1) participating in the functions of the Chief Information Officers Council; and

(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated under this division by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of Federal Government electronic information, and computer system efficiency and security.

(g) E-GOVERNMENT STATUS REPORT.—

(1) IN GENERAL.—Each agency shall compile and submit to the Director an annual E-Government Status Report on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) compliance by the agency with this Act; and

(C) how electronic Government initiatives of the agency improve performance in delivering programs to constituencies.

(2) SUBMISSION.—Each agency shall submit an annual report under this subsection—

(A) to the Director at such time and in such manner as the Director requires;

(B) consistent with related reporting requirements; and

(C) which addresses any section in this title relevant to that agency.

(h) USE OF TECHNOLOGY.—Nothing in this division supersedes the responsibility of an agency to use or manage information technology to deliver Government information and services that fulfill the statutory mission and programs of the agency.

(i) NATIONAL SECURITY SYSTEMS.—

(1) INAPPLICABILITY.—Except as provided under paragraph (2), this title does not apply to national security systems as defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

(2) APPLICABILITY.—Sections 3202, 3203, 3210, and 3214 of this title do apply to national security systems to the extent practicable and consistent with law.

SEC. 3203. COMPATIBILITY OF EXECUTIVE AGENCY METHODS FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

(a) PURPOSE.—The purpose of this section is to achieve interoperable implementation of electronic signatures for appropriately secure electronic transactions with Government.

(b) ELECTRONIC SIGNATURES.—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105–277; 112 Stat. 2681–749 through 2681–751), each Executive agency (as defined under section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with the relevant policies and procedures issued by the Director.

(c) AUTHORITY FOR ELECTRONIC SIGNATURES.—The Administrator of General Services shall support the Director by establishing a framework to allow efficient interoperability among Executive agencies when using electronic signatures, including processing of digital signatures.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration, to ensure the development and operation of a Federal bridge certification authority for digital signature compatibility, or for other activities consistent with this section, $8,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3204. FEDERAL INTERNET PORTAL.

(a) IN GENERAL.—

(1) PUBLIC ACCESS.—The Director shall work with the Administrator of the General Services Administration and other agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

(2) CRITERIA.—To the extent practicable, the integrated system shall be designed and operated according to the following criteria:

(A) The provision of Internet-based Government information and services directed to key groups, including citizens, business, and other governments, and integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction.

(B) An ongoing effort to ensure that Internet-based Government services relevant to a given citizen activity are available from a single point.

(C) Access to Federal Government information and services consolidated, as appropriate, with Internet-based information and services provided by State, local, and tribal governments.

(D) Access to Federal Government information held by 1 or more agencies shall be made available in a manner that protects privacy, consistent with law.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

SEC. 3205. FEDERAL COURTS.

(a) INDIVIDUAL COURT WEBSITES.—The Chief Justice of the United States, the chief judge of each circuit and district, and the chief bankruptcy judge of each district shall establish with respect to the Supreme Court or the respective court of appeals, district, or bankruptcy court of a district, a website that contains the following information or links to websites with the following information:

(1) Location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers.

(2) Local rules and standing or general orders of the court.

(3) Individual rules, if in existence, of each justice or judge in that court.

(4) Access to docket information for each case.

(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.

(6) Access to all documents filed with the courthouse in electronic form, described under subsection (c).

(7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) MAINTENANCE OF DATA ONLINE.—

(1) UPDATE OF INFORMATION.—The information and rules on each website shall be updated regularly and kept reasonably current.

(2) CLOSED CASES.—Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) ELECTRONIC FILINGS.—

(1) IN GENERAL.—Except as provided under paragraph (2), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.

(2) EXCEPTIONS.—Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.

(3) PRIVACY AND SECURITY CONCERNS.—The Judicial Conference of the United States may promulgate rules under this subsection to protect important privacy and security concerns.

(d) DOCKETS WITH LINKS TO DOCUMENTS.—The Judicial Conference of the United States shall explore the feasibility of technology to post online dockets with links allowing all filings, decisions, and rulings in each case to be obtained from the docket sheet of that case.

(e) COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION.—Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking ''shall hereafter'' and inserting ''may, only to the extent necessary,''.

(f) TIME REQUIREMENTS.—Not later than 2 years after the effective date of this title, the websites under subsection (a) shall be established, except that access to documents filed in electronic form shall be established not later than 4 years after that effective date.

(g) DEFERRAL.—

(1) IN GENERAL.—

(A) ELECTION.—

(i) NOTIFICATION.—The Chief Justice of the United States, a chief judge, or chief bankruptcy judge may submit a notification to the Administrative Office of the United States Courts to defer compliance with any requirement of this section with respect to the Supreme Court, a court of appeals, district, or the bankruptcy court of a district.

(ii) CONTENTS.—A notification submitted under this subparagraph shall state—

(I) the reasons for the deferral; and

(II) the online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(B) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.

SEC. 3206. REGULATORY AGENCIES.

(a) PURPOSES.—The purposes of this section are to—

(1) improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency; and

(2) enhance public participation in Government by electronic means, consistent with requirements under subchapter II of chapter 5 of title 5, United States Code, (commonly referred to as the Administrative Procedures Act).

(b) INFORMATION PROVIDED BY AGENCIES ONLINE.—To the extent practicable as determined by the agency in consultation with the Director, each agency (as defined under section 551 of title 5, United States Code) shall ensure that a publicly accessible Federal Government website includes all information about that agency required to be published in the Federal Register under section 552(a)(1) of title 5, United States Code.

(c) SUBMISSIONS BY ELECTRONIC MEANS.—To the extent practicable, agencies shall accept submissions under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under section 553 of title 5, United States Code.

(2) INFORMATION AVAILABLE.—Agency electronic dockets shall make publicly available online to the extent practicable, as determined by the agency in consultation with the Director—

(A) all submissions under section 553(c) of title 5, United States Code; and

(B) other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3605 of title 44 (as added by this Act).

SEC. 3207. ACCESSIBILITY, USABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) PURPOSE.—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.

(b) DEFINITIONS.—In this section, the term—

(1) ''Committee'' means the Interagency Committee on Government Information established under subsection (c); and

(2) ''directory'' means a taxonomy of subjects linked to websites that—

(A) organizes Government information on the Internet according to subject matter; and

(B) may be created with the participation of human editors.

(c) INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this title, the Director shall establish the Interagency Committee on Government Information.

(2) MEMBERSHIP.—The Committee shall be chaired by the Director or the designee of the Director and—

(A) shall include representatives from—

(i) the National Archives and Records Administration;

(ii) the offices of the Chief Information Officers from Federal agencies; and

(iii) other relevant officers from the executive branch; and

(B) may include representatives from the Federal legislative and judicial branches.

(3) FUNCTIONS.—The Committee shall—

(A) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section, to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(4) TERMINATION.—The Committee may be terminated on a date determined by the Director, except the Committee may not terminate before the Committee submits all recommendations required under this section.

(d) CATEGORIZING OF INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director on—

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(iii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(2) FUNCTIONS OF THE DIRECTOR.—Not later than 180 days after the submission of recommendations under paragraph (1), the Director shall issue policies—

(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers;

(ii) in ways that are interoperable across agencies; and

(iii) that are, as appropriate, consistent with the standards promulgated by the Secretary of Commerce under section 3602(f)(8) of title 44, United States Code;

(B) defining categories of Government information which shall be required to be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(e) PUBLIC ACCESS TO ELECTRONIC INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) FUNCTIONS OF THE ARCHIVIST.—Not later than 180 days after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(f) AVAILABILITY OF GOVERNMENT INFORMATION ON THE INTERNET.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, each agency shall—

(A) consult with the Committee and solicit public comment;

(B) determine which Government information the agency intends to make available and accessible to the public on the Internet and by other means;

(C) develop priorities and schedules for making that Government information available and accessible;

(D) make such final determinations, priorities, and schedules available for public comment;

(E) post such final determinations, priorities, and schedules on the Internet; and

(F) submit such final determinations, priorities, and schedules to the Director, in the report established under section 3202(g).

(2) UPDATE.—Each agency shall update determinations, priorities, and schedules of the agency, as needed, after consulting with the Committee and soliciting public comment, if appropriate.

(g) ACCESS TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT.—

(1) DEVELOPMENT AND MAINTENANCE OF GOVERNMENTWIDE REPOSITORY AND WEBSITE.—

(A) REPOSITORY AND WEBSITE.—The Director of the National Science Foundation, working with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(I) include information about research and development funded by the Federal Government and performed by—

(aa) institutions not a part of the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development center; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(II) integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that would prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(ii) 1 or more websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—

(I) the coordination of Federal research and development activities;

(II) collaboration among those conducting Federal research and development;

(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and

(IV) access by policymakers and the public to information concerning Federal research and development activities.

(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.

(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.

(3) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—

(A) policies to improve agency reporting of information for the repository established under this subsection; and

(B) policies to improve dissemination of the results of research performed by Federal agencies and federally funded research and development centers.

(4) FUNCTIONS OF THE DIRECTOR.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3605 of title 44 (as added by this Act).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—

(A) $2,000,000 in each of the fiscal years 2003 through 2005; and

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.

(h) PUBLIC DOMAIN DIRECTORY OF PUBLIC FEDERAL GOVERNMENT WEBSITES.—

(1) ESTABLISHMENT.—Not later than 2 years after the effective date of this title, the Director and each agency shall—

(A) develop and establish a public domain directory of public Federal Government websites; and

(B) post the directory on the Internet with a link to the integrated Internet-based system established under section 3204.

(2) DEVELOPMENT.—With the assistance of each agency, the Director shall—

(A) direct the development of the directory through a collaborative effort, including input from—

(i) agency librarians;

(ii) information technology managers;

(iii) program managers;

(iv) records managers;

(v) Federal depository librarians; and

(vi) other interested parties; and

(B) develop a public domain taxonomy of subjects used to review and categorize public Federal Government websites.

(3) UPDATE.—With the assistance of each agency, the Administrator of the Office of Electronic Government shall—

(A) update the directory as necessary, but not less than every 6 months; and

(B) solicit interested persons for improvements to the directory.

(i) STANDARDS FOR AGENCY WEBSITES.—Not later than 18 months after the effective date of this title, the Director shall promulgate guidance for agency websites that include—

(1) requirements that websites include direct links to—

(A) descriptions of the mission and statutory authority of the agency;

(B) the electronic reading rooms of the agency relating to the disclosure of information under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(C) information about the organizational structure of the agency; and

(D) the strategic plan of the agency developed under section 306 of title 5, United States Code; and

(2) minimum agency goals to assist public users to navigate agency websites, including—

(A) speed of retrieval of search results;

(B) the relevance of the results;

(C) tools to aggregate and disaggregate data; and

(D) security protocols to protect information.

SEC. 3208. PRIVACY PROVISIONS.

(a) PURPOSE.—The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.

(b) PRIVACY IMPACT ASSESSMENTS.—

(1) RESPONSIBILITIES OF AGENCIES.—

(A) IN GENERAL.—An agency shall take actions described under subparagraph (B) before—

(i) developing or procuring information technology that collects, maintains, or disseminates information that includes any identifier permitting the physical or online contacting of a specific individual; or

(ii) initiating a new collection of information that—

(I) will be collected, maintained, or disseminated using information technology; and

(II) includes any identifier permitting the physical or online contacting of a specific individual, if the information concerns 10 or more persons.

(B) AGENCY ACTIVITIES.—To the extent required under subparagraph (A), each agency shall—

(i) conduct a privacy impact assessment;

(ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and

(iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.

(C) SENSITIVE INFORMATION.—Subparagraph (B)(iii) may be modified or waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment.

(D) COPY TO DIRECTOR.—Agencies shall provide the Director with a copy of the privacy impact assessment for each system for which funding is requested.

(2) CONTENTS OF A PRIVACY IMPACT ASSESSMENT.—

(A) IN GENERAL.—The Director shall issue guidance to agencies specifying the required contents of a privacy impact assessment.

(B) GUIDANCE.—The guidance shall—

(i) ensure that a privacy impact assessment is commensurate with the size of the information system being assessed, the sensitivity of personally identifiable information in that system, and the risk of harm from unauthorized release of that information; and

(ii) require that a privacy impact assessment address—

(I) what information is to be collected;

(II) why the information is being collected;

(III) the intended use of the agency of the information;

(IV) with whom the information will be shared;

(V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(VI) how the information will be secured; and

(VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the Privacy Act).

(3) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—

(A) develop policies and guidelines for agencies on the conduct of privacy impact assessments;

(B) oversee the implementation of the privacy impact assessment process throughout the Government; and

(C) require agencies to conduct privacy impact assessments of existing information systems or ongoing collections of personally identifiable information as the Director determines appropriate.

(c) PRIVACY PROTECTIONS ON AGENCY WEBSITES.—

(1) PRIVACY POLICIES ON WEBSITES.—

(A) GUIDELINES FOR NOTICES.—The Director shall develop guidance for privacy notices on agency websites used by the public.

(B) CONTENTS.—The guidance shall require that a privacy notice address, consistent with section 552a of title 5, United States Code—

(i) what information is to be collected;

(ii) why the information is being collected;

(iii) the intended use of the agency of the information;

(iv) with whom the information will be shared;

(v) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(vi) how the information will be secured; and

(vii) the rights of the individual under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), and other laws relevant to the protection of the privacy of an individual.

(2) PRIVACY POLICIES IN MACHINE-READABLE FORMATS.—The Director shall issue guidance requiring agencies to translate privacy policies into a standardized machine-readable format.

SEC. 3209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government information and services.

(b) IN GENERAL.—In consultation with the Director, the Chief Information Officers Council, and the Administrator of General Services, the Director of the Office of Personnel Management shall—

(1) analyze, on an ongoing basis, the personnel needs of the Federal Government related to information technology and information resource management;

(2) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel needs of the Federal Government related to information technology and information resource management; and

(3) assess the training of Federal employees in information technology disciplines, as necessary, in order to ensure that the information resource management needs of the Federal Government are addressed.

(c) EMPLOYEE PARTICIPATION.—Subject to information resource management needs and the limitations imposed by resource needs in other occupational areas, and consistent with their overall workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this section, $7,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3210. COMMON PROTOCOLS FOR GEOGRAPHIC INFORMATION SYSTEMS.

(a) PURPOSES.—The purposes of this section are to—

(1) reduce redundant data collection and information; and

(2) promote collaboration and use of standards for government geographic information.

(b) DEFINITION.—In this section, the term ''geographic information'' means information systems that involve locational data, such as maps or other geospatial information resources.

(c) IN GENERAL.—

(1) COMMON PROTOCOLS.—The Secretary of the Interior, working with the Director and through an interagency group, and working with private sector experts, State, local, and tribal governments, commercial and international standards groups, and other interested parties, shall facilitate the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information. If practicable, the Secretary of the Interior shall incorporate intergovernmental and public private geographic information partnerships into efforts under this subsection.

(2) INTERAGENCY GROUP.—The interagency group referred to under paragraph (1) shall include representatives of the National Institute of Standards and Technology and other agencies.

(d) DIRECTOR.—The Director shall oversee—

(1) the interagency initiative to develop common protocols;

(2) the coordination with State, local, and tribal governments, public private partnerships, and other interested persons on effective and efficient ways to align geographic information and develop common protocols; and

(3) the adoption of common standards relating to the protocols.

(e) COMMON PROTOCOLS.—The common protocols shall be designed to—

(1) maximize the degree to which unclassified geographic information from various sources can be made electronically compatible and accessible; and

(2) promote the development of interoperable geographic information systems technologies that shall—

(A) allow widespread, low-cost use and sharing of geographic data by Federal agencies, State, local, and tribal governments, and the public; and

(B) enable the enhancement of services using geographic data.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this section, for each of the fiscal years 2003 through 2007.

SEC. 3211. SHARE-IN-SAVINGS PROGRAM IMPROVEMENTS.

Section 5311 of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 110 Stat. 692; 40 U.S.C. 1491) is amended—

(1) in subsection (a)—

(A) by striking ''the heads of two executive agencies to carry out'' and inserting ''heads of executive agencies to carry out a total of 5 projects under'';

(B) by striking ''and'' at the end of paragraph (1);

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

(D) by adding at the end the following:

''(3) encouraging the use of the contracting and sharing approach described in paragraphs (1) and (2) by allowing the head of the executive agency conducting a project under the pilot program—

''(A) to retain, until expended, out of the appropriation accounts of the executive agency in which savings computed under

paragraph (2) are realized as a result of the project, up to the amount equal to half of the excess of—

''(i) the total amount of the savings; over

''(ii) the total amount of the portion of the savings paid to the private sector source for such project under paragraph (2); and

''(B) to use the retained amount to acquire additional information technology.'';

(2) in subsection (b)—

(A) by inserting ''a project under'' after ''authorized to carry out''; and

(B) by striking ''carry out one project and''; and

(3) in subsection (c), by inserting before the period ''and the Administrator for the Office of Electronic Government''; and

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

''(d) REPORT.—

''(1) IN GENERAL.—After 5 pilot projects have been completed, but no later than 3 years after the effective date of this subsection, the Director shall submit a report on the results of the projects to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(2) CONTENTS.—The report under paragraph (1) shall include—

''(A) a description of the reduced costs and other measurable benefits of the pilot projects;

''(B) a description of the ability of agencies to determine the baseline costs of a project against which savings would be measured; and

''(C) recommendations of the Director relating to whether Congress should provide general authority to the heads of executive agencies to use a share-in-savings contracting approach to the acquisition of information technology solutions for improving mission-related or administrative processes of the Federal Government.''.

SEC. 3212. INTEGRATED REPORTING STUDY AND PILOT PROJECTS.

(a) PURPOSES.—The purposes of this section are to—

(1) enhance the interoperability of Federal information systems;

(2) assist the public, including the regulated community, in electronically submitting information to agencies under Federal requirements, by reducing the burden of duplicate collection and ensuring the accuracy of submitted information; and

(3) enable any person to integrate and obtain similar information held by 1 or more agencies under 1 or more Federal requirements without violating the privacy rights of an individual.

(b) DEFINITIONS.—In this section, the term—

(1) ''agency'' means an Executive agency as defined under section 105 of title 5, United States Code; and

(2) ''person'' means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or agency or component of the Federal Government.

(c) REPORT.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Director shall oversee a study, in consultation with agencies, the regulated community, public interest organizations, and the public, and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on progress toward integrating Federal information systems across agencies.

(2) CONTENTS.—The report under this section shall—

(A) address the integration of data elements used in the electronic collection of information within databases established under Federal statute without reducing the quality, accessibility, scope, or utility of the information contained in each database;

(B) address the feasibility of developing, or enabling the development of, software, including Internet-based tools, for use by reporting persons in assembling, documenting, and validating the accuracy of information electronically submitted to agencies under nonvoluntary, statutory, and regulatory requirements;

(C) address the feasibility of developing a distributed information system involving, on a voluntary basis, at least 2 agencies, that—

(i) provides consistent, dependable, and timely public access to the information holdings of 1 or more agencies, or some portion of such holdings, including the underlying raw data, without requiring public users to know which agency holds the information; and

(ii) allows the integration of public information held by the participating agencies;

(D) address the feasibility of incorporating other elements related to the purposes of this section at the discretion of the Director; and

(E) make recommendations that Congress or the executive branch can implement, through the use of integrated reporting and information systems, to reduce the burden on reporting and strengthen public access to databases within and across agencies.

(d) PILOT PROJECTS TO ENCOURAGE INTEGRATED COLLECTION AND MANAGEMENT OF DATA AND INTEROPERABILITY OF FEDERAL INFORMATION SYSTEMS.—

(1) IN GENERAL.—In order to provide input to the study under subsection (c), the Director shall designate, in consultation with agencies, a series of no more than 5 pilot projects that integrate data elements. The Director shall consult with agencies, the regulated community, public interest organizations, and the public on the implementation of the pilot projects.

(2) GOALS OF PILOT PROJECTS.—

(A) IN GENERAL.—Each goal described under subparagraph (B) shall be addressed by at least 1 pilot project each.

(B) GOALS.—The goals under this paragraph are to—

(i) reduce information collection burdens by eliminating duplicative data elements within 2 or more reporting requirements;

(ii) create interoperability between or among public databases managed by 2 or more agencies using technologies and techniques that facilitate public access; and

(iii) develop, or enable the development of, software to reduce errors in electronically submitted information.

(3) INPUT.—Each pilot project shall seek input from users on the utility of the pilot project and areas for improvement. To the extent practicable, the Director shall consult with relevant agencies and State, tribal, and local governments in carrying out the report and pilot projects under this section.

(e) PRIVACY PROTECTIONS.—The activities authorized under this section shall afford protections for—

(1) confidential business information consistent with section 552(b)(4) of title 5, United States Code, and other relevant law;

(2) personal privacy information under sections 552(b) (6) and (7)(C) and 552a of title 5, United States Code, and other relevant law; and

(3) other information consistent with section 552(b)(3) of title 5, United States Code, and other relevant law.

SEC. 3213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of on-line government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to computer technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Secretary of Education, in consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce, the Director of the National Science Foundation, and the Director of the Institute of Museum and Library Services, shall—

(1) conduct a study to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report on the study to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Government Reform of the House of Representatives; and

(D) the Committee on Education and the Workforce of the House of Representatives.

(c) CONTENTS.—The report under subsection (b) may consider—

(1) an evaluation of the best practices being used by successful community technology centers;

(2) a strategy for—

(A) continuing the evaluation of best practices used by community technology centers; and

(B) establishing a network to share information and resources as community technology centers evolve;

(3) the identification of methods to expand the use of best practices to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;

(4) a database of all community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;

(5) an analysis of whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation; and

(6) recommendations of how to—

(A) enhance the development of community technology centers; and

(B) establish a network to share information and resources.

(d) COOPERATION.—All agencies that fund community technology centers shall provide to the Department of Education any information and assistance necessary for the completion of the study and the report under this section.

(e) ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Department of Education shall work with other relevant Federal agencies, and other interested persons in the private and nonprofit sectors to—

(A) assist in the implementation of recommendations; and

(B) identify other ways to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public.

(2) TYPES OF ASSISTANCE.—Assistance under this subsection may include—

(A) contribution of funds;

(B) donations of equipment, and training in the use and maintenance of the equipment; and

(C) the provision of basic instruction or training material in computer skills and Internet usage.

(f) ONLINE TUTORIAL.—

(1) IN GENERAL.—The Secretary of Education, in consultation with the Director of the Institute of Museum and Library Services, the Director of the National Science Foundation, other relevant agencies, and the public, shall develop an online tutorial that—

(A) explains how to access Government information and services on the Internet; and

(B) provides a guide to available online resources.

(2) DISTRIBUTION.—The Secretary of Education shall distribute information on the tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public.

(g) PROMOTION OF COMMUNITY TECHNOLOGY CENTERS.—In consultation with other agencies and organizations, the Department of Education shall promote the availability of community technology centers to raise awareness within each community where such a center is located.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Education for the study of best practices at community technology centers, for the development and dissemination of the online tutorial, and for the promotion of community technology centers under this section—

(1) $2,000,000 in fiscal year 2003;

(2) $2,000,000 in fiscal year 2004; and

(3) such sums as are necessary in fiscal years 2005 through 2007.

SEC. 3214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to improve how information technology is used in coordinating and facilitating information on disaster preparedness, response, and recovery, while ensuring the availability of such information across multiple access channels.

(b) IN GENERAL.—

(1) STUDY ON ENHANCEMENT OF CRISIS RESPONSE.—Not later than 90 days after the date of enactment of this Act, the Federal Emergency Management Agency shall enter into a contract to conduct a study on using information technology to enhance crisis preparedness, response, and consequence management of natural and manmade disasters.

(2) CONTENTS.—The study under this subsection shall address—

(A) a research and implementation strategy for effective use of information technology in crisis response and consequence management, including the more effective use of technologies, management of information technology research initiatives, and incorporation of research advances into the information and communications systems of—

(i) the Federal Emergency Management Agency; and

(ii) other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management; and

(B) opportunities for research and development on enhanced technologies into areas of potential improvement as determined during the course of the study.

(3) REPORT.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Federal Emergency Management Agency shall submit a report on the study, including findings and recommendations to—

(A) the Committee on Governmental Affairs of the Senate; and

(B) the Committee on Government Reform of the House of Representatives.

(4) INTERAGENCY COOPERATION.—Other Federal departments and agencies with responsibility for disaster relief and emergency assistance shall fully cooperate with the Federal Emergency Management Agency in carrying out this section.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Emergency Management Agency for research under this subsection, such sums as are necessary for fiscal year 2003.

(c) PILOT PROJECTS.—Based on the results of the research conducted under subsection (b), the Federal Emergency Management Agency shall initiate pilot projects or report to Congress on other activities that further the goal of maximizing the utility of information technology in disaster management. The Federal Emergency Management Agency shall cooperate with other relevant agencies, and, if appropriate, State, local, and tribal governments, in initiating such pilot projects.

SEC. 3215. DISPARITIES IN ACCESS TO THE INTERNET.

(a) STUDY AND REPORT.—

(1) STUDY.—Not later than 90 days after the date of enactment of this Act, the Director of the National Science Foundation shall request that the National Academy of Sciences, acting through the National Research Council, enter into a contract to conduct a study on disparities in Internet access for online Government services.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Science Foundation shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a final report of the study under this section, which shall set forth the findings, conclusions, and recommendations of the National Research Council.

(b) CONTENTS.—The report under subsection (a) shall include a study of—

(1) how disparities in Internet access influence the effectiveness of online Government services, including a review of—

(A) the nature of disparities in Internet access;

(B) the affordability of Internet service;

(C) the incidence of disparities among different groups within the population; and

(D) changes in the nature of personal and public Internet access that may alleviate or aggravate effective access to online Government services;

(2) how the increase in online Government services is influencing the disparities in Internet access and how technology development or diffusion trends may offset such adverse influences; and

(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.

(c) RECOMMENDATIONS.—The report shall include recommendations on actions to ensure that online Government initiatives shall not have the unintended result of increasing any deficiency in public access to Government services.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation $950,000 in fiscal year 2003 to carry out this section.

SEC. 3216. NOTIFICATION OF OBSOLETE OR COUNTERPRODUCTIVE PROVISIONS.

If the Director of the Office of Management and Budget makes a determination that any provision of this division (including any amendment made by this division) is obsolete or counterproductive to the purposes of this Act, as a result of changes in technology or any other reason, the Director shall submit notification of that determination to—

(1) the Committee on Governmental Affairs of the Senate; and

(2) the Committee on Government Reform of the House of Representatives.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

SEC. 3301. INFORMATION SECURITY.

(a) ADDITION OF SHORT TITLE.—Subtitle G of title X of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–266) is amended by inserting after the heading for the subtitle the following new section:

"SEC. 1060. SHORT TITLE.

''This subtitle may be cited as the 'Government Information Security Reform Act'.''.

(b) CONTINUATION OF AUTHORITY.—

(1) IN GENERAL.—Section 3536 of title 44, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3536.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

Except for those purposes for which an authorization of appropriations is specifically provided in title XXXI or XXXII, including the amendments made by such titles, there are authorized to be appropriated such sums as are necessary to carry out titles XXXI and XXXII for each of fiscal years 2003 through 2007.

SEC. 3402. EFFECTIVE DATES.

(a) TITLES XXXI AND XXXII.—

(1) IN GENERAL.—Except as provided under paragraph (2), titles XXXI and XXXII and the amendments made by such titles shall take effect 120 days after the date of enactment of this Act.

(2) IMMEDIATE ENACTMENT.—Sections 3207, 3214, 3215, and 3216 shall take effect on the date of enactment of this Act.

(b) TITLES XXXIII AND XXXIV.—Title XXXIII and this title shall take effect on the date of enactment of this Act.

SA 4812. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, line 10, strike all through page 84, line 7, and insert the following:

(5) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. DEFINITION.

SA 4813. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 9 and all that follows through page 90, line 2, and insert the following:

SEC. 710. INSPECTOR GENERAL.

(a) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(b) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(c) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4814. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 9 and all that follows through page 90, line 2, and insert the following:

SEC. 710. INSPECTOR GENERAL.

(a) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(b) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—

(1) ASSISTANT IG.—The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Civil Rights and Civil Liberties who shall have experience and demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) DUTIES.—The Assistant Inspector General for Civil Rights and Civil Liberties shall—

(A) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(B) if appropriate, investigate such complaints in a timely manner;

(C) publicize in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the official; and

(ii) instructions on how to contact the official; and

(D) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection;

(ii) detailing any civil rights abuses under paragraph (1); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(c) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the 'Inspector General') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the 'Secretary') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.''.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4815. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNEL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows

On page 15, after line 23, insert the following:

SEC. 105. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SA 4816. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 15, after line 23, insert the following:

SEC. 105. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SA 4817. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, line 14, strike all through page 110, line 4.

SA 4818. Mr. LIEBERMAN SUBMITTED AN AMENDMENT INTENDED TO BE PROPOSED TO AMENDMENT SA 4738 PROPOSED BY Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN TO THE BILL H.R. 5005, TO ESTABLISH THE DEPARTMENT of Homeland Security, and for other purposes;

which was ordered to lie on the table; as follows:

On page 14, strike lines 6 through 12, and insert the following:

(e) OTHER OFFICERS.—

(1) IN GENERAL.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(A) A Director of the Secret Service.

(B) A Chief Information Officer.

(C) A Chief Human Capital Officer.

(2) CHIEF FINANCIAL OFFICER.—

(A) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(B) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(i) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(ii) by inserting after subparagraph (F) the following:

''(G) The Department of Homeland Security.''.

(3) SECTION 603 NOT EFFECTIVE.—Notwithstanding any other provision of this Act, including any effective date provision, section 603 shall not take effect.

SA 4819. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, strike lines 10–24 and all that follows through page 53, line 14.

SA 4820. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, strike line 22 and all that follows through page 43, line 14, and insert the following:

SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(a) AUTHORIZATION.—The Secretary may carry out human health biodefense-related biological, biomedical, and infectious disease research and development (including vaccine research and development) in collaboration with the Secretary of Health and Human Services.

(b) JOINT STRATEGIC PRIORITIZATION AGREEMENTS.—

(1) IN GENERAL.—Research supported by funding appropriated to the National Institutes of Health for bioterrorism research and related facilities development shall be conducted through the National Institutes of Health under joint strategic prioritization agreements between the Secretary and the Secretary of Health and Human Services.

(2) GENERAL RESEARCH PRIORITIES.—The Secretary shall have the authority to establish general research priorities, which shall be embodied in the agreements under paragraph (1).

(3) SPECIFIC SCIENTIFIC RESEARCH AGENDA.—The specific scientific research agenda to implement agreements under paragraph (1) shall be developed by the Secretary of Health and Human Services, who shall consult the Secretary to ensure that the agreements conform with homeland security priorities.

(4) MANAGEMENT OF RESEARCH PROGRAMS.—All research programs established under the agreements under paragraph (1) shall be managed and awarded by the Director of the National Institutes of Health consistent with those agreements.

(5) TRANSFER OF FUNDS.—The Secretary may transfer funds to the Department of Health and Human Services in connection with the agreements under paragraph (1).

SA 4821. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Privacy, Civil Rights, and Inspector General

SEC. 708. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 709. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(b) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(c) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4822. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Privacy, Civil Rights, and Inspector General

SEC. 708. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 709. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(b) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—

(1) ASSISTANT IG.—The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Civil Rights and Civil Liberties who shall have experience and demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) DUTIES.—The Assistant Inspector General for Civil Rights and Civil Liberties shall—

(A) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(B) if appropriate, investigate such complaints in a timely manner;

(C) publicize in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the official; and

(ii) instructions on how to contact the official; and

(D) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection;

(ii) detailing any civil rights abuses under paragraph (1); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(c) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the 'Inspector General') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the 'Secretary') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.''.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4823. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, strike lines 12–15.

SA 4824. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (FOR HIMSELF, MR. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, strike lines 12–15.

On page 52, strike lines 10–24 and all that follows through page 53, line 14.

SA 4803. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department; or

(ii) independent contractors retained by the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department; or

(iii) independent contractors employed by the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4804. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(B) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(C) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(D) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(E) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4805. Mr. FEINGOLD (for himself, and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be

appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department; or

(ii) any unit of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4806. Mr. FEINGOLD (for himself, and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 88, strike line 8 and all that follows through page 90, line 2, and insert the following:

Subtitle B—Civil Rights Oversight and Inspector General

SEC. 708. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 709. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 710. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or

investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4807. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

On page 162, strike lines 1 through 8.

SA 4825. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 5 divisions as follows:

(1) Division A—National Homeland Security and Combating Terrorism.

(2) Division B—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) Division C—Federal Workforce Improvement.

(4) Division D—E-Government Act of 2002.

(5) Division E—Flight and Cabin Security on Passenger Aircraft.

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

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

Sec. 100. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security.
Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.
Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Office of International Affairs.
Sec. 114. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 134. Directorate of Emergency Preparedness and Response.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Office for National Capital Region Coordination.
Sec. 141. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Sec. 154. Designation of National Emergency Preparedness Week.

Subtitle D—Miscellaneous Provisions

Sec. 161. National Bio-Weapons Defense Analysis Center.
Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.
Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
Sec. 165. Whistleblower protection for certain airport employees.
Sec. 166. Bioterrorism preparedness and response division.
Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 168. Rail security enhancements.
Sec. 169. Grants for firefighting personnel.
Sec. 170. Review of transportation security enhancements.
Sec. 171. Interoperability of information systems.
Sec. 172. Extension of customs user fees.
Sec. 173. Conforming amendments regarding laws administered by the Secretary of Veterans Affairs.
Sec. 174. Prohibition on contracts with corporate expatriates.
Sec. 175. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 176. Coordination of information and information technology.

Subtitle E—Transition Provisions

Sec. 181. Definitions.
Sec. 182. Transfer of agencies.
Sec. 183. Transitional authorities.
Sec. 184. Incidental transfers and transfer of related functions.
Sec. 185. Implementation progress reports and legislative recommendations.

Sec. 186. Transfer and allocation.
Sec. 187. Savings provisions.
Sec. 188. Transition plan.
Sec. 189. Use of appropriated funds.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Procurement of temporary and intermittent services.
Sec. 196. Preserving non-homeland security mission performance.
Sec. 197. Future Years Homeland Security Program.
Sec. 198. Protection of voluntarily furnished confidential information.
Sec. 199. Establishment of human resources management system.
Sec. 199A. Labor-management relations.
Sec. 199B. Authorization of appropriations.

TITLE II—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 201. Law enforcement powers of Inspector General agents.

TITLE III—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 301. Definition.
Sec. 302. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 303. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 304. Increased micro-purchase threshold for certain procurements.
Sec. 305. Application of certain commercial items authorities to certain procurements.
Sec. 306. Use of streamlined procedures.
Sec. 307. Review and report by Comptroller General.

Subtitle B—Other Matters

Sec. 311. Identification of new entrants into the Federal marketplace.

TITLE IV—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Sec. 401. Establishment of Commission.
Sec. 402. Purposes.
Sec. 403. Composition of the Commission.
Sec. 404. Functions of the Commission.
Sec. 405. Powers of the Commission.
Sec. 406. Staff of the Commission.
Sec. 407. Compensation and travel expenses.
Sec. 408. Security clearances for Commission members and staff.
Sec. 409. Reports of the Commission; termination.
Sec. 410. Authorization of appropriations.

TITLE V—EFFECTIVE DATE

Sec. 501. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

TITLE X—SHORT TITLE AND DEFINITIONS

Sec. 1001. Short title.
Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement and Border Affairs.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Executive Office for Immigration review authorities not affected.
Sec. 1119. Other authorities not affected.
Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

Sec. 1201. Short title.
Sec. 1202. Definitions.

Subtitle A—Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 1212. Establishment of Interagency Task Force on Unaccompanied Alien Children.
Sec. 1213. Transition provisions.
Sec. 1214. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when encountering unaccompanied alien children.
Sec. 1222. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 1223. Appropriate conditions for detention of unaccompanied alien children.
Sec. 1224. Repatriated unaccompanied alien children.
Sec. 1225. Establishing the age of an unaccompanied alien child.
Sec. 1226. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1231. Right of unaccompanied alien children to guardians ad litem.
Sec. 1232. Right of unaccompanied alien children to counsel.
Sec. 1233. Effective date; applicability.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

Sec. 1241. Special immigrant juvenile visa.
Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 1243. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

Sec. 1251. Guidelines for children's asylum claims.
Sec. 1252. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

Sec. 1261. Authorization of appropriations.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

Sec. 1301. Establishment.
Sec. 1302. Director of the agency.
Sec. 1303. Board of Immigration Appeals.
Sec. 1304. Chief Immigration Judge.
Sec. 1305. Chief Administrative Hearing Officer.
Sec. 1306. Removal of judges.
Sec. 1307. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1311. Transition provisions.

Subtitle C—Effective Date

Sec. 1321. Effective date.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and program performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.

TITLE XXIV—ACADEMIC TRAINING

Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensatory time off for travel.

DIVISION D—E-GOVERNMENT ACT OF 2002

TITLE XXX—SHORT TITLE; FINDINGS AND PURPOSES

Sec. 3001. Short title.
Sec. 3002. Findings and purposes.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

Sec. 3101. Management and promotion of electronic Government services.
Sec. 3102. Conforming amendments.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

Sec. 3201. Definitions.
Sec. 3202. Federal agency responsibilities.
Sec. 3203. Compatibility of executive agency methods for use and acceptance of electronic signatures.
Sec. 3204. Federal Internet portal.
Sec. 3205. Federal courts.
Sec. 3206. Regulatory agencies.
Sec. 3207. Accessibility, usability, and preservation of Government information.

Sec. 3208. Privacy provisions.
Sec. 3209. Federal information technology workforce development.
Sec. 3210. Common protocols for geographic information systems.
Sec. 3211. Share-in-savings program improvements.
Sec. 3212. Integrated reporting study and pilot projects.
Sec. 3213. Community technology centers.
Sec. 3214. Enhancing crisis management through advanced information technology.
Sec. 3215. Disparities in access to the Internet.
Sec. 3216. Notification of obsolete or counterproductive provisions.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

Sec. 3301. Information security.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

Sec. 3401. Authorization of appropriations.
Sec. 3402. Effective dates.

DIVISION E—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

TITLE XLI—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

Sec. 4101. Short title.
Sec. 4102. Findings.
Sec. 4103. Federal flight deck officer program.
Sec. 4104. Cabin security.
Sec. 4105. Prohibition on opening cockpit doors in flight.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term ''agency''—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security established under title I.

(4) ENTERPRISE ARCHITECTURE.—The term ''enterprise architecture''—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term ''Federal terrorism prevention and response agency'' means any Federal department or agency charged with responsibilities for carrying out a homeland security strategy.

(6) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(7) HOMELAND.—The term ''homeland'' means the United States, in a geographic sense.

(8) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(9) PERSONNEL.—The term ''personnel'' means officers and employees.

(10) RISK ANALYSIS AND RISK MANAGEMENT.—The term ''risk analysis and risk management'' means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(12) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

''The Department of Homeland Security.''.

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop a comprehensive strategy for combating terrorism and the homeland security response.

(4) To make budget recommendations relating to a homeland security strategy, border and transportation security, infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities;

(D) consulting State and local governments, and other entities as appropriate, in developing a homeland security strategy; and

(E) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and the governors of the several States regarding integration of the United States military, including the National Guard, into all aspects of a homeland security strategy and its implementation, including detection, prevention, protection, response, and recovery.

(B) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to executing a homeland security strategy.

(C) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and

local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 185; and

(B) each biennial report required under section 192(b).

(c) VISA ISSUANCE BY THE SECRETARY.—

(1) DEFINITION.—In this subsection, the term ''consular officer'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(2) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided under paragraph (3), the Secretary—

(A) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(B)(i) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(ii) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in subparagraph (A).

(3) AUTHORITY OF THE SECRETARY OF STATE.—

(A) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(B) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(i) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(15)(A)).

(ii) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(iii) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(iv) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)(B)(vi)(II)).

(v) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(vi) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(vii) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(viii) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(ix) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(x) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034).

(xi) Section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

(xii) Section 103(f) of the Chemical Weapons Convention Implementation Act of 1998 (112 Stat. 2681–865).

(xiii) Section 801 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2002 and 2001 (113 Stat. 1501A–468).

(xiv) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(xv) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(xvi) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(4) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(5) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(A) IN GENERAL.—The Secretary is authorized to assign employees of the Department to diplomatic and consular posts abroad to perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(B) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in subparagraph (A) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(C) TRAINING AND HIRING.—

(i) IN GENERAL.—The Secretary shall ensure that any employees of the Department assigned to perform functions described under subparagraph (A) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(ii) FOREIGN LANGUAGE PROFICIENCY.—Before assigning employees of the Department to perform the functions described under subparagraph (A), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described under subparagraph (A) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(iii) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in clause (i).

(6) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(7) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(d) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

''(5) the Secretary of Homeland Security; and

''(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.''.

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.''

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

''(G) The Department of Homeland Security.''.

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that

ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

(a) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Secretary of Homeland Security.''.

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Secretary of Homeland Security.''.

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Management, Department of Homeland Security.''.

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretaries of Homeland Security (5).

''Inspector General, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''General Counsel, Department of Homeland Security.''.

Subtitle B—Establishment of Directorates and Offices

SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Border and Transportation Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Border and Transportation Protection shall be responsible for the following:

(1) Securing the borders, territorial waters, ports, terminals, waterways and air, land (including rail), and sea transportation systems of the United States, including coordinating governmental activities at ports of entry.

(2) Receiving and providing relevant intelligence on threats of terrorism and other homeland threats.

(3) Administering, carrying out, and promoting other established missions of the entities transferred to the Directorate.

(4) Using intelligence from the Directorate of Intelligence and other Federal intelligence organizations under section 132(a)(1)(B) to establish inspection priorities to identify products and other goods imported from suspect locations recognized by the intelligence community as having terrorist activities, unusual human health or agriculture disease outbreaks, or harboring terrorists.

(5) Providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities that have established partnerships with the Federal Law Enforcement Training Center.

(6) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(7) Consistent with section 175, conducting agricultural import and entry inspection functions transferred under section 175.

(8) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—Except as provided under subsection (d), the authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(2) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(3) The Transportation Security Administration of the Department of Transportation.

(4) The Federal Law Enforcement Training Center of the Department of the Treasury.

(d) EXERCISE OF CUSTOMS REVENUE AUTHORITY.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (c), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by

the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITION OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(e) PRESERVING COAST GUARD MISSION PERFORMANCE.—

(1) DEFINITIONS.—In this subsection:

(A) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(i) Marine safety.

(ii) Search and rescue.

(iii) Aids to navigation.

(iv) Living marine resources (fisheries law enforcement).

(v) Marine environmental protection.

(vi) Ice operations.

(B) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(i) Ports, waterways and coastal security.

(ii) Drug interdiction.

(iii) Migrant interdiction.

(iv) Defense readiness.

(v) Other law enforcement.

(2) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(3) CERTAIN TRANSFERS PROHIBITED.—None of the missions, functions, personnel, and assets (including for purposes of this subsection ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(4) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(A) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act.

(B) WAIVER.—The President may waive the restrictions under subparagraph (A) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under subparagraph (A) are not waived.

(5) ANNUAL REVIEW.—

(A) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(B) REPORT.—The report under this paragraph shall be submitted not later than March 1 of each year to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Government Reform of the House of Representatives;

(iii) the Committees on Appropriations of the Senate and the House of Representatives;

(iv) the Committee on Commerce, Science, and Transportation of the Senate; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(6) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(7) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this subsection shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(f) CONTINUATION OF CERTAIN FUNCTIONS OF THE CUSTOMS SERVICE.—

(1) IN GENERAL.—

(A) PRESERVATION OF CUSTOMS FUNDS.—Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(1) through (8)) may be transferred for use by any other agency or office in the Department.

(B) CUSTOMS AUTOMATION.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(i) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(ii) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(iii) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Customs Commercial and Homeland Security Automation Account for each of fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Customs Commercial and Homeland Security Automation Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(2) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 19 U.S.C. 2071 note) is amended—

(A) in paragraph (1), by inserting ''in consultation with the Secretary of Homeland Security'' after ''Secretary of the Treasury'';

(B) in paragraph (2)(A), by inserting ''in consultation with the Secretary of Homeland Security'' after ''Secretary of the Treasury'';

(C) in paragraph (3)(A), by inserting ''and the Secretary of Homeland Security'' after ''Secretary of the Treasury''; and

(D) in paragraph (4)—

(i) by inserting ''and the Under Secretary of Homeland Security for Border and Transportation'' after ''for Enforcement''; and

(ii) by inserting ''jointly'' after ''shall preside''.

(3) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—

(A) IN GENERAL.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(B) SUPPORT TO DIRECTORATE.—The Directorate of Intelligence shall communicate, coordinate, and cooperate with—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community, as defined under section 3 of the National Security Act of 1947 (50 U.S.C. 401a), including the Office of the Director of Central Intelligence, the National Intelligence Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(C) INFORMATION ON INTERNATIONAL TERRORISM.—

(i) DEFINITIONS.—In this subparagraph, the terms ''foreign intelligence'' and ''counterintelligence'' shall have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(ii) PROVISION OF INFORMATION TO COUNTERTERRORIST CENTER.—In order to ensure that the Secretary is provided with appropriate analytical products, assessments, and warnings relating to threats of terrorism against the United States and other threats to homeland security, the Director of Central Intelligence (as head of the intelligence community with respect to foreign intelligence and counterintelligence), the Attorney General, and the heads of other agencies of the Federal Government shall ensure that all intelligence and other information relating to international terrorism is provided to the Director of Central Intelligence's Counterterrorist Center.

(iii) ANALYSIS OF INFORMATION.—The Director of Central Intelligence shall ensure the analysis by the Counterterrorist Center of all intelligence and other information provided the Counterterrorist Center under clause (ii).

(iv) ANALYSIS OF FOREIGN INTELLIGENCE.—The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1)(A) Receiving and analyzing law enforcement and other information from agencies of the United States Government, State and local government agencies (including law enforcement agencies), and private sector entities, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the Director of Central Intelligence's Counterterrorist Center in order to—

(i) identify and assess the nature and scope of threats to the homeland; and

(ii) detect and identify threats of terrorism against the United States and other threats to homeland security.

(B) Nothing in this paragraph shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—

(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Representing the Department in procedures to establish requirements and priorities in the collection of national intelligence for purposes of the provision to the executive branch under section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) of national intelligence relating to foreign terrorist threats to the homeland.

(4) Consulting with the Attorney General or the designees of the Attorney General, and other officials of the United States Government to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats, such as terrorism, to the homeland.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department and the appropriate officers of the agencies described under subsection (a)(1)(B), a secure communications and information technology infrastructure, and advanced analytical tools, to carry out the mission of the Directorate.

(7) Developing, in conjunction with the Chief Information Officer of the Department and appropriate officers of the agencies described under subsection (a)(1)(B), appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—

(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purpose of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interests of United States persons as defined under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(9) Providing, through the Secretary, to the appropriate law enforcement or intelligence agency, information and analysis relating to threats.

(10) Coordinating, or where appropriate providing, training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department, including training and support under section 908 of the USA PATRIOT Act of 2001 (Public Law 107–56).

(11) Reviewing, analyzing, and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the United States Government and between the United States Government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Unless otherwise directed by the President, the Secretary shall have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organizations, and to other areas of responsibility as described in this division, that may be collected, possessed, or prepared, by any other United States Government agency.

(2) ADDITIONAL INFORMATION.—As the President may further provide, the Secretary shall receive additional information requested by the Secretary from the agencies described under subsection (a)(1)(B).

(3) OBTAINING INFORMATION.—All information shall be provided to the Secretary consistent with the requirements of subsection (b)(8), unless otherwise determined by the President.

(4) COOPERATIVE ARRANGEMENTS.—The Secretary may enter into cooperative arrangements with agencies described under subsection (a)(1)(B) to share material on a regular or routine basis, including arrangements involving broad categories of material, and regardless of whether the Secretary has entered into any such cooperative arrangement, all agencies described under subsection (a)(1)(B) shall promptly provide information under this subsection.

(d) AUTHORIZATION TO SHARE LAW ENFORCEMENT INFORMATION.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, or national security official for purposes of information sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(e) ADDITIONAL RISK ANALYSIS AND RISK MANAGEMENT RESPONSIBILITIES.—The Under Secretary for Intelligence shall, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, be responsible for—

(1) developing analysis concerning the means and methods terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) supporting experiments, tests, and inspections to identify weaknesses in homeland defenses;

(3) developing countersurveillance techniques to prevent attacks;

(4) conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks, the probability of successful attacks, and the feasibility of specific countermeasures.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intelligence shall be staffed, in part, by analysts as requested by the Secretary and assigned by the agencies described under subsection (a)(1)(B). The analysts shall be assigned by reimbursable detail for periods as determined necessary by the Secretary in conjunction with the head of the assigning agency. No such detail may be undertaken without the consent of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN DEPARTMENT.—The Secretary may assign employees of the Department by reimbursable detail to the Directorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The President, or the designee of the President, shall prescribe regulations to provide that service described under paragraph (1) or (2), or service by employees within the Directorate, shall be considered a positive factor for selection to positions of greater authority within all agencies described under subsection (a)(1)(B).

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments are provided by the Department or others) to identify priorities and support protective measures by the Department, by other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) As part of a homeland security strategy, developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate. This shall include, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, establishing procedures, mechanisms, or units for the purpose of utilizing intelligence to identify vulnerabilities and protective measures in—

(A) public health infrastructure;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;

(F) information and communication systems;

(G) continuity of government services; and

(H) other systems or facilities the destruction or disruption of which could cause substantial harm to health, safety, property, or the environment.

(5) Enhancing the sharing of information regarding cyber security and physical security of the United States, developing appropriate security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various Government agencies in preventing, defending, and recovering from attacks.

(6) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department and assuming the responsibilities carried out by the Critical Infrastructure Assurance Office and the National Infrastructure Protection Center before the effective date of this division.

(7) Coordinating the activities of the Information Sharing and Analysis Centers to share information, between the public and private sectors, on threats, vulnerabilities, individual incidents, and privacy issues regarding homeland security.

(8) Working closely with the Department of State on cyber security issues with respect to international bodies and coordinating with appropriate agencies in helping to establish cyber security policy, standards, and enforcement mechanisms.

(9) Establishing the necessary organizational structure within the Directorate to provide leadership and focus on both cyber security and physical security, and ensuring the maintenance of a nucleus of cyber security and physical security experts within the United States Government.

(10) Performing such other duties as assigned by the Secretary.

In this subsection, the term ''key resources'' includes National Park Service sites identified by the Secretary of the Interior that are so universally recognized as symbols of the United States and so heavily visited by the American and international public that such sites would likely be identified as targets of terrorist attacks, including the Statue of Liberty, Independence Hall and the Liberty Bell, the Arch in St. Louis, Missouri, Mt. Rushmore, and memorials and monuments in Washington, D.C.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Critical Infrastructure Assurance Office of the Department of Commerce.

(2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(3) The National Communications System of the Department of Defense.

(4) The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(6) The Federal Computer Incident Response Center of the General Services Administration.

(7) The Energy Security and Assurance Program of the Department of Energy.

(8) The Federal Protective Service of the General Services Administration.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this division.

(3) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(4) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with intelligence estimates and coordinating Federal assistance for any emergency, including emergencies caused by natural disasters, manmade accidents, human or agricultural health emergencies, or terrorist attacks.

(5) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(6) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(7) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(8) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(9) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(10) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(5).

(11) Collaborating with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions described in subsection (c)(6)(B).

(12) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(13) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(14) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(15) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(5) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(6)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

(d) APPOINTMENT AS UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—An individual may serve as both the Under Secretary for Emergency Preparedness and Response and the Director of the Federal Emergency Management Agency if appointed by the President, by and with the advice and consent of the Senate, to each office.

(2) PAY.—Nothing in paragraph (1) shall be construed to authorize an individual appointed to both positions to receive pay at a rate of pay in excess of the rate of pay payable for the position to which the higher rate of pay applies.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to establish a Directorate of Science and Technology that will support the mission of the Department and the directorates of the Department by—

(1) establishing, funding, managing, and supporting research, development, demonstration, testing, and evaluation activities to meet national homeland security needs and objectives;

(2) setting national research and development goals and priorities pursuant to the mission of the Department, and developing strategies and policies in furtherance of such goals and priorities;

(3) coordinating and collaborating with other Federal departments and agencies, and State, local, academic, and private sector entities, to advance the research and development agenda of the Department;

(4) advising the Secretary on all scientific and technical matters relevant to homeland security; and

(5) facilitating the transfer and deployment of technologies that will serve to enhance homeland security goals.

(b) DEFINITIONS.—In this section:

(1) COUNCIL.—The term ''Council'' means the Homeland Security Science and Technology Council established under this section.

(2) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(3) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development applicable to the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(4) OSTP.—The term ''OSTP'' means the Office of Science and Technology Policy.

(5) SARPA.—The term ''SARPA'' means the Security Advanced Research Projects Agency established under this section.

(6) TECHNOLOGY ROADMAP.—The term ''technology roadmap'' means a plan or framework in which goals, priorities, and milestones for desired future technological capabilities and functions are established, and research and development alternatives or means for achieving those goals, priorities, and milestones are identified and analyzed in order to guide decisions on resource allocation and investments.

(7) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

(1) ESTABLISHMENT.—There is established a Directorate of Science and Technology within the Department.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology under subsection (a). In addition, the Under Secretary shall undertake the following activities in furtherance of such purposes:

(A) Coordinating with the OSTP and other appropriate entities in developing and executing the research and development agenda of the Department.

(B) Developing a technology roadmap that shall be updated biannually for achieving technological goals relevant to homeland security needs.

(C) Instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities.

(D) Assisting the Secretary and the Director of OSTP to ensure that science and technology priorities are clearly reflected and considered in a homeland security Strategy.

(E) Establishing mechanisms for the sharing and dissemination of key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities.

(F) Establishing, in coordination with the Under Secretary for Critical Infrastructure Protection and the Under Secretary for Emergency Preparedness and Response and relevant programs under their direction, a National Emergency Technology Guard, comprised of teams of volunteers with expertise in relevant areas of science and technology, to assist local communities in responding to and recovering from emergency contingencies requiring specialized scientific and technical capabilities. In carrying out this responsibility, the Under Secretary shall establish and manage a database of National Emergency Technology Guard volunteers, and prescribe procedures for organizing, certifying, mobilizing, and deploying National Emergency Technology Guard teams.

(G) Chairing the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(H) Assisting the Secretary in developing a homeland security strategy for Countermeasure Research described under subsection (k).

(I) Assisting the Secretary and acting on behalf of the Secretary in contracting with, commissioning, or establishing federally funded research and development centers determined useful and appropriate by the Secretary for the purpose of providing the Department with independent analysis and support.

(J) Assisting the Secretary and acting on behalf of the Secretary in entering into joint

sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites.

(K) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(L) Carrying out other appropriate activities as directed by the Secretary.

(3) RESEARCH AND DEVELOPMENT-RELATED AUTHORITIES.—The Secretary shall exercise the following authorities relating to the research, development, testing, and evaluation activities of the Directorate of Science and Technology:

(A) With respect to research and development expenditures under this section, the authority (subject to the same limitations and conditions) as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), for a period of 5 years beginning on the date of enactment of this Act. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph. The annual report required under subsection (h) of such section, as applied to the Secretary by this subparagraph, shall—

(i) be submitted to the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives; and

(ii) report on other transactions entered into under subparagraph (B).

(B) Authority to carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), for a period of 5 years beginning on the date of enactment of this Act. In applying the authorities of such section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) of that section. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph.

(C) In hiring personnel to assist in research, development, testing, and evaluation activities within the Directorate of Science and Technology, the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261), with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointment for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extensions under subsection (c)(2) of that section.

(D) With respect to such research, development, testing, and evaluation responsibilities under this section (except as provided in subparagraph (E)) as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under subsection (d)(4) for the Fund, not less than 10 percent of such funds for each fiscal year through 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways, and coastal security mission.

(E) The Secretary may carry out human health biodefense-related biological, biomedical, and infectious disease research and development (including vaccine research and development) in collaboration with the Secretary of Health and Human Services. Research supported by funding appropriated to the National Institutes of Health for bioterrorism research and related facilities development shall be conducted through the National Institutes of Health under joint strategic prioritization agreements between the Secretary and the Secretary of Health and Human Services. The Secretary shall have the authority to establish general research priorities, which shall be embodied in the joint strategic prioritization agreements with the Secretary of Health and Human Services. The specific scientific research agenda to implement agreements under this subparagraph shall be developed by the Secretary of Health and Human Services, who shall consult the Secretary to ensure that the agreements conform with homeland security priorities. All research programs established under those agreements shall be managed and awarded by the Director of the National Institutes of Health consistent with those agreements. The Secretary may transfer funds to the Department of Health and Human Services in connection with those agreements.

(d) ACCELERATION FUND.—

(1) ESTABLISHMENT.—There is established an Acceleration Fund to support research and development of technologies relevant to homeland security.

(2) FUNCTION.—The Fund shall be used to stimulate and support research and development projects selected by SARPA under subsection (f), and to facilitate the rapid transfer of research and technology derived from such projects.

(3) RECIPIENTS.—Fund monies may be made available through grants, contracts, cooperative agreements, and other transactions under subsection (c)(3) (A) and (B) to—

(A) public sector entities, including Federal, State, or local entities;

(B) private sector entities, including corporations, partnerships, or individuals; and

(C) other nongovernmental entities, including universities, federally funded research and development centers, and other academic or research institutions.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for the Fund for fiscal year 2003, and such sums as are necessary in subsequent fiscal years.

(e) SCIENCE AND TECHNOLOGY COUNCIL.—

(1) ESTABLISHMENT.—There is established the Homeland Security Science and Technology Council within the Directorate of Science and Technology. The Under Secretary shall chair the Council and have the authority to convene meetings. At the discretion of the Under Secretary and the Director of OSTP, the Council may be constituted as a subcommittee of the National Science and Technology Council.

(2) COMPOSITION.—The Council shall be composed of the following:

(A) Senior research and development officials representing agencies engaged in research and development relevant to homeland security and combating terrorism needs. Each representative shall be appointed by the head of the representative's respective agency with the advice and consent of the Under Secretary.

(B) The Director of SARPA and other appropriate officials within the Department.

(C) The Director of the OSTP and other senior officials of the Executive Office of the President as designated by the President.

(3) RESPONSIBILITIES.—The Council shall—

(A) provide the Under Secretary with recommendations on priorities and strategies, including those related to funding and portfolio management, for homeland security research and development;

(B) facilitate effective coordination and communication among agencies, other entities of the Federal Government, and entities in the private sector and academia, with respect to the conduct of research and development related to homeland security;

(C) recommend specific technology areas for which the Fund and other research and development resources shall be used, among other things, to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities;

(D) assist and advise the Under Secretary in developing the technology roadmap referred to under subsection (c)(2)(B); and

(E) perform other appropriate activities as directed by the Under Secretary.

(4) ADVISORY PANEL.—The Under Secretary may establish an advisory panel consisting of representatives from industry, academia, and other non-Federal entities to advise and support the Council.

(5) WORKING GROUPS.—At the discretion of the Under Secretary, the Council may establish working groups in specific homeland security areas consisting of individuals with relevant expertise in each articulated area. Working groups established for bioterrorism and public health-related research shall be fully coordinated with the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(f) SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—

(1) ESTABLISHMENT.—There is established the Security Advanced Research Projects Agency within the Directorate of Science and Technology.

(2) RESPONSIBILITIES.—SARPA shall—

(A) undertake and stimulate basic and applied research and development, leverage existing research and development, and accelerate the transition and deployment of technologies that will serve to enhance homeland defense;

(B) identify, fund, develop, and transition high-risk, high-payoff homeland security research and development opportunities that—

(i) may lie outside the purview or capabilities of the existing Federal agencies; and

(ii) emphasize revolutionary rather than evolutionary or incremental advances;

(C) provide selected projects with single or multiyear funding, and require such projects to provide interim progress reports, no less often than annually;

(D) administer the Acceleration Fund to carry out the purposes of this paragraph;

(E) advise the Secretary and Under Secretary on funding priorities under subsection (c)(3)(E); and

(F) perform other appropriate activities as directed by the Under Secretary.

(g) OFFICE OF RISK ANALYSIS AND ASSESSMENT.—

(1) ESTABLISHMENT.—There is established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology.

(2) FUNCTIONS.—The Office of Risk Analysis and Assessment shall assist the Secretary, the Under Secretary, and other Directorates with respect to their risk analysis and risk management activities by providing scientific or technical support for such activities. Such support shall include, as appropriate—

(A) identification and characterization of homeland security threats;

(B) evaluation and delineation of the risk of these threats;

(C) pinpointing of vulnerabilities or linked vulnerabilities to these threats;

(D) determination of criticality of possible threats;

(E) analysis of possible technologies, research, and protocols to mitigate or eliminate threats, vulnerabilities, and criticalities;

(F) evaluation of the effectiveness of various forms of risk communication; and

(G) other appropriate activities as directed by the Secretary.

(3) METHODS.—In performing the activities described under paragraph (2), the Office of Risk Analysis and Assessment may support or conduct, or commission from federally funded research and development centers or other entities, work involving modeling, statistical analyses, field tests and exercises (including red teaming), testbed development, development of standards and metrics.

(h) OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION.—

(1) ESTABLISHMENT.—There is established an Office for Technology Evaluation and Transition within the Directorate of Science and Technology.

(2) FUNCTION.—The Office for Technology Evaluation and Transition shall, with respect to technologies relevant to homeland security needs—

(A) serve as the principal, national point-of-contact and clearinghouse for receiving and processing proposals or inquiries regarding such technologies;

(B) identify and evaluate promising new technologies;

(C) undertake testing and evaluation of, and assist in transitioning, such technologies into deployable, fielded systems;

(D) consult with and advise agencies regarding the development, acquisition, and deployment of such technologies;

(E) coordinate with SARPA to accelerate the transition of technologies developed by SARPA and ensure transition paths for such technologies; and

(F) perform other appropriate activities as directed by the Under Secretary.

(3) TECHNICAL SUPPORT WORKING GROUP.—The functions described under this subsection may be carried out through, or in coordination with, or through an entity established by the Secretary and modeled after, the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) that provides an interagency forum to coordinate research and development of technologies for combating terrorism.

(i) OFFICE OF LABORATORY RESEARCH.—

(1) ESTABLISHMENT.—There is established an Office of Laboratory Research within the Directorate of Science and Technology.

(2) RESEARCH AND DEVELOPMENT FUNCTIONS TRANSFERRED.—There shall be transferred to the Department, to be administered by the Under Secretary, the functions, personnel, assets, and liabilities of the following programs and activities:

(A) Within the Department of Energy (but not including programs and activities relating to the strategic nuclear defense posture of the United States) the following:

(i) The chemical and biological national security and supporting programs and activities supporting domestic response of the nonproliferation and verification research and development program.

(ii) The nuclear smuggling programs and activities, and other programs and activities directly related to homeland security, within the proliferation detection program of the nonproliferation and verification research and development program, except that the programs and activities described in this clause may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(iii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(iv) The Environmental Measurements Laboratory.

(B) Within the Department of Defense, the National Bio-Weapons Defense Analysis Center established under section 161.

(3) RESPONSIBILITIES.—The Office of Laboratory Research shall—

(A) supervise the activities of the entities transferred under this subsection;

(B) administer the disbursement and undertake oversight of research and development funds transferred from the Department to other agencies outside of the Department, including funds transferred to the Department of Health and Human Services consistent with subsection (c)(3)(E);

(C) establish and direct new research and development facilities as the Secretary determines appropriate;

(D) include a science advisor to the Under Secretary on research priorities related to biological and chemical weapons, with supporting scientific staff, who shall advise on and support research priorities with respect to—

(i) research on countermeasures for biological weapons, including research on the development of drugs, devices, and biologics; and

(ii) research on biological and chemical threat agents; and

(E) other appropriate activities as directed by the Under Secretary.

(j) OFFICE FOR NATIONAL LABORATORIES.—

(1) ESTABLISHMENT.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(2) JOINT SPONSORSHIP ARRANGEMENTS.—

(A) NATIONAL LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work on behalf of the Department.

(B) DEPARTMENT OF ENERGY SITE.—The Department may be a joint sponsor of Department of Energy sites in the performance of work as if such sites were federally funded research and development centers and the work were performed under a multiple agency sponsorship arrangement with the Department.

(C) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subparagraph (A) or (B).

(D) CONDITIONS.—A joint sponsorship arrangement under this subsection shall—

(i) provide for the direct funding and management by the Department of the work being carried out on behalf of the Department; and

(ii) include procedures for addressing the coordination of resources and tasks to minimize conflicts between work undertaken on behalf of either Department.

(E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—

(i) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(ii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017 of the Federal Acquisition Regulation.

(F) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subparagraph (B).

(3) OTHER ARRANGEMENTS.—The Office for National Laboratories may enter into other arrangements with Department of Energy national laboratories or sites to carry out work to support the missions of the Department under applicable law, except that the Department of Energy may not charge or apply administrative fees for work on behalf of the Department.

(4) TECHNOLOGY TRANSFER.—The Office for National Laboratories may exercise the authorities in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to permit the Director of a Department of Energy national laboratory to enter into cooperative research and development agreements, or to negotiate licensing agreements, pertaining to work supported by the Department at the Department of Energy national laboratory.

(5) ASSISTANCE IN ESTABLISHING DEPARTMENT.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall develop a comprehensive, long-term strategy and plan for engaging non-Federal entities, particularly including private, for-profit entities, in the research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

(2) TIMEFRAME.—The strategy and plan under this subsection, together with recommendations for the enactment of supporting or enabling legislation, shall be submitted to the Congress within 270 days after the date of enactment of this Act.

(3) COORDINATION.—In developing the strategy and plan under this subsection, the Secretary shall consult with—

(A) other agencies with expertise in research, development, and production of countermeasures;

(B) private, for-profit entities and entrepreneurs with appropriate expertise and technology regarding countermeasures;

(C) investors that fund such entities;

(D) nonprofit research universities and institutions;

(E) public health and other interested private sector and government entities; and

(F) governments allied with the United States in the war on terrorism.

(4) PURPOSE.—The strategy and plan under this subsection shall evaluate proposals to assure that—

(A) research on countermeasures by non-Federal entities leads to the expeditious development and production of countermeasures that may be procured and deployed in the homeland security interests of the United States;

(B) capital is available to fund the expenses associated with such research, development, and production, including Government grants and contracts and appropriate capital formation tax incentives that apply to non-Federal entities with and without tax liability;

(C) the terms for procurement of such countermeasures are defined in advance so that such entities may accurately and reliably assess the potential countermeasures market and the potential rate of return;

(D) appropriate intellectual property, risk protection, and Government approval standards are applicable to such countermeasures;

(E) Government-funded research is conducted and prioritized so that such research complements, and does not unnecessarily duplicate, research by non-Federal entities and that such Government-funded research is made available, transferred, and licensed on commercially reasonable terms to such entities for development; and

(F) universities and research institutions play a vital role as partners in research and development and technology transfer, with appropriate progress benchmarks for such activities, with for-profit entities.

(5) REPORTING.—The Secretary shall report periodically to the Congress on the status of non-Federal entity countermeasure research, development, and production, and submit additional recommendations for legislation as needed.

(l) CLASSIFICATION OF RESEARCH.—

(1) IN GENERAL.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) CLASSIFICATION AND REVIEW.—The Under Secretary shall—

(A)(i) decide whether classification is appropriate before the award of a research grant, contract, cooperative agreement, or other transaction by the Department; and

(ii) if the decision under clause (i) is one of classification, control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, cooperative agreements, and other transactions issued by the Department to determine whether classification is still necessary.

(3) RESTRICTIONS.—No restrictions shall be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided under applicable provisions of law.

(m) OFFICE OF SCIENCE AND TECHNOLOGY POLICY.—The National Science and Technology Policy, Organization, and Priorities Act is amended in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''.

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to be headed by a director, which shall oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland;

(4) develop a process for receiving meaningful input from State and local government to assist the development of homeland security activities; and

(5) prepare an annual report, that contains—

(A) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(B) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(C) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(D) proposals to increase the coordination of Department priorities within each State and between the States.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) DESIGNATION.—The Secretary shall designate in each State and the District of Columbia not less than 1 employee of the Department to serve as the Homeland Security Liaison Officer in that State or District.

(2) DUTIES.—Each Homeland Security Liaison Officer designated under paragraph (1) shall—

(A) provide State and local government officials with regular information, research, and technical support to assist local efforts at securing the homeland;

(B) provide coordination between the Department and State and local first responders, including—

(i) law enforcement agencies;

(ii) fire and rescue agencies;

(iii) medical providers;

(iv) emergency service providers; and

(v) relief agencies;

(C) notify the Department of the State and local areas requiring additional information, training, resources, and security;

(D) provide training, information, and education regarding homeland security for State and local entities;

(E) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(F) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(G) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner;

(H) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security;

(I) consult with State and local government officials, including emergency managers, to coordinate efforts and avoid duplication; and

(J) coordinate with Homeland Security Liaison Officers in neighboring States to—

(i) address shared vulnerabilities; and

(ii) identify opportunities to achieve efficiencies through interstate activities .

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS AND STATE, LOCAL, AND CROSS-JURISDICTIONAL ISSUES.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders and State, Local, and Cross-jurisdictional Issues (in this section referred to as the ''Interagency Committee'', that shall—

(A) ensure coordination, with respect to homeland security functions, among the Federal agencies involved with—

(i) State, local, and regional governments;

(ii) State, local, and community-based law enforcement;

(iii) fire and rescue operations; and

(iv) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee shall be composed of—

(A) a representative of the Office for State and Local Government Coordination;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee shall meet—

(A) at the call of the Secretary; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Interagency Committee (in this section referred to as the ''Advisory Council'').

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee.

(B) DUTIES.—The Advisory Council shall—

(i) develop a plan to disseminate information on first response best practices;

(ii) identify and educate the Secretary on the latest technological advances in the field of first response;

(iii) identify probable emerging threats to first responders;

(iv) identify needed improvements to first response techniques and training;

(v) identify efficient means of communication and coordination between first responders and Federal, State, and local officials;

(vi) identify areas in which the Department can assist first responders; and

(vii) evaluate the adequacy and timeliness of resources being made available to local first responders.

(C) REPRESENTATION.—The Interagency Committee shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee not less frequently than once every 3 months.

SEC. 138. UNITED STATES SECRET SERVICE.

There are transferred to the Department the authorities, functions, personnel, and assets of the United States Secret Service, which shall be maintained as a distinct entity within the Department.

SEC. 139. BORDER COORDINATION WORKING GROUP.

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term ''border security functions'' means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term ''relevant agencies'' means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 140. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Homeland Security Liaison Officers for Maryland, Virginia, and the District of Columbia within the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 141. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Border and Transportation, Department of Homeland Security.

''Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

''Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

''Under Secretary for Immigration, Department of Homeland Security.

''Under Secretary for Intelligence, Department of Homeland Security.

''Under Secretary for Science and Technology, Department of Homeland Security.''.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the ''National Emergency Preparedness Enhancement Act of 2002''.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the ''Clearinghouse''). The Clearinghouse shall be headed by a Director.

(b) CONSULTATION.—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to a homeland security strategy.

(c) DUTIES.—

(1) DISSEMINATION OF INFORMATION.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) CENTER.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) PUBLIC AWARENESS CAMPAIGN.—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is ''National Emergency Preparedness Week''.

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) FEDERAL AGENCY ACTIVITIES.—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) ESTABLISHMENT.—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the ''Center'').

(b) MISSION.—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) FINDINGS.—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) EXCHANGE OF EMPLOYEES.—

(1) IN GENERAL.—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) CONDITIONS.—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking ''(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law,'' and inserting the following:

''(d) SCREENER PERSONNEL.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (except as provided under paragraph (2)),''; and

(2) by adding at the end the following:

''(2) WHISTLEBLOWER PROTECTION.—

''(A) DEFINITION.—In this paragraph, the term ''security screener'' means—

''(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

''(ii) an applicant for the position of a security screener under that subsection.

''(B) IN GENERAL.—Notwithstanding paragraph (1)—

''(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

''(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

''(C) COVERED POSITION.—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.''.

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) IN GENERAL.—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking ''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier'' and inserting the following:

''(a) DISCRIMINATION AGAINST EMPLOYEES.—

''(1) IN GENERAL.—No air carrier, contractor, subcontractor, or employer described under paragraph (2)'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

''(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

''(A) an air carrier or contractor or subcontractor of an air carrier;

''(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

''(C) an employer of private screening personnel described in section 44919 or 44920 of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''; and

(2) in clause (iii), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''.

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) $375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) $778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) $55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

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

''(c) PERSONNEL GRANTS.—

''(1) EXCLUSION.—Grants awarded under subsection (b) to hire 'employees engaged in fire protection', as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203), shall not be subject to paragraphs (10) or (11) of subsection (b).

''(2) DURATION.—Grants awarded under paragraph (1) shall be for a 3-year period.

''(3) MAXIMUM AMOUNT.—The total amount of grants awarded under paragraph (1) shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—Notwithstanding subsection (b)(6), the Federal share of a grant under paragraph (1) shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(5) APPLICATION.—In addition to the information under subsection (b)(5), an application for a grant under paragraph (1), shall include—

''(A) an explanation for the need for Federal assistance; and

''(B) specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(6) MAINTENANCE OF EFFORT.—Grants awarded under paragraph (1) shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).''.

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit facilities and equipment;

(2) review all available information on vulnerabilities of the aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit modes of transportation to terrorist attack; and

(3) review the steps taken by public and private entities since September 11, 2001, to improve aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security to determine their effectiveness at protecting passengers, freight (including hazardous materials), and transportation infrastructure from terrorist attack.

(b) REPORT.—

(1) CONTENT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress, the Secretary, and the Secretary of Transportation a comprehensive report without compromising national security, containing—

(A) the findings and conclusions from the reviews conducted under subsection (a); and

(B) proposed steps to improve any deficiencies found in aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security, including, to the extent possible, the cost of implementing the steps.

(2) FORMAT.—The Comptroller General may submit the report in both classified and redacted format if the Comptroller General determines that such action is appropriate or necessary.

(c) RESPONSE OF THE SECRETARY.—

(1) IN GENERAL.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(A) the response of the Department to the recommendations of the report; and

(B) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

(2) FORMATS.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is necessary or appropriate.

(d) REPORTS PROVIDED TO COMMITTEES.—In furnishing the report required by subsection (b), and the Secretary's response and recommendations under subsection (c), to the Congress, the Comptroller General and the Secretary, respectively, shall ensure that the report, response, and recommendations are transmitted to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) CONTENT.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

SEC. 172. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''March 31, 2004''.

SEC. 173. CONFORMING AMENDMENTS REGARDING LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

(a) TITLE 38, UNITED STATES CODE.—

(1) SECRETARY OF HOMELAND SECURITY AS HEAD OF COAST GUARD.—Title 38, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security'' in each of the following provisions:

(A) Section 101(25)(D).

(B) Section 1974(a)(5).

(C) Section 3002(5).

(D) Section 3011(a)(1)(A)(ii), both places it appears.

(E) Section 3012(b)(1)(A)(v).

(F) Section 3012(b)(1)(B)(ii)(V).

(G) Section 3018A(a)(3).

(H) Section 3018B(a)(1)(C).

(I) Section 3018B(a)(2)(C).

(J) Section 3018C(a)(5).

(K) Section 3020(m)(4).

(L) Section 3035(d).

(M) Section 6105(c).

(2) DEPARTMENT OF HOMELAND SECURITY AS EXECUTIVE DEPARTMENT OF COAST GUARD.—Title 38, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security'' in each of the following provisions:

(A) Section 1560(a).

(B) Section 3035(b)(2).

(C) Section 3035(c).

(D) Section 3035(d).

(E) Section 3035(e)(1)(C).

(F) Section 3680A(g).

(b) SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.—The Soldiers' and Sailors' Civil Relief Act of 1940 is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security'' in each of the following provisions:

(1) Section 105 (50 U.S.C. App. 515), both places it appears.

(2) Section 300(c) (50 U.S.C. App. 530).

(c) OTHER LAWS AND DOCUMENTS.—(1) Any reference to the Secretary of Transportation, in that Secretary's capacity as the head of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Secretary of Homeland Security.

(2) Any reference to the Department of Transportation, in its capacity as the executive department of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Department of Homeland Security.

SEC. 174. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

(e) EFFECTIVE DATE.—This section shall take effect 1 day after the date of the enactment of this Act.

SEC. 175. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) DEFINITION OF COVERED LAW.—In this section, the term ''covered law'' means—

(1) the first section of the Act of August 31, 1922 (commonly known as the ''Honeybee Act'') (7 U.S.C. 281);

(2) title III of the Federal Seed Act (7 U.S.C. 1581 et seq.);

(3) the Plant Protection Act (7 U.S.C. 7701 et seq.);

(4) the Animal Health Protection Act (7 U.S.C. 8301 et seq.);

(5) section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(6) the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.); and

(7) the eighth paragraph under the heading ''BUREAU OF ANIMAL INDUSTRY'' in the Act of March 4, 1913 (commonly known as the ''Virus-Serum-Toxin Act'') (21 U.S.C. 151 et seq.);

(b) TRANSFER.—

(1) IN GENERAL.—Subject to paragraph (2), there is transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under each covered law.

(2) QUARANTINE ACTIVITIES.—The functions transferred under paragraph (1) shall not include any quarantine activity carried out under a covered law.

(c) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred under subsection (b) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of each covered law.

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security in any case in which the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (b) under a covered law.

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred under subsection (b).

(d) TRANSFER AGREEMENT.—

(1) IN GENERAL.—Before the completion of the transition period (as defined in section 181), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to carry out this section.

(2) REQUIRED TERMS.—The agreement required by this subsection shall provide for—

(A) the supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred under subsection (b);

(B) the transfer of funds to the Secretary of Homeland Security under subsection (e);

(C) authority under which the Secretary of Homeland Security may perform functions that—

(i) are delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants; but

(ii) are not transferred to the Secretary of Homeland Security under subsection (b); and

(D) authority under which the Secretary of Agriculture may use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(3) REVIEW AND REVISION.—After the date of execution of the agreement described in paragraph (1), the Secretary of Agriculture and the Secretary of Homeland Security—

(A) shall periodically review the agreement; and

(B) may jointly revise the agreement, as necessary.

(e) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary of Homeland Security, in accordance with the agreement under subsection (d), funds for activities carried out by the Secretary of Homeland Security for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary of Homeland Security under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary of Homeland Security to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(f) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 181), the Secretary of Agriculture shall transfer to the Department of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(g) PROTECTION OF INSPECTION ANIMALS.—

(1) DEFINITION OF SECRETARY CONCERNED.—Title V of the Agricultural Risk Protection Act of 2000 is amended—

(A) by redesignating sections 501 and 502 (7 U.S.C. 2279e, 2279f) as sections 502 and 503, respectively; and

(B) by inserting before section 502 (as redesignated by subparagraph (A)) the following:

''SEC. 501. DEFINITION OF SECRETARY CONCERNED.

''In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 502 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended—

(i) in subsection (a)—

(I) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(II) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(ii) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(B) Section 503 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended by striking ''501'' each place it appears and inserting ''502''.

(C) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 176. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department of Homeland Security;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary of Homeland Security.

(b) COORDINATION.—Consistent with section 171, the Secretary of Homeland Security, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall ensure that appropriate information (as determined by the Secretary of Homeland Security) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) TRANSITION PERIOD.—The term ''transition period'' means the 1-year period beginning on the effective date of this division.

SEC. 182. TRANSFER OF AGENCIES.

The transfer of an agency to the Department, as authorized by this title, shall occur when the President so directs, but in no event later than the end of the transition period.

SEC. 183. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until an agency is transferred to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this division shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may reasonably request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any agency (as defined under section 2) may, on a reimbursable basis, provide services and detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) DESIGNATION.—During the transition period, pending the nomination and advice and consent of the Senate to the appointment of an officer required by this division to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent, and who continues as such an officer, to act in such office until the office is filled as provided in this division.

(2) COMPENSATION.—While serving as an acting officer under paragraph (1), the officer

shall receive compensation at the higher of the rate provided—

(A) under this division for the office in which that officer acts; or

(B) for the office held at the time of designation.

(3) PERIOD OF SERVICE.—The person serving as an acting officer under paragraph (1) may serve in the office for the periods described under section 3346 of title 5, United States Code, as if the office became vacant on the effective date of this division.

(d) EXCEPTION TO ADVICE AND CONSENT REQUIREMENT.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer—

(1) whose agency is transferred to the Department under this Act;

(2) whose appointment was by and with the advice and consent of the Senate;

(3) who is proposed to serve in a directorate or office of the Department that is similar to the transferred agency in which the officer served; and

(4) whose authority and responsibilities following such transfer would be equivalent to those performed prior to such transfer.

SEC. 184. INCIDENTAL TRANSFERS AND TRANSFER OF RELATED FUNCTIONS.

(a) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director determines necessary to accomplish the purposes of this title.

(b) ADJUDICATORY OR REVIEW FUNCTIONS.—

(1) IN GENERAL.—At the time an agency is transferred to the Department, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency.

(2) EXCEPTION.—The President may not transfer the Executive Office of Immigration Review of the Department of Justice under this subsection.

(c) TRANSFER OF RELATED FUNCTIONS.—The transfer, under this title, of an agency that is a subdivision of a department before such transfer shall include the transfer to the Secretary of any function relating to such agency that, on the date before the transfer, was exercised by the head of the department from which such agency is transferred.

(d) REFERENCES.—A reference in any other Federal law, Executive order, rule, regulation, delegation of authority, or other document pertaining to an agency transferred under this title that refers to the head of the department from which such agency is transferred is deemed to refer to the Secretary.

SEC. 185. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 186. TRANSFER AND ALLOCATION.

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the agencies transferred under this title, shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and to section 1531 of title 31, United States Code. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 187. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this division takes effect, or were final before the effective date of this division and are to become effective on or after the effective date of this division,

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this division, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) TERMS AND CONDITIONS OF EMPLOYMENT.—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(2) CONDITIONS AND CRITERIA FOR APPOINTMENT.—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(3) WHISTLEBLOWER PROTECTION.—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) NO EFFECT ON INTELLIGENCE AUTHORITIES.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 188. TRANSITION PLAN.

(a) IN GENERAL.—Not later than September 15, 2002, the President shall submit to Congress a transition plan as set forth in subsection (b).

(b) CONTENTS.—

(1) IN GENERAL.—The transition plan under subsection (a) shall include a detailed—

(A) plan for the transition to the Department and implementation of this title and division B; and

(B) proposal for the financing of those operations and needs of the Department that do not represent solely the continuation of functions for which appropriations already are available.

(2) FINANCING PROPOSAL.—The financing proposal under paragraph (1)(B) may consist of any combination of specific appropriations transfers, specific reprogrammings, and new specific appropriations as the President considers advisable.

SEC. 189. USE OF APPROPRIATED FUNDS.

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(g) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(h) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) ANNUAL EVALUATIONS.—The Comptroller General of the United States shall monitor and evaluate the implementation of this title and title XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 185;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) POINT OF ENTRY MANAGEMENT REPORT.—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) COMBATING TERRORISM AND HOMELAND SECURITY.—Not later than 270 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the head of each department or agency affected by titles I, II, III, and XI, develop definitions of the terms ''combating terrorism'' and ''homeland security'' for purposes of those titles and shall consider such definitions in determining the mission of the Department; and

(2) submit a report to Congress on such definitions.

(e) RESULTS-BASED MANAGEMENT.—

(1) STRATEGIC PLAN.—

(A) IN GENERAL.—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) PERIOD; REVISIONS.—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) CONTENTS.—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) PERFORMANCE PLAN.—

(A) IN GENERAL.—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) CONTENTS.—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) SCOPE.—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) PERFORMANCE REPORT.—

(A) IN GENERAL.—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) CONTENTS.—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance authorized under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

SEC. 195. PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 196. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 197. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 198. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 199. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.
''9701. Establishment of human resources management system.

"§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 71, 72, 73, 77, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of this title; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of this title;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of this title in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 181 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 199A. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of title 5, United States Code, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SEC. 199B. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

TITLE II—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

SEC. 201. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

TITLE III—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

SEC. 301. DEFINITION.

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 302. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 303. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 302 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 304. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 302, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 305. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 302 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 306. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 302, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of

procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 302.

SEC. 307. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

Subtitle B—Other Matters

SEC. 311. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

TITLE IV—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 401. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 402. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 403. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 404. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 405. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the vice chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned

under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 406. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 407. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 408. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 409. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This division shall take effect 30 days after the date of enactment of this Act or, if enacted within 30 days before January 1, 2003, on January 1, 2003.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

TITLE X—SHORT TITLE AND DEFINITIONS.

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

''(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following new paragraphs:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the

authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Under Secretary of Homeland Security for Immigration Affairs'' and ''Under Secretary'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''UNDER SECRETARY'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for

Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement and Border Affairs.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification

of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow

the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that

it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

"§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies; and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Chief Human Capital Officers ..... 1401".

SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

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

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

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

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

(C) by adding at the end the following:

''(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

''§ 3319. Alternative ranking and selection procedures

''(a)(1) the Office, in exercising its authority under section 3304; or

''(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in the case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT''; and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.
''3522. Agency plans; approval.
''3523. Authority to provide voluntary separation incentive payments.
''3524. Effect of subsequent employment with the Government.
''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors;''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a,'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the Senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to

the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

DIVISION D—E-GOVERNMENT ACT OF 2002

TITLE XXX—SHORT TITLE; FINDINGS AND PURPOSES

SEC. 3001. SHORT TITLE.

This division may be cited as the ''E-Government Act of 2002''.

SEC. 3002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The use of computers and the Internet is rapidly transforming societal interactions and the relationships among citizens, private businesses, and the Government.

(2) The Federal Government has had uneven success in applying advances in information technology to enhance governmental functions and services, achieve more efficient performance, increase access to Government information, and increase citizen participation in Government.

(3) Most Internet-based services of the Federal Government are developed and presented separately, according to the jurisdictional boundaries of an individual department or agency, rather than being integrated cooperatively according to function or topic.

(4) Internet-based Government services involving interagency cooperation are especially difficult to develop and promote, in part because of a lack of sufficient funding mechanisms to support such interagency cooperation.

(5) Electronic Government has its impact through improved Government performance and outcomes within and across agencies.

(6) Electronic Government is a critical element in the management of Government, to be implemented as part of a management framework that also addresses finance, procurement, human capital, and other challenges to improve the performance of Government.

(7) To take full advantage of the improved Government performance that can be achieved through the use of Internet-based technology requires strong leadership, better organization, improved interagency collaboration, and more focused oversight of agency compliance with statutes related to information resource management.

(b) PURPOSES.—The purposes of this division are the following:

(1) To provide effective leadership of Federal Government efforts to develop and promote electronic Government services and processes by establishing an Administrator of a new Office of Electronic Government within the Office of Management and Budget.

(2) To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

(3) To promote interagency collaboration in providing electronic Government services, where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal electronic Government processes, where this collaboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Government to achieve agency missions and program performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services.

(6) To reduce costs and burdens for businesses and other Government entities.

(7) To promote better informed decision-making by policy makers.

(8) To promote access to high quality Government information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations.

(11) To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

SEC. 3101. MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES.

(a) IN GENERAL.—Title 44, United States Code, is amended by inserting after chapter 35 the following:

"CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

''Sec.
''3601. Definitions.
''3602. Office of Electronic Government.
''3603. Chief Information Officers Council.
''3604. E-Government Fund.
''3605. E-Government report.

"§ 3601. Definitions

''In this chapter, the definitions under section 3502 shall apply, and the term—

''(1) 'Administrator' means the Administrator of the Office of Electronic Government established under section 3602;

''(2) 'Council' means the Chief Information Officers Council established under section 3603;

''(3) 'electronic Government' means the use by the Government of web-based Internet applications and other information technologies, combined with processes that implement these technologies, to—

''(A) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or

''(B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation;

''(4) 'enterprise architecture'—

''(A) means—

''(i) a strategic information asset base, which defines the mission;

''(ii) the information necessary to perform the mission;

''(iii) the technologies necessary to perform the mission; and

''(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

''(B) includes—

''(i) a baseline architecture;

''(ii) a target architecture; and

''(iii) a sequencing plan;

''(5) 'Fund' means the E-Government Fund established under section 3604;

''(6) 'interoperability' means the ability of different operating and software systems, applications, and services to communicate and exchange data in an accurate, effective, and consistent manner;

''(7) 'integrated service delivery' means the provision of Internet-based Federal Government information or services integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction; and

''(8) 'tribal government' means the governing body of 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.

"§ 3602. Office of Electronic Government

''(a) There is established in the Office of Management and Budget an Office of Electronic Government.

''(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

''(c) The Administrator shall assist the Director in carrying out—

''(1) all functions under this chapter;

''(2) all of the functions assigned to the Director under title XXXII of the E-Government Act of 2002; and

''(3) other electronic government initiatives, consistent with other statutes.

''(d) The Administrator shall assist the Director and the Deputy Director for Management and work with the Administrator of the Office of Information and Regulatory Affairs in setting strategic direction for implementing electronic Government, under relevant statutes, including—

''(1) chapter 35;

''(2) division E of the Clinger-Cohen Act of 1996 (division E of Public Law 104–106; 40 U.S.C. 1401 et seq.);

''(3) section 552a of title 5 (commonly referred to as the Privacy Act);

''(4) the Government Paperwork Elimination Act (44 U.S.C. 3504 note);

''(5) the Government Information Security Reform Act; and

''(6) the Computer Security Act of 1987 (40 U.S.C. 759 note).

''(e) The Administrator shall work with the Administrator of the Office of Information and Regulatory Affairs and with other offices within the Office of Management and Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to—

''(1) capital planning and investment control for information technology;

''(2) the development of enterprise architectures;

''(3) information security;

''(4) privacy;

''(5) access to, dissemination of, and preservation of Government information;

''(6) accessibility of information technology for persons with disabilities; and

''(7) other areas of electronic Government.

''(f) Subject to requirements of this chapter, the Administrator shall assist the Director by performing electronic Government functions as follows:

''(1) Advise the Director on the resources required to develop and effectively operate and maintain Federal Government information systems.

''(2) Recommend to the Director changes relating to Governmentwide strategies and priorities for electronic Government.

''(3) Provide overall leadership and direction to the executive branch on electronic Government by working with authorized officials to establish information resources management policies and requirements, and by reviewing performance of each agency in acquiring, using, and managing information resources.

''(4) Promote innovative uses of information technology by agencies, particularly

initiatives involving multiagency collaboration, through support of pilot projects, research, experimentation, and the use of innovative technologies.

''(5) Oversee the distribution of funds from, and ensure appropriate administration and coordination of, the E-Government Fund established under section 3604.

''(6) Coordinate with the Administrator of General Services regarding programs undertaken by the General Services Administration to promote electronic government and the efficient use of information technologies by agencies.

''(7) Lead the activities of the Chief Information Officers Council established under section 3603 on behalf of the Deputy Director for Management, who shall chair the council.

''(8) Assist the Director in establishing policies which shall set the framework for information technology standards for the Federal Government under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), to be developed by the National Institute of Standards and Technology and promulgated by the Secretary of Commerce, taking into account, if appropriate, recommendations of the Chief Information Officers Council, experts, and interested parties from the private and nonprofit sectors and State, local, and tribal governments, and maximizing the use of commercial standards as appropriate, as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(9) Sponsor ongoing dialogue that—

''(A) shall be conducted among Federal, State, local, and tribal government leaders on electronic Government in the executive, legislative, and judicial branches, as well as leaders in the private and nonprofit sectors, to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, using, and managing information resources;

''(B) is intended to improve the performance of governments in collaborating on the use of information technology to improve the delivery of Government information and services; and

''(C) may include—

''(i) development of innovative models—

''(I) for electronic Government management and Government information technology contracts; and

''(II) that may be developed through focused discussions or using separately sponsored research;

''(ii) identification of opportunities for public-private collaboration in using Internet-based technology to increase the efficiency of Government-to-business transactions;

''(iii) identification of mechanisms for providing incentives to program managers and other Government employees to develop and implement innovative uses of information technologies; and

''(iv) identification of opportunities for public, private, and intergovernmental collaboration in addressing the disparities in access to the Internet and information technology.

''(10) Sponsor activities to engage the general public in the development and implementation of policies and programs, particularly activities aimed at fulfilling the goal of using the most effective citizen-centered strategies and those activities which engage multiple agencies providing similar or related information and services.

''(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(12) Coordinate with the Administrator of the Office of Federal Procurement Policy to ensure effective implementation of electronic procurement initiatives.

''(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

''(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

''(B) ensuring compliance with those standards through the budget review process and other means.

''(14) Oversee the development of enterprise architectures within and across agencies.

''(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes.

''(16) Administer the Office of Electronic Government established under section 3602.

''(17) Assist the Director in preparing the E-Government report established under section 3605.

''(g) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all functions under the E-Government Act of 2002.

''§ 3603. Chief Information Officers Council

''(a) There is established in the executive branch a Chief Information Officers Council.

''(b) The members of the Council shall be as follows:

''(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

''(2) The Administrator of the Office of Electronic Government.

''(3) The Administrator of the Office of Information and Regulatory Affairs.

''(4) The chief information officer of each agency described under section 901(b) of title 31.

''(5) The chief information officer of the Central Intelligence Agency.

''(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

''(7) Any other officer or employee of the United States designated by the chairperson.

''(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

''(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

''(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

''(3) The Administrator of General Services shall provide administrative and other support for the Council.

''(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.

''(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

''(f) The Council shall perform functions that include the following:

''(1) Develop recommendations for the Director on Government information resources management policies and requirements.

''(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

''(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

''(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title XXXII of the E-Government Act of 2002.

''(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) and promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(6) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management.

''(7) Work with the Archivist of the United States to assess how the Federal Records Act can be addressed effectively by Federal information resources management activities.

''§ 3604. E-Government Fund

''(a)(1) There is established in the Treasury of the United States the E-Government Fund.

''(2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by the Administrator of the Office of Electronic Government, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically.

''(3) Projects under this subsection may include efforts to—

''(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments);

''(B) make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and

''(C) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.

''(b)(1) The Administrator shall—

''(A) establish procedures for accepting and reviewing proposals for funding;

''(B) consult with interagency councils, including the Chief Information Officers Council, the Chief Financial Officers Council, and other interagency management councils, in establishing procedures and reviewing proposals; and

''(C) assist the Director in coordinating resources that agencies receive from the Fund with other resources available to agencies for similar purposes.

''(2) When reviewing proposals and managing the Fund, the Administrator shall observe and incorporate the following procedures:

''(A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agency-wide authority on behalf of the head of the agency, who shall report directly to the head of the agency.

''(B) Projects shall adhere to fundamental capital planning and investment control processes.

''(C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would be coordinated with support from the Fund, and include plans for potential continuation of projects after all funds made available from the Fund are expended.

''(D) After considering the recommendations of the interagency councils, the Director, assisted by the Administrator, shall have final authority to determine which of the candidate projects shall be funded from the Fund.

''(E) Agencies shall assess the results of funded projects.

''(c) In determining which proposals to recommend for funding, the Administrator—

''(1) shall consider criteria that include whether a proposal—

''(A) identifies the group to be served, including citizens, businesses, the Federal Government, or other governments;

''(B) indicates what service or information the project will provide that meets needs of groups identified under subparagraph (A);

''(C) ensures proper security and protects privacy;

''(D) is interagency in scope, including projects implemented by a primary or single agency that—

''(i) could confer benefits on multiple agencies; and

''(ii) have the support of other agencies; and

''(E) has performance objectives that tie to agency missions and strategic goals, and interim results that relate to the objectives; and

''(2) may also rank proposals based on criteria that include whether a proposal—

''(A) has Governmentwide application or implications;

''(B) has demonstrated support by the public to be served;

''(C) integrates Federal with State, local, or tribal approaches to service delivery;

''(D) identifies resource commitments from nongovernmental sectors;

''(E) identifies resource commitments from the agencies involved;

''(F) uses web-based technologies to achieve objectives;

''(G) identifies records management and records access strategies;

''(H) supports more effective citizen participation in and interaction with agency activities that further progress toward a more citizen-centered Government;

''(I) directly delivers Government information and services to the public or provides the infrastructure for delivery;

''(J) supports integrated service delivery;

''(K) describes how business processes across agencies will reflect appropriate transformation simultaneous to technology implementation; and

''(L) is new or innovative and does not supplant existing funding streams within agencies.

''(d) The Fund may be used to fund the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(e) None of the funds provided from the Fund may be transferred to any agency until 15 days after the Administrator of the General Services Administration has submitted to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the appropriate authorizing committees of the Senate and the House of Representatives, a notification and description of how the funds are to be allocated and how the expenditure will further the purposes of this chapter.

''(f)(1) The Director shall report annually to Congress on the operation of the Fund, through the report established under section 3605.

''(2) The report under paragraph (1) shall describe—

''(A) all projects which the Director has approved for funding from the Fund; and

''(B) the results that have been achieved to date for these funded projects.

''(g)(1) There are authorized to be appropriated to the Fund—

''(A) $45,000,000 for fiscal year 2003;

''(B) $50,000,000 for fiscal year 2004;

''(C) $100,000,000 for fiscal year 2005;

''(D) $150,000,000 for fiscal year 2006; and

''(E) such sums as are necessary for fiscal year 2007.

''(2) Funds appropriated under this subsection shall remain available until expended.

''§ 3605. E-Government report

''(a) Not later than March 1 of each year, the Director shall submit an E-Government status report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(b) The report under subsection (a) shall contain—

''(1) a summary of the information reported by agencies under section 3202(f) of the E-Government Act of 2002;

''(2) the information required to be reported by section 3604(f); and

''(3) a description of compliance by the Federal Government with other goals and provisions of the E-Government Act of 2002.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

''36. Management and Promotion of Electronic Government Services .. 3601''.

SEC. 3102. CONFORMING AMENDMENTS.

(a) ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.—

(1) IN GENERAL.—The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by inserting after section 112 the following:

''SEC. 113. ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.

''The Administrator of General Services shall consult with the Administrator of the Office of Electronic Government on programs undertaken by the General Services Administration to promote electronic Government and the efficient use of information technologies by Federal agencies.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for the Federal Property and Administrative Services Act of 1949 is amended by inserting after the item relating to section 112 the following:

''Sec. 113. Electronic Government and information technologies.''.

(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS.—Section 503(b) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), and (9), as paragraphs (6), (7), (8), (9), and (10), respectively; and

(2) by inserting after paragraph (4) the following:

''(5) Chair the Chief Information Officers Council established under section 3603 of title 44.''.

(c) OFFICE OF ELECTRONIC GOVERNMENT.—

(1) IN GENERAL.—Chapter 5 of title 31, United States Code, is amended by inserting after section 506 the following:

''§ 507. Office of Electronic Government

''The Office of Electronic Government, established under section 3602 of title 44, is an office in the Office of Management and Budget.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 31, United States Code, is amended by inserting after the item relating to section 506 the following:

''507. Office of Electronic Government.''.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

SEC. 3201. DEFINITIONS.

Except as otherwise provided, in this title the definitions under sections 3502 and 3601 of title 44, United States Code, shall apply.

SEC. 3202. FEDERAL AGENCY RESPONSIBILITIES.

(a) IN GENERAL.—The head of each agency shall be responsible for—

(1) complying with the requirements of this division (including the amendments made by this Act), the related information resource management policies and guidance established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

(2) ensuring that the information resource management policies and guidance established under this division by the Director, and the information technology standards promulgated under this division by the Secretary of Commerce are communicated promptly and effectively to all relevant officials within their agency; and

(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an integrated Internet-based system of delivering Federal Government information and services to the public under section 3204.

(b) PERFORMANCE INTEGRATION.—

(1) Agencies shall develop performance measures that demonstrate how electronic government enables progress toward agency objectives, strategic goals, and statutory mandates.

(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

(3) Areas of performance measurement that agencies should consider include—

(A) customer service;

(B) agency productivity; and

(C) adoption of innovative information technology, including the appropriate use of commercial best practices.

(4) Agencies shall link their performance goals to key groups, including citizens, businesses, and other governments, and to internal Federal Government operations.

(5) As appropriate, agencies shall work collectively in linking their performance goals

to groups identified under paragraph (4) and shall use information technology in delivering Government information and services to those groups.

(c) AVOIDING DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable—

(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and

(2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet.

(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this division shall be in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e) SPONSORED ACTIVITIES.—Agencies shall sponsor activities that use information technology to engage the public in the development and implementation of policies and programs.

(f) CHIEF INFORMATION OFFICERS.—The Chief Information Officer of each of the agencies designated under chapter 36 of title 44, United States Code (as added by this Act) shall be responsible for—

(1) participating in the functions of the Chief Information Officers Council; and

(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated under this division by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of Federal Government electronic information, and computer system efficiency and security.

(g) E-GOVERNMENT STATUS REPORT.—

(1) IN GENERAL.—Each agency shall compile and submit to the Director an annual E-Government Status Report on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) compliance by the agency with this Act; and

(C) how electronic Government initiatives of the agency improve performance in delivering programs to constituencies.

(2) SUBMISSION.—Each agency shall submit an annual report under this subsection—

(A) to the Director at such time and in such manner as the Director requires;

(B) consistent with related reporting requirements; and

(C) which addresses any section in this title relevant to that agency.

(h) USE OF TECHNOLOGY.—Nothing in this division supersedes the responsibility of an agency to use or manage information technology to deliver Government information and services that fulfill the statutory mission and programs of the agency.

(i) NATIONAL SECURITY SYSTEMS.—

(1) INAPPLICABILITY.—Except as provided under paragraph (2), this title does not apply to national security systems as defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

(2) APPLICABILITY.—Sections 3202, 3203, 3210, and 3214 of this title do apply to national security systems to the extent practicable and consistent with law.

SEC. 3203. COMPATIBILITY OF EXECUTIVE AGENCY METHODS FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

(a) PURPOSE.—The purpose of this section is to achieve interoperable implementation of electronic signatures for appropriately secure electronic transactions with Government.

(b) ELECTRONIC SIGNATURES.—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105–277; 112 Stat. 2681–749 through 2681–751), each Executive agency (as defined under section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with the relevant policies and procedures issued by the Director.

(c) AUTHORITY FOR ELECTRONIC SIGNATURES.—The Administrator of General Services shall support the Director by establishing a framework to allow efficient interoperability among Executive agencies when using electronic signatures, including processing of digital signatures.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration, to ensure the development and operation of a Federal bridge certification authority for digital signature compatibility, or for other activities consistent with this section, $8,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3204. FEDERAL INTERNET PORTAL.

(a) IN GENERAL.—

(1) PUBLIC ACCESS.—The Director shall work with the Administrator of the General Services Administration and other agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

(2) CRITERIA.—To the extent practicable, the integrated system shall be designed and operated according to the following criteria:

(A) The provision of Internet-based Government information and services directed to key groups, including citizens, business, and other governments, and integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction.

(B) An ongoing effort to ensure that Internet-based Government services relevant to a given citizen activity are available from a single point.

(C) Access to Federal Government information and services consolidated, as appropriate, with Internet-based information and services provided by State, local, and tribal governments.

(D) Access to Federal Government information held by 1 or more agencies shall be made available in a manner that protects privacy, consistent with law.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

SEC. 3205. FEDERAL COURTS.

(a) INDIVIDUAL COURT WEBSITES.—The Chief Justice of the United States, the chief judge of each circuit and district, and the chief bankruptcy judge of each district shall establish with respect to the Supreme Court or the respective court of appeals, district, or bankruptcy court of a district, a website that contains the following information or links to websites with the following information:

(1) Location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers.

(2) Local rules and standing or general orders of the court.

(3) Individual rules, if in existence, of each justice or judge in that court.

(4) Access to docket information for each case.

(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.

(6) Access to all documents filed with the courthouse in electronic form, described under subsection (c).

(7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) MAINTENANCE OF DATA ONLINE.—

(1) UPDATE OF INFORMATION.—The information and rules on each website shall be updated regularly and kept reasonably current.

(2) CLOSED CASES.—Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) ELECTRONIC FILINGS.—

(1) IN GENERAL.—Except as provided under paragraph (2), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.

(2) EXCEPTIONS.—Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.

(3) PRIVACY AND SECURITY CONCERNS.—The Judicial Conference of the United States may promulgate rules under this subsection to protect important privacy and security concerns.

(d) DOCKETS WITH LINKS TO DOCUMENTS.—The Judicial Conference of the United States shall explore the feasibility of technology to post online dockets with links allowing all filings, decisions, and rulings in each case to be obtained from the docket sheet of that case.

(e) COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION.—Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking ''shall hereafter'' and inserting ''may, only to the extent necessary,''.

(f) TIME REQUIREMENTS.—Not later than 2 years after the effective date of this title, the websites under subsection (a) shall be established, except that access to documents filed in electronic form shall be established not later than 4 years after that effective date.

(g) DEFERRAL.—

(1) IN GENERAL.—

(A) ELECTION.—

(i) NOTIFICATION.—The Chief Justice of the United States, a chief judge, or chief bankruptcy judge may submit a notification to the Administrative Office of the United States Courts to defer compliance with any requirement of this section with respect to the Supreme Court, a court of appeals, district, or the bankruptcy court of a district.

(ii) CONTENTS.—A notification submitted under this subparagraph shall state—

(I) the reasons for the deferral; and

(II) the online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(B) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every

year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.

SEC. 3206. REGULATORY AGENCIES.

(a) PURPOSES.—The purposes of this section are to—

(1) improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency; and

(2) enhance public participation in Government by electronic means, consistent with requirements under subchapter II of chapter 5 of title 5, United States Code, (commonly referred to as the Administrative Procedures Act).

(b) INFORMATION PROVIDED BY AGENCIES ON-LINE.—To the extent practicable as determined by the agency in consultation with the Director, each agency (as defined under section 551 of title 5, United States Code) shall ensure that a publicly accessible Federal Government website includes all information about that agency required to be published in the Federal Register under section 552(a)(1) of title 5, United States Code.

(c) SUBMISSIONS BY ELECTRONIC MEANS.—To the extent practicable, agencies shall accept submissions under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under section 553 of title 5, United States Code.

(2) INFORMATION AVAILABLE.—Agency electronic dockets shall make publicly available online to the extent practicable, as determined by the agency in consultation with the Director—

(A) all submissions under section 553(c) of title 5, United States Code; and

(B) other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3605 of title 44 (as added by this Act).

SEC. 3207. ACCESSIBILITY, USABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) PURPOSE.—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.

(b) DEFINITIONS.—In this section, the term—

(1) ''Committee'' means the Interagency Committee on Government Information established under subsection (c); and

(2) ''directory'' means a taxonomy of subjects linked to websites that—

(A) organizes Government information on the Internet according to subject matter; and

(B) may be created with the participation of human editors.

(c) INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this title, the Director shall establish the Interagency Committee on Government Information.

(2) MEMBERSHIP.—The Committee shall be chaired by the Director or the designee of the Director and—

(A) shall include representatives from—

(i) the National Archives and Records Administration;

(ii) the offices of the Chief Information Officers from Federal agencies; and

(iii) other relevant officers from the executive branch; and

(B) may include representatives from the Federal legislative and judicial branches.

(3) FUNCTIONS.—The Committee shall—

(A) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section, to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(4) TERMINATION.—The Committee may be terminated on a date determined by the Director, except the Committee may not terminate before the Committee submits all recommendations required under this section.

(d) CATEGORIZING OF INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director on—

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(ii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(2) FUNCTIONS OF THE DIRECTOR.—Not later than 180 days after the submission of recommendations under paragraph (1), the Director shall issue policies—

(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers;

(ii) in ways that are interoperable across agencies; and

(iii) that are, as appropriate, consistent with the standards promulgated by the Secretary of Commerce under section 3602(f)(8) of title 44, United States Code;

(B) defining categories of Government information which shall be required to be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(e) PUBLIC ACCESS TO ELECTRONIC INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) FUNCTIONS OF THE ARCHIVIST.—Not later than 180 days after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(f) AVAILABILITY OF GOVERNMENT INFORMATION ON THE INTERNET.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, each agency shall—

(A) consult with the Committee and solicit public comment;

(B) determine which Government information the agency intends to make available and accessible to the public on the Internet and by other means;

(C) develop priorities and schedules for making that Government information available and accessible;

(D) make such final determinations, priorities, and schedules available for public comment;

(E) post such final determinations, priorities, and schedules on the Internet; and

(F) submit such final determinations, priorities, and schedules to the Director, in the report established under section 3202(g).

(2) UPDATE.—Each agency shall update determinations, priorities, and schedules of the agency, as needed, after consulting with the Committee and soliciting public comment, if appropriate.

(g) ACCESS TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT.—

(1) DEVELOPMENT AND MAINTENANCE OF GOVERNMENTWIDE REPOSITORY AND WEBSITE.—

(A) REPOSITORY AND WEBSITE.—The Director of the National Science Foundation, working with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(I) include information about research and development funded by the Federal Government and performed by—

(aa) institutions not a part of the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development center; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(II) integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that would prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(ii) 1 or more websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—

(I) the coordination of Federal research and development activities;

(II) collaboration among those conducting Federal research and development;

(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and

(IV) access by policymakers and the public to information concerning Federal research and development activities.

(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.

(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.

(3) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—

(A) policies to improve agency reporting of information for the repository established under this subsection; and

(B) policies to improve dissemination of the results of research performed by Federal agencies and federally funded research and development centers.

(4) FUNCTIONS OF THE DIRECTOR.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3605 of title 44 (as added by this Act).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—

(A) $2,000,000 in each of the fiscal years 2003 through 2005; and

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.

(h) PUBLIC DOMAIN DIRECTORY OF PUBLIC FEDERAL GOVERNMENT WEBSITES.—

(1) ESTABLISHMENT.—Not later than 2 years after the effective date of this title, the Director and each agency shall—

(A) develop and establish a public domain directory of public Federal Government websites; and

(B) post the directory on the Internet with a link to the integrated Internet-based system established under section 3204.

(2) DEVELOPMENT.—With the assistance of each agency, the Director shall—

(A) direct the development of the directory through a collaborative effort, including input from—

(i) agency librarians;

(ii) information technology managers;

(iii) program managers;

(iv) records managers;

(v) Federal depository librarians; and

(vi) other interested parties; and

(B) develop a public domain taxonomy of subjects used to review and categorize public Federal Government websites.

(3) UPDATE.—With the assistance of each agency, the Administrator of the Office of Electronic Government shall—

(A) update the directory as necessary, but not less than every 6 months; and

(B) solicit interested persons for improvements to the directory.

(i) STANDARDS FOR AGENCY WEBSITES.—Not later than 18 months after the effective date of this title, the Director shall promulgate guidance for agency websites that include—

(1) requirements that websites include direct links to—

(A) descriptions of the mission and statutory authority of the agency;

(B) the electronic reading rooms of the agency relating to the disclosure of information under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(C) information about the organizational structure of the agency; and

(D) the strategic plan of the agency developed under section 306 of title 5, United States Code; and

(2) minimum agency goals to assist public users to navigate agency websites, including—

(A) speed of retrieval of search results;

(B) the relevance of the results;

(C) tools to aggregate and disaggregate data; and

(D) security protocols to protect information.

SEC. 3208. PRIVACY PROVISIONS.

(a) PURPOSE.—The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.

(b) PRIVACY IMPACT ASSESSMENTS.—

(1) RESPONSIBILITIES OF AGENCIES.—

(A) IN GENERAL.—An agency shall take actions described under subparagraph (B) before—

(i) developing or procuring information technology that collects, maintains, or disseminates information that includes any identifier permitting the physical or online contacting of a specific individual; or

(ii) initiating a new collection of information that—

(I) will be collected, maintained, or disseminated using information technology; and

(II) includes any identifier permitting the physical or online contacting of a specific individual, if the information concerns 10 or more persons.

(B) AGENCY ACTIVITIES.—To the extent required under subparagraph (A), each agency shall—

(i) conduct a privacy impact assessment;

(ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and

(iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.

(C) SENSITIVE INFORMATION.—Subparagraph (B)(iii) may be modified or waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment.

(D) COPY TO DIRECTOR.—Agencies shall provide the Director with a copy of the privacy impact assessment for each system for which funding is requested.

(2) CONTENTS OF A PRIVACY IMPACT ASSESSMENT.—

(A) IN GENERAL.—The Director shall issue guidance to agencies specifying the required contents of a privacy impact assessment.

(B) GUIDANCE.—The guidance shall—

(i) ensure that a privacy impact assessment is commensurate with the size of the information system being assessed, the sensitivity of personally identifiable information in that system, and the risk of harm from unauthorized release of that information; and

(ii) require that a privacy impact assessment address—

(I) what information is to be collected;

(II) why the information is being collected;

(III) the intended use of the agency of the information;

(IV) with whom the information will be shared;

(V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(VI) how the information will be secured; and

(VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the Privacy Act).

(3) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—

(A) develop policies and guidelines for agencies on the conduct of privacy impact assessments;

(B) oversee the implementation of the privacy impact assessment process throughout the Government; and

(C) require agencies to conduct privacy impact assessments of existing information systems or ongoing collections of personally identifiable information as the Director determines appropriate.

(c) PRIVACY PROTECTIONS ON AGENCY WEBSITES.—

(1) PRIVACY POLICIES ON WEBSITES.—

(A) GUIDELINES FOR NOTICES.—The Director shall develop guidance for privacy notices on agency websites used by the public.

(B) CONTENTS.—The guidance shall require that a privacy notice address, consistent with section 552a of title 5, United States Code—

(i) what information is to be collected;

(ii) why the information is being collected;

(iii) the intended use of the agency of the information;

(iv) with whom the information will be shared;

(v) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(vi) how the information will be secured; and

(vii) the rights of the individual under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), and other laws relevant to the protection of the privacy of an individual.

(2) PRIVACY POLICIES IN MACHINE-READABLE FORMATS.—The Director shall issue guidance requiring agencies to translate privacy policies into a standardized machine-readable format.

SEC. 3209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government information and services.

(b) IN GENERAL.—In consultation with the Director, the Chief Information Officers Council, and the Administrator of General Services, the Director of the Office of Personnel Management shall—

(1) analyze, on an ongoing basis, the personnel needs of the Federal Government related to information technology and information resource management;

(2) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel needs of the Federal Government related to information technology and information resource management; and

(3) assess the training of Federal employees in information technology disciplines, as necessary, in order to ensure that the information resource management needs of the Federal Government are addressed.

(c) EMPLOYEE PARTICIPATION.—Subject to information resource management needs and the limitations imposed by resource needs in other occupational areas, and consistent with their overall workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this section, $7,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3210. COMMON PROTOCOLS FOR GEOGRAPHIC INFORMATION SYSTEMS.

(a) PURPOSES.—The purposes of this section are to—

(1) reduce redundant data collection and information; and

(2) promote collaboration and use of standards for government geographic information.

(b) DEFINITION.—In this section, the term ''geographic information'' means information systems that involve locational data, such as maps or other geospatial information resources.

(c) IN GENERAL.—

(1) COMMON PROTOCOLS.—The Secretary of the Interior, working with the Director and through an interagency group, and working with private sector experts, State, local, and tribal governments, commercial and international standards groups, and other interested parties, shall facilitate the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information. If practicable, the Secretary of the Interior shall incorporate intergovernmental and public private geographic information partnerships into efforts under this subsection.

(2) INTERAGENCY GROUP.—The interagency group referred to under paragraph (1) shall include representatives of the National Institute of Standards and Technology and other agencies.

(d) DIRECTOR.—The Director shall oversee—

(1) the interagency initiative to develop common protocols;

(2) the coordination with State, local, and tribal governments, public private partnerships, and other interested persons on effective and efficient ways to align geographic information and develop common protocols; and

(3) the adoption of common standards relating to the protocols.

(e) COMMON PROTOCOLS.—The common protocols shall be designed to—

(1) maximize the degree to which unclassified geographic information from various sources can be made electronically compatible and accessible; and

(2) promote the development of interoperable geographic information systems technologies that shall—

(A) allow widespread, low-cost use and sharing of geographic data by Federal agencies, State, local, and tribal governments, and the public; and

(B) enable the enhancement of services using geographic data.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this section, for each of the fiscal years 2003 through 2007.

SEC. 3211. SHARE-IN-SAVINGS PROGRAM IMPROVEMENTS.

Section 5311 of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 110 Stat. 692; 40 U.S.C. 1491) is amended—

(1) in subsection (a)—

(A) by striking ''the heads of two executive agencies to carry out'' and inserting ''heads of executive agencies to carry out a total of 5 projects under'';

(B) by striking ''and'' at the end of paragraph (1);

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

(D) by adding at the end the following:

''(3) encouraging the use of the contracting and sharing approach described in paragraphs (1) and (2) by allowing the head of the executive agency conducting a project under the pilot program—

''(A) to retain, until expended, out of the appropriation accounts of the executive agency in which savings computed under paragraph (2) are realized as a result of the project, up to the amount equal to half of the excess of—

''(i) the total amount of the savings; over

''(ii) the total amount of the portion of the savings paid to the private sector source for such project under paragraph (2); and

''(B) to use the retained amount to acquire additional information technology.'';

(2) in subsection (b)—

(A) by inserting ''a project under'' after ''authorized to carry out''; and

(B) by striking ''carry out one project and''; and

(3) in subsection (c), by inserting before the period ''and the Administrator for the Office of Electronic Government''; and

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

''(d) REPORT.—

''(1) IN GENERAL.—After 5 pilot projects have been completed, but no later than 3 years after the effective date of this subsection, the Director shall submit a report on the results of the projects to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(2) CONTENTS.—The report under paragraph (1) shall include—

''(A) a description of the reduced costs and other measurable benefits of the pilot projects;

''(B) a description of the ability of agencies to determine the baseline costs of a project against which savings would be measured; and

''(C) recommendations of the Director relating to whether Congress should provide general authority to the heads of executive agencies to use a share-in-savings contracting approach to the acquisition of information technology solutions for improving mission-related or administrative processes of the Federal Government.''.

SEC. 3212. INTEGRATED REPORTING STUDY AND PILOT PROJECTS.

(a) PURPOSES.—The purposes of this section are to—

(1) enhance the interoperability of Federal information systems;

(2) assist the public, including the regulated community, in electronically submitting information to agencies under Federal requirements, by reducing the burden of duplicate collection and ensuring the accuracy of submitted information; and

(3) enable any person to integrate and obtain similar information held by 1 or more agencies under 1 or more Federal requirements without violating the privacy rights of an individual.

(b) DEFINITIONS.—In this section, the term—

(1) ''agency'' means an Executive agency as defined under section 105 of title 5, United States Code; and

(2) ''person'' means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or agency or component of the Federal Government.

(c) REPORT.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Director shall oversee a study, in consultation with agencies, the regulated community, public interest organizations, and the public, and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on progress toward integrating Federal information systems across agencies.

(2) CONTENTS.—The report under this section shall—

(A) address the integration of data elements used in the electronic collection of information within databases established under Federal statute without reducing the quality, accessibility, scope, or utility of the information contained in each database;

(B) address the feasibility of developing, or enabling the development of, software, including Internet-based tools, for use by reporting persons in assembling, documenting, and validating the accuracy of information electronically submitted to agencies under nonvoluntary, statutory, and regulatory requirements;

(C) address the feasibility of developing a distributed information system involving, on a voluntary basis, at least 2 agencies, that—

(i) provides consistent, dependable, and timely public access to the information holdings of 1 or more agencies, or some portion of such holdings, including the underlying raw data, without requiring public users to know which agency holds the information; and

(ii) allows the integration of public information held by the participating agencies;

(D) address the feasibility of incorporating other elements related to the purposes of this section at the discretion of the Director; and

(E) make recommendations that Congress or the executive branch can implement, through the use of integrated reporting and information systems, to reduce the burden on reporting and strengthen public access to databases within and across agencies.

(d) PILOT PROJECTS TO ENCOURAGE INTEGRATED COLLECTION AND MANAGEMENT OF DATA AND INTEROPERABILITY OF FEDERAL INFORMATION SYSTEMS.—

(1) IN GENERAL.—In order to provide input to the study under subsection (c), the Director shall designate, in consultation with agencies, a series of no more than 5 pilot

projects that integrate data elements. The Director shall consult with agencies, the regulated community, public interest organizations, and the public on the implementation of the pilot projects.

(2) GOALS OF PILOT PROJECTS.—

(A) IN GENERAL.—Each goal described under subparagraph (B) shall be addressed by at least 1 pilot project each.

(B) GOALS.—The goals under this paragraph are to—

(i) reduce information collection burdens by eliminating duplicative data elements within 2 or more reporting requirements;

(ii) create interoperability between or among public databases managed by 2 or more agencies using technologies and techniques that facilitate public access; and

(iii) develop, or enable the development of, software to reduce errors in electronically submitted information.

(3) INPUT.—Each pilot project shall seek input from users on the utility of the pilot project and areas for improvement. To the extent practicable, the Director shall consult with relevant agencies and State, tribal, and local governments in carrying out the report and pilot projects under this section.

(e) PRIVACY PROTECTIONS.—The activities authorized under this section shall afford protections for—

(1) confidential business information consistent with section 552(b)(4) of title 5, United States Code, and other relevant law;

(2) personal privacy information under sections 552(b) (6) and (7)(C) and 552a of title 5, United States Code, and other relevant law; and

(3) other information consistent with section 552(b)(3) of title 5, United States Code, and other relevant law.

SEC. 3213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of on-line government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to computer technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Secretary of Education, in consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce, the Director of the National Science Foundation, and the Director of the Institute of Museum and Library Services, shall—

(1) conduct a study to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report on the study to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Government Reform of the House of Representatives; and

(D) the Committee on Education and the Workforce of the House of Representatives.

(c) CONTENTS.—The report under subsection (b) may consider—

(1) an evaluation of the best practices being used by successful community technology centers;

(2) a strategy for—

(A) continuing the evaluation of best practices used by community technology centers; and

(B) establishing a network to share information and resources as community technology centers evolve;

(3) the identification of methods to expand the use of best practices to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;

(4) a database of all community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;

(5) an analysis of whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation; and

(6) recommendations of how to—

(A) enhance the development of community technology centers; and

(B) establish a network to share information and resources.

(d) COOPERATION.—All agencies that fund community technology centers shall provide to the Department of Education any information and assistance necessary for the completion of the study and the report under this section.

(e) ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Department of Education shall work with other relevant Federal agencies, and other interested persons in the private and nonprofit sectors to—

(A) assist in the implementation of recommendations; and

(B) identify other ways to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public.

(2) TYPES OF ASSISTANCE.—Assistance under this subsection may include—

(A) contribution of funds;

(B) donations of equipment, and training in the use and maintenance of the equipment; and

(C) the provision of basic instruction or training material in computer skills and Internet usage.

(f) ONLINE TUTORIAL.—

(1) IN GENERAL.—The Secretary of Education, in consultation with the Director of the Institute of Museum and Library Services, the Director of the National Science Foundation, other relevant agencies, and the public, shall develop an online tutorial that—

(A) explains how to access Government information and services on the Internet; and

(B) provides a guide to available online resources.

(2) DISTRIBUTION.—The Secretary of Education shall distribute information on the tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public.

(g) PROMOTION OF COMMUNITY TECHNOLOGY CENTERS.—In consultation with other agencies and organizations, the Department of Education shall promote the availability of community technology centers to raise awareness within each community where such a center is located.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Education for the study of best practices at community technology centers, for the development and dissemination of the online tutorial, and for the promotion of community technology centers under this section—

(1) $2,000,000 in fiscal year 2003;

(2) $2,000,000 in fiscal year 2004; and

(3) such sums as are necessary in fiscal years 2005 through 2007.

SEC. 3214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to improve how information technology is used in coordinating and facilitating information on disaster preparedness, response, and recovery, while ensuring the availability of such information across multiple access channels.

(b) IN GENERAL.—

(1) STUDY ON ENHANCEMENT OF CRISIS RESPONSE.—Not later than 90 days after the date of enactment of this Act, the Federal Emergency Management Agency shall enter into a contract to conduct a study on using information technology to enhance crisis preparedness, response, and consequence management of natural and manmade disasters.

(2) CONTENTS.—The study under this subsection shall address—

(A) a research and implementation strategy for effective use of information technology in crisis response and consequence management, including the more effective use of technologies, management of information technology research initiatives, and incorporation of research advances into the information and communications systems of—

(i) the Federal Emergency Management Agency; and

(ii) other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management; and

(B) opportunities for research and development on enhanced technologies into areas of potential improvement as determined during the course of the study.

(3) REPORT.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Federal Emergency Management Agency shall submit a report on the study, including findings and recommendations to—

(A) the Committee on Governmental Affairs of the Senate; and

(B) the Committee on Government Reform of the House of Representatives.

(4) INTERAGENCY COOPERATION.—Other Federal departments and agencies with responsibility for disaster relief and emergency assistance shall fully cooperate with the Federal Emergency Management Agency in carrying out this section.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Emergency Management Agency for research under this subsection, such sums as are necessary for fiscal year 2003.

(c) PILOT PROJECTS.—Based on the results of the research conducted under subsection (b), the Federal Emergency Management Agency shall initiate pilot projects or report to Congress on other activities that further the goal of maximizing the utility of information technology in disaster management. The Federal Emergency Management Agency shall cooperate with other relevant agencies, and, if appropriate, State, local, and tribal governments, in initiating such pilot projects.

SEC. 3215. DISPARITIES IN ACCESS TO THE INTERNET.

(a) STUDY AND REPORT.—

(1) STUDY.—Not later than 90 days after the date of enactment of this Act, the Director of the National Science Foundation shall request that the National Academy of Sciences, acting through the National Research Council, enter into a contract to conduct a study on disparities in Internet access for online Government services.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Science Foundation shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a final report of the study under this section, which shall set forth the findings, conclusions, and recommendations of the National Research Council.

(b) CONTENTS.—The report under subsection (a) shall include a study of—

(1) how disparities in Internet access influence the effectiveness of online Government services, including a review of—

(A) the nature of disparities in Internet access;

(B) the affordability of Internet service;

(C) the incidence of disparities among different groups within the population; and

(D) changes in the nature of personal and public Internet access that may alleviate or aggravate effective access to online Government services;

(2) how the increase in online Government services is influencing the disparities in Internet access and how technology development or diffusion trends may offset such adverse influences; and

(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.

(c) RECOMMENDATIONS.—The report shall include recommendations on actions to ensure that online Government initiatives shall not have the unintended result of increasing any deficiency in public access to Government services.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation $950,000 in fiscal year 2003 to carry out this section.

SEC. 3216. NOTIFICATION OF OBSOLETE OR COUNTERPRODUCTIVE PROVISIONS.

If the Director of the Office of Management and Budget makes a determination that any provision of this division (including any amendment made by this division) is obsolete or counterproductive to the purposes of this Act, as a result of changes in technology or any other reason, the Director shall submit notification of that determination to—

(1) the Committee on Governmental Affairs of the Senate; and

(2) the Committee on Government Reform of the House of Representatives.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

SEC. 3301. INFORMATION SECURITY.

(a) ADDITION OF SHORT TITLE.—Subtitle G of title X of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–266) is amended by inserting after the heading for the subtitle the following new section:

"SEC. 1060. SHORT TITLE.

''This subtitle may be cited as the 'Government Information Security Reform Act'.''.

(b) CONTINUATION OF AUTHORITY.—

(1) IN GENERAL.—Section 3536 of title 44, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3536.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

Except for those purposes for which an authorization of appropriations is specifically provided in title XXXI or XXXII, including the amendments made by such titles, there are authorized to be appropriated such sums as are necessary to carry out titles XXXI and XXXII for each of fiscal years 2003 through 2007.

SEC. 3402. EFFECTIVE DATES.

(a) TITLES XXXI AND XXXII.—

(1) IN GENERAL.—Except as provided under paragraph (2), titles XXXI and XXXII and the amendments made by such titles shall take effect 120 days after the date of enactment of this Act.

(2) IMMEDIATE ENACTMENT.—Sections 3207, 3214, 3215, and 3216 shall take effect on the date of enactment of this Act.

(b) TITLES XXXIII AND XXXIV.—Title XXXIII and this title shall take effect on the date of enactment of this Act.

DIVISION E—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

TITLE XLI—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

SECTION 4101. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. 4102. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. 4103. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. Such training, qualifications, curriculum, and equipment shall be consistent with and equivalent to those required of Federal law enforcement officers and shall include periodic re-qualification as determined by the Under Secretary. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. 4104. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SEC. 4105. PROHIBITION ON OPENING COCKPIT DOORS IN FLIGHT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44917. Prohibition on opening cockpit doors in flight

''(a) IN GENERAL.—The door to the flight deck of any aircraft engaged in passenger air transportation or interstate air transportation that is required to have a door between the passenger and pilot compartment under title 14, Code of Federal Regulations,

shall remain closed and locked at all times during flight, except for mechanical or physiological emergencies.

''(b) MANTRAP DOOR EXCEPTION.—It shall not be a violation of subsection (a) for an authorized person to enter or leave the flight deck during flight of any aircraft described in subsection (a) that is equipped with double doors between the flight deck and the passenger compartment that are designed so that—

''(1) any person entering or leaving the flight deck is required to lock the first door through which that person passes before the second door can be opened; and

''(2) the flight crew is able to monitor by remote camera the area between the 2 doors and prevent the door to the flight deck from being unlocked from that area.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by inserting after the item relating to section 44916 the following:

''44917. Prohibition on opening cockpit doors in flight.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 day after the date of enactment of this Act.

SA 4826. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 172. AIRLINE PASSENGER SCREENING.

Section 44901(b) of title 49, United States Code, is amended—

(1) by striking ''All screening of passengers'' and inserting:

''(1) IN GENERAL.—All screening of passengers''; and

(2) by adding at the end the following:

''(2) TREATMENT OF PASSENGERS.—Screening of passengers under this section shall be carried out in a manner that —

''(A) is not abusive or unnecessarily intrusive;

''(B) ensures protection of the passenger's personal property; and

''(C) provides adequate privacy for the passenger, if the screening involves the removal of clothing (other than shoes) or a search under the passenger's clothing.''.

SA 4827. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.___. NATIONAL DEFENSE RAIL CONNECTION.

(a) FINDINGS.—Congress finds that—

(1) A comprehensive rail transportation network is a key element of an integrated transportation system for the North American continent, and federal leadership is required to address the needs of a reliable, safe, and secure rail network, and to connect all areas of the United States for national defense and economic development, as previously done for the interstate highway system, the Federal aviation network, and the transcontinental railroad;

(2) The creation and use of joint use corridors for rail transportation, fiber optics, pipelines, and utilities are an efficient and appropriate approach to optimizing the nation's interconnectivity and national security;

(3) Government assistance and encouragement in the development of the transcontinental rail system successfully led to the growth of economically strong and socially stable communities throughout the western United States;

(4) Government assistance and encouragement in the development of the Alaska Railroad between Seward, Alaska and Fairbanks, Alaska successfully led to the growth of economically strong and socially stable communities along the route, which today provide homes for over 70% of Alaska's total population;

(5) While Alaska and the remainder of the continental United States has been connected by highway and air transportation, no rail connection exists despite the fact that Alaska is accessible by land routes and is a logical destination for the North American rail system;

(6) Rail transportation in otherwise isolated areas is an appropriate means of providing controlled access, reducing overall impacts to environmentally sensitive areas over other methods of land-based access;

(7) Because Congress originally authorized 1,000 miles of rail line to be built in Alaska, and because the system today covers only approximately half that distance, substantially limiting its beneficial effect on the economy of Alaska and the nation, it is appropriate to support the expansion of the Alaska system to ensure the originally planned benefits are achieved;

(8) Alaska has an abundance of natural resources, both material and aesthetic, access to which would significantly increase Alaska's contribution to the national economy;

(9) Alaska contains many key national defense installations, including sites chosen for the construction of the first phase of the National Missile Defense system, the cost of which could be significantly reduced if rail transportation were available for the movement of materials necessary for construction and for the secure movement of launch vehicles, fuel and other operational supplies;

(10) The 106th Congress recognized the potential benefits of establishing a rail connection to Alaska by enacting legislation to authorize a U.S.—Canada bilateral commission to study the feasibility of linking the rail system in Alaska to the nearest appropriate point in Canada of the North American rail network; and

(11) In support of pending bilateral activities between the United States and Canada, it is appropriate for the United States to undertake activities relating to elements within the United States.

(b) IDENTIFICATION OF NATIONAL DEFENSE RAILROAD-UTILITY CORRIDOR.—

(1) Within one year from the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Transportation, the State of Alaska and the Alaska Railroad Corporation, shall identify a proposed national defense railroad-utility corridor linking the existing corridor of the Alaska Railroad to the vicinity of the proposed National Missile Defense facilities at Fort Greely, Alaska. The corridor shall be at least 500 feet wide and shall also identify land for such terminals, stations, maintenance facilities, switching yards, and material sites as are considered necessary.

(2) The identification of the corridor under paragraph (1) shall include information providing a complete legal description for and noting the current ownership of the proposed corridor and associated land.

(3) In identifying the corridor under paragraph (1), The Secretary shall consider, at a minimum, the following factors:

(A) The proximity of national defense installations and national defense considerations;

(B) The location of and access to natural resources that could contribute to economic development of the region;

(C) Grade and alignment standards that are commensurate with rail and utility construction standards and that minimize the prospect of at-grade railroad and highway crossings;

(D) Availability of construction materials;

(E) Safety;

(F) Effects on and service to adjacent communities and potential intermodal transportation connections;

(G) Environmental concerns;

(H) Use of public land to the maximum degree possible;

(I) Minimization of probable construction costs;

(J) An estimate of probable construction costs and methods of financing such costs through a combination of private, state, and federal sources; and

(K) Appropriate utility elements for the corridor, including but not limited to petroleum product pipelines, fiber-optic telecommunication facilities, and electrical power transmission lines, and

(L) Prior and established traditional uses.

(4) The Secretary may, as part of the corridor identification, include issues related to the further extension of such corridor to a connection with the nearest appropriate terminus of the North American rail network in Canada.

(c) NEGOTIATION AND LAND TRANSFER.—

(1) The Secretary of the Interior shall—

(A) upon completion of the corridor identification in subsection (b), negotiate the acquisition of any lands in the corridor which are not federally owned through an exchange for lands of equal or greater value held by the federal government elsewhere in Alaska; and

(B) upon completion of the acquisition of lands under paragraph (A), the Secretary shall convey to the Alaska Railroad Corporation, subject to valid existing rights, title to the lands identified under subsection (b) as necessary to complete the national defense railroad-utility corridor, on condition that the Alaska Railroad Corporation construct in the corridor an extension of the railroad system to the vicinity of the proposed national missile defense installation at Fort Greely, Alaska, together with such other utilities, including but not limited to fiber-optic transmission lines and electrical transmission lines, as it considers necessary and appropriate. The Federal interest in lands conveyed to the Alaska Railroad Corporation under this Act shall be the same as in lands conveyed pursuant to the Alaska Railroad Transfer Act (45 U.S.C. 1201 et seq.).

(d) APPLICABILITY OF OTHER LAWS.—

Actions authorized in this Act shall proceed immediately and to conclusion not withstanding the land-use planning provisions of Section 202 of the Federal Land Policy and Management Act of 1976, P.L. 94–579.

(e) AUTHORIZATOIN OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SA 4828. Mr. MURSKOWSKI submitted an amendment intended to be

proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.____.FOOD AND DRINKING WATER SUPPLY SECURITY PROGRAM.

(a) FINDINGS.—Congress finds that—

(1) section 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5180) authorizes the purchase of food commodities to provide adequate supplies of food for use in any area of the United States in the event of a major disaster or emergency in the area;

(2) the current terrorist threat was not envisioned when that Act was enacted, and the Act does not specifically require pre-positioning of food supplies;

(3) the maintenance of safe food and drinking water supplies is essential;

(4) stored food supplies for major cities are minimal;

(5) if terrorist activity were to disrupt the transportation system, affect food supplies directly, or create a situation in which a quarantine would have to be declared it, would require a considerable period of time to ensure delivery of safe food supplies;

(6) terrorist activity could also disrupt drinking water supplies; and

(7) accordingly, emergency food and drinking water repositories should be established at such locations as will ensure the availability of food and drinking water to populations in areas that are vulnerable to terrorist activity.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report with information necessary to the establishment of secure prepositioned emergency supplies of food and drinking water for major population centers for use in the event of a breakdown in the food supply and delivery chain.

(2) CONSIDERATIONS.—The report shall consider the likelihood of such breakdowns occurring from accidents and natural disasters as well as terrorist activity.

(3) CONTENTS.—The report shall—

(A) Identify the 20 most vulnerable metropolitan areas or population concentrations in the United States; and

(B) make recommendations regarding the appropriate number of days' supply of food to be maintained to ensure the security of the population in each such area.

(c) REPOSITORIES.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall establish secure repositories for food and drinking water in each of the 20 areas identified in the report.

(2) ACCESSIBILITY.—The repositories shall be locally accessible without special equipment in the event of a major transportation breakdown.

(d) PURCHASE OF SUPPLIES.—

(1) IN GENERAL.—The Secretary of Agriculture shall purchase and maintain food and water stocks for each repository, consistent with determinations made by the Secretary of Homeland Security.

(2) PHASING IN.—Purchases and full stocking of repositories may be phased in over a period of not more than 3 years.

(3) PRODUCTS OF THE UNITED STATES.—The Secretary of Agriculture shall purchase for the repositories food and water supplies produced, processed, and packaged exclusively in the United States.

(4) SELECTION.—Food and water supplies for the repositories shall be selected and managed so as to provide—

(A) quantities and packaging suitable for immediate distribution to individuals and families;

(B) forms of food products suitable for immediate consumption in an emergency without heating and without further preparation;

(C) packaging that ensures that food products are maximally resistant to post-production contamination or adulteration;

(D) packaging and preservation technology to ensure that the quality of stored food and water is maintained for a minimum of 4 years at ambient temperatures;

(E) a range of food products, including meats, seafood, dairy, and vegetable (including fruit and grain) products, emphasizing, insofar as practicable—

(i) food products that meet multiple nutritional needs, such as those composed primarily of high-quality protein in combination with essential minerals; and

(ii) food products with a high ratio of nutrient value to cost;

(F) rotation of stock, in repositories on a regular basis at intervals of not longer than 3 years; and

(G) use of stocks of food being rotated out of repositories for other suitable purposes.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 4829. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.____. AGE AND OTHER LIMITATIONS.

(a) GENERAL.—Notwithstanding any other provision of law, beginning on the date that is 6 months after the date of enactment of this Act—

(1) section 121.383(c) of title 14, Code of Federal Regulations, shall not apply;

(2) no certificate holder may use the services of any person as a pilot on an airplane engaged in operations under part 121 of title 14, Code of Federal Regulations, if that person is 63 years of age or older; and

(3) no person may serve as a pilot on an airplane engaged in operations under part 121 of title 14, Code of Federal Regulations, if that person is 63 years of age or older.

(b) CERTIFICATE HOLDER.—For purposes of this section, the term ''certificate holder'' means a holder of a certificate to operate as an air carrier or commercial operator issued by the Federal Aviation Administration.

(c) RESERVATION OF SAFETY AUTHORITY.—Nothing in this section is intended to change the authority of the Federal Aviation Administration to take steps to ensure the safety of air transportation operations involving a pilot who has reached the age of 60, including its authority—

(1) to require such a pilot to undergo additional or more stringent medical, cognitive, or proficiency testing in order to retain certification; or

(2) to establish crew pairing standards for crews with such a pilot.

SA 4830. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 220, strike line 21 and all that follows through line 25 on page 230 and insert the following:

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security (or, prior to the effective date of title XI, the Attorney General).

(5) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(6) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(5) AUTHORITY TO HIRE PERSONNEL.—The Director is authorized to hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. In hiring such personnel, the Director may seek the transfer of personnel employed by the Department of Justice in connection with the functions transferred by section 1213.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Commissioner of Immigration and Naturalization (or, upon the effective date of title XI, the Under Secretary of Homeland Security for Immigration Affairs).

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.—The liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect on the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence that such child endangers the national security of the United States.

(D) TRAFFICKING VICTIMS.—For the purposes of this Act, an unaccompanied alien child who is receiving services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES.—The Director shall establish policies to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member or other appropriate disciplinary authorities for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency receiving funds under this subsection is a grantee or

contractee for more than one of the following services:

(i) Services provided under section 1222.

(ii) Services provided under section 1231.

(iii) Services provided under paragraph (2).

(iv) Services provided under paragraph (3).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect 180 days after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of such Act until such time as the child attains the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

(c) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(1) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review (or its

successor entity), in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(2) PURPOSE OF GUIDELINES.—Such guidelines shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(3) IMPLEMENTATION.—The Executive Office for Immigration Review (or its successor entity) shall adopt such guidelines and submit them for adoption by national, State, and local bar associations.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

SA 4831. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 220, strike line 21 and all that follows through line 25 on page 230 and insert the following:

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security (or, prior to the effective date of title XI, the Attorney General).

(5) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(6) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(5) AUTHORITY TO HIRE PERSONNEL.—The Director is authorized to hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. In hiring such personnel, the Director may seek the transfer of personnel employed by the Department of Justice in connection with the functions transferred by section 1213.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Commissioner of Immigration and Naturalization (or, upon the effective date of title XI, the Under Secretary of Homeland Security for Immigration Affairs).

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by

statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.—The liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect on the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence that such child endangers the national security of the United States.

(D) TRAFFICKING VICTIMS.—For the purposes of this Act, an unaccompanied alien child who is receiving services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES.—The Director shall establish policies to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member or other appropriate disciplinary authorities for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include each year in the State Department Country Report on Human Rights an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Office shall consult the State Department Country Report on Human Rights as one of the factors in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) IN GENERAL.—When the age of the alien is at issue, the Director shall develop procedures to determine the age of an alien who attests that he or she is under the age of 18. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Neither radiographs nor a child's attestation shall be used as the sole means of determining age for the purposes of determining a child's eligibility for treatment under this title.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for an unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of the guardian ad litem provisions in this section.

(2) PURPOSE.—The purpose of the pilot program is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) The Director shall select three sites in which to operate the pilot program established by paragraph (1).

(B) To the greatest extent possible, each such site should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than one year after the date on which the first pilot program established pursuant to paragraph (1) is established, the Director shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANTMAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency receiving funds under this subsection is a grantee or contractee for more than one of the following services:

(i) Services provided under section 1222.

(ii) Services provided under section 1231.

(iii) Services provided under paragraph (2).

(iv) Services provided under paragraph (3).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect 180 days after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage,

be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security (or, prior to the effective date of title XI of the National Homeland Security and Combatting Terrorism Act of 2002, the Attorney General) may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of such Act until such time as the child attains the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

(c) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(1) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review (or its successor entity), in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(2) PURPOSE OF GUIDELINES.—Such guidelines shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(3) IMPLEMENTATION.—The Executive Office for Immigration Review (or its successor entity) shall adopt such guidelines and submit them for adoption by national, State, and local bar associations.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

SA 4832. Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to be lie on the table; as follows:

At the end of title I, add the following:

Subtitle G—First Responder Terrorism Preparedness

SEC. 199A. SHORT TITLE.

This subtitle may be cited as the ''First Responder Terrorism Preparedness Act of 2002''.

SEC. 199B. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government must enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(2) as a result of the events of September 11, 2001, it is necessary to clarify and consolidate the authority of the Federal Emergency Management Agency to support first responders.

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

(1) to establish within the Federal Emergency Management Agency the Office of National Preparedness;

(2) to establish a program to provide assistance to enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(3) to address issues relating to urban search and rescue task forces.

SEC. 199C. DEFINITIONS.

(a) MAJOR DISASTER.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

(b) WEAPON OF MASS DESTRUCTION.—Section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(a)) is amended by adding at the end the following:

''(11) WEAPON OF MASS DESTRUCTION.—The term 'weapon of mass destruction' has the meaning given the term in section 2302 of title 50, United States Code.''.

SEC. 199D. ESTABLISHMENT OF OFFICE OF NATIONAL PREPAREDNESS.

Subtitle A of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196 et seq.) is amended by adding at the end the following:

''SEC. 616. OFFICE OF NATIONAL PREPAREDNESS.

''(a) IN GENERAL.—There is established in the Federal Emergency Management Agency an office to be known as the 'Office of National Preparedness' (referred to in this section as the 'Office').

''(b) APPOINTMENT OF ASSOCIATE DIRECTOR.—

''(1) IN GENERAL.—The Office shall be headed by an Associate Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(2) COMPENSATION.—The Associate Director shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(c) DUTIES.—The Office shall—

''(1) lead a coordinated and integrated overall effort to build, exercise, and ensure viable terrorism preparedness and response capability at all levels of government;

''(2) establish clearly defined standards and guidelines for Federal, State, tribal, and local government terrorism preparedness and response;

''(3) establish and coordinate an integrated capability for Federal, State, tribal, and local governments and emergency responders to plan for and address potential consequences of terrorism;

''(4) coordinate provision of Federal terrorism preparedness assistance to State, tribal, and local governments;

''(5) establish standards for a national, interoperable emergency communications and warning system;

''(6) establish standards for training of first responders (as defined in section 630(a)), and for equipment to be used by first responders, to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(7) carry out such other related activities as are approved by the Director.

''(d) DESIGNATION OF REGIONAL CONTACTS.—The Associate Director shall designate an officer or employee of the Federal Emergency Management Agency in each of the 10 regions of the Agency to serve as the Office contact for the States in that region.

''(e) USE OF EXISTING RESOURCES.—In carrying out this section, the Associate Director shall—

''(1) to the maximum extent practicable, use existing resources, including planning documents, equipment lists, and program inventories; and

''(2) consult with and use—

''(A) existing Federal interagency boards and committees;

''(B) existing government agencies; and

''(C) nongovernmental organizations.''.

SEC. 199E. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) IN GENERAL.—Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) is amended by adding at the end the following:

''SEC. 630. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' means—

''(A) fire, emergency medical service, and law enforcement personnel; and

''(B) such other personnel as are identified by the Director.

''(2) LOCAL ENTITY.—The term 'local entity' has the meaning given the term by regulation promulgated by the Director.

''(3) PROGRAM.—The term 'program' means the program established under subsection (b).

''(b) PROGRAM TO PROVIDE ASSISTANCE.—

''(1) IN GENERAL.—The Director shall establish a program to provide assistance to States to enhance the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.

''(2) FEDERAL SHARE.—The Federal share of the costs eligible to be paid using assistance provided under the program shall be not less than 75 percent, as determined by the Director.

''(3) FORMS OF ASSISTANCE.—Assistance provided under paragraph (1) may consist of—

''(A) grants; and

''(B) such other forms of assistance as the Director determines to be appropriate.

''(c) USES OF ASSISTANCE.—Assistance provided under subsection (b)—

''(1) shall be used—

''(A) to purchase, to the maximum extent practicable, interoperable equipment that is necessary to respond to incidents of terrorism, including incidents involving weapons of mass destruction;

''(B) to train first responders, consistent with guidelines and standards developed by the Director;

''(C) in consultation with the Director, to develop, construct, or upgrade terrorism preparedness training facilities;

''(D) to develop, construct, or upgrade emergency operating centers;

''(E) to develop preparedness and response plans consistent with Federal, State, and local strategies, as determined by the Director;

''(F) to provide systems and equipment to meet communication needs, such as emergency notification systems, interoperable equipment, and secure communication equipment;

''(G) to conduct exercises; and

''(H) to carry out such other related activities as are approved by the Director; and

''(2) shall not be used to provide compensation to first responders (including payment for overtime).

''(d) ALLOCATION OF FUNDS.—For each fiscal year, in providing assistance under subsection (b), the Director shall make available—

''(1) to each of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, $3,000,000; and

''(2) to each State (other than a State specified in paragraph (1))—

''(A) a base amount of $15,000,000; and

''(B) a percentage of the total remaining funds made available for the fiscal year based on criteria established by the Director, such as—

''(i) population;

''(ii) location of vital infrastructure, including—

''(I) military installations;

''(II) public buildings (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612));

''(III) nuclear power plants;

''(IV) chemical plants; and

''(V) national landmarks; and

''(iii) proximity to international borders.

''(e) PROVISION OF FUNDS TO LOCAL GOVERNMENTS AND LOCAL ENTITIES.—

''(1) IN GENERAL.—For each fiscal year, not less than 75 percent of the assistance provided to each State under this section shall be provided to local governments and local entities within the State.

''(2) ALLOCATION OF FUNDS.—Under paragraph (1), a State shall allocate assistance to local governments and local entities within the State in accordance with criteria established by the Director, such as the criteria specified in subsection (d)(2)(B).

''(3) DEADLINE FOR PROVISION OF FUNDS.—Under paragraph (1), a State shall provide all assistance to local government and local entities not later than 45 days after the date on which the State receives the assistance.

''(4) COORDINATION.—Each State shall coordinate with local governments and local entities concerning the use of assistance provided to local governments and local entities under paragraph (1).

''(f) ADMINISTRATIVE EXPENSES.—

''(1) DIRECTOR.—For each fiscal year, the Director may use to pay salaries and other administrative expenses incurred in administering the program not more than the lesser of—

''(A) 5 percent of the funds made available to carry out this section for the fiscal year; or

''(B)(i) for fiscal year 2003, $75,000,000; and

''(ii) for each of fiscal years 2004 through 2006, $50,000,000.

''(2) RECIPIENTS OF ASSISTANCE.—For each fiscal year, not more than 10 percent of the funds retained by a State after application of subsection (e) may be used to pay salaries and other administrative expenses incurred in administering the program.

''(g) MAINTENANCE OF EXPENDITURES.—The Director may provide assistance to a State under this section only if the State agrees to maintain, and to ensure that each local government that receives funds from the State in accordance with subsection (e) maintains, for the fiscal year for which the assistance is provided, the aggregate expenditures by the State or the local government, respectively, for the uses described in subsection (c)(1) at a level that is at or above the average annual level of those expenditures by the State or local government, respectively, for the 2 fiscal years preceding the fiscal year for which the assistance is provided.

''(h) REPORTS.—

''(1) ANNUAL REPORT TO THE DIRECTOR.—As a condition of receipt of assistance under this section for a fiscal year, a State shall submit to the Director, not later than 60 days after the end of the fiscal year, a report on the use of the assistance in the fiscal year.

''(2) EXERCISE AND REPORT TO CONGRESS.—As a condition of receipt of assistance under this section, not later than 3 years after the date of enactment of this section, a State shall—

''(A) conduct an exercise, or participate in a regional exercise, approved by the Director, to measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(B) submit a report on the results of the exercise to—

''(i) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

''(i) COORDINATION.—

''(1) WITH FEDERAL AGENCIES.—The Director shall, as necessary, coordinate the provision of assistance under this section with activities carried out by—

''(A) the Administrator of the United States Fire Administration in connection with the implementation by the Administrator of the assistance to firefighters grant program established under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) (as added by section 1701(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360));

''(B) the Attorney General, in connection with the implementation of the Community Oriented Policing Services (COPS) Program established under section 1701(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(a)); and

''(C) other appropriate Federal agencies.

''(2) WITH INDIAN TRIBES.—In providing and using assistance under this section, the Director and the States shall, as appropriate, coordinate with—

''(A) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and other tribal organizations; and

''(B) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) and other Alaska Native organizations.''.

(b) COST SHARING FOR EMERGENCY OPERATING CENTERS.—Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c) is amended—

(1) by inserting ''(other than section 630)'' after ''carry out this title''; and

(2) by inserting ''(other than section 630)'' after ''under this title''.

SEC. 199F. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199E(a)) is amended by adding at the end the following:

"SEC. 631. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' has the meaning given the term in section 630(a).

''(2) HARMFUL SUBSTANCE.—The term 'harmful substance' means a substance that the President determines may be harmful to human health.

''(3) PROGRAM.—The term 'program' means a program described in subsection (b)(1).

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more harmful substances are being, or have been, released in an area that the President has declared to be a major disaster area under this Act, the President shall carry out a program with respect to the area for the protection, assessment, monitoring, and study of the health and safety of first responders.

''(2) ACTIVITIES.—A program shall include—

''(A) collection and analysis of environmental and exposure data;

''(B) development and dissemination of educational materials;

''(C) provision of information on releases of a harmful substance;

''(D) identification of, performance of baseline health assessments on, taking biological samples from, and establishment of an exposure registry of first responders exposed to a harmful substance;

''(E) study of the long-term health impacts of any exposures of first responders to a harmful substance through epidemiological studies; and

''(F) provision of assistance to participants in registries and studies under subparagraphs (D) and (E) in determining eligibility for health coverage and identifying appropriate health services.

''(3) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study under subparagraph (D) or (E) of paragraph (2) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(4) COOPERATIVE AGREEMENTS.—The President may carry out a program through a cooperative agreement with a medical or academic institution, or a consortium of such institutions, that is—

''(A) located in close proximity to the major disaster area with respect to which the program is carried out; and

''(B) experienced in the area of environmental or occupational health and safety, including experience in—

''(i) conducting long-term epidemiological studies;

''(ii) conducting long-term mental health studies; and

''(iii) establishing and maintaining environmental exposure or disease registries.

''(c) REPORTS AND RESPONSES TO STUDIES.—

''(1) REPORTS.—Not later than 1 year after the date of completion of a study under subsection (b)(2)(E), the President, or the medical or academic institution or consortium of such institutions that entered into the cooperative agreement under subsection (b)(4), shall submit to the Director, the Secretary of Health and Human Services, the Secretary of Labor, and the Administrator of the Environmental Protection Agency a report on the study.

''(2) CHANGES IN PROCEDURES.—To protect the health and safety of first responders, the President shall make such changes in procedures as the President determines to be necessary based on the findings of a report submitted under paragraph (1).''.

SEC. 199G. URBAN SEARCH AND RESCUE TASK FORCES.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 199F) is amended by adding at the end the following:

"SEC. 632. URBAN SEARCH AND RESCUE TASK FORCES.

''(a) DEFINITIONS.—In this section:

''(1) URBAN SEARCH AND RESCUE EQUIPMENT.—The term 'urban search and rescue equipment' means any equipment that the Director determines to be necessary to respond to a major disaster or emergency declared by the President under this Act.

''(2) URBAN SEARCH AND RESCUE TASK FORCE.—The term 'urban search and rescue task force' means any of the 28 urban search and rescue task forces designated by the Director as of the date of enactment of this section.

''(b) ASSISTANCE.—

''(1) MANDATORY GRANTS FOR COSTS OF OPERATIONS.—For each fiscal year, of the amounts made available to carry out this section, the Director shall provide to each urban search and rescue task force a grant of not less than $1,500,000 to pay the costs of operations of the urban search and rescue task force (including costs of basic urban search and rescue equipment).

''(2) DISCRETIONARY GRANTS.—The Director may provide to any urban search and rescue task force a grant, in such amount as the Director determines to be appropriate, to pay the costs of—

''(A) operations in excess of the funds provided under paragraph (1);

''(B) urban search and rescue equipment;

''(C) equipment necessary for an urban search and rescue task force to operate in an environment contaminated or otherwise affected by a weapon of mass destruction;

''(D) training, including training for operating in an environment described in subparagraph (C);

''(E) transportation;

''(F) expansion of the urban search and rescue task force; and

''(G) incident support teams, including costs of conducting appropriate evaluations of the readiness of the urban search and rescue task force.

''(3) PRIORITY FOR FUNDING.—The Director shall distribute funding under this subsection so as to ensure that each urban search and rescue task force has the capacity to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

''(c) GRANT REQUIREMENTS.—The Director shall establish such requirements as are necessary to provide grants under this section.

''(d) ESTABLISHMENT OF ADDITIONAL URBAN SEARCH AND RESCUE TASK FORCES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Director may establish urban search and rescue task forces in addition to the 28 urban search and rescue task forces in existence on the date of enactment of this section.

''(2) REQUIREMENT OF FULL FUNDING OF EXISTING URBAN SEARCH AND RESCUE TASK FORCES.—Except in the case of an urban search and rescue task force designated to replace any urban search and rescue task force that withdraws or is otherwise no longer considered to be an urban search and rescue task force designated by the Director, no additional urban search and rescue task forces may be designated or funded until the 28 urban search and rescue task forces are able to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.''.

SEC. 199H. AUTHORIZATION OF APPROPRIATIONS.

Section 626 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197e) is amended by striking subsection (a) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this title (other than sections 630 and 632).

''(2) PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.—There are authorized to be appropriated to carry out section 630—

''(A) $3,340,000,000 for fiscal year 2003; and

''(B) $3,458,000,000 for each of fiscal years 2004 through 2006.

''(3) URBAN SEARCH AND RESCUE TASK FORCES.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out section 632—

''(i) $160,000,000 for fiscal year 2003; and

''(ii) $42,000,000 for each of fiscal years 2004 through 2006.

''(B) AVAILABILITY OF AMOUNTS.—Amounts made available under subparagraph (A) shall remain available until expended.''.

SA 4833. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows;

On page 68, strike lines 14 through 23 and insert the following:

SEC. 134. FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) HOMELAND SECURITY DUTIES.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall be responsible for the emergency preparedness and response functions of the Department.

(2) FUNCTION.—Except as provided in paragraph (3) and subsections (b) through (e), nothing in this Act affects the administration or administrative jurisdiction of the Federal Emergency Management Agency as in existence on the day before the date of enactment of this Act.

(3) DIRECTOR.—In carrying out responsibilities of the Federal Emergency Management Agency under all applicable law, the Director of the Federal Emergency Management Agency shall report—

(A) to the President directly, with respect to all matters relating to a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) to the Secretary, with respect to all other matters.

On page 69, strike lines 1 through 7 and insert the following:

(b) SPECIFIC RESPONSIBILITIES.—The Director of the Federal Emergency Management Agency shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities of the Department.

On page 69, line 23, strike ''Creating a National Crisis Action Center to act'' and inserting ''Acting''.

On page 72, line 4, strike ''other''.

On page 72, line 14, strike ''Department'' and insert ''Federal Emergency Management Agency''.

On page 72, strike lines 15 through 19.

On page 72, line 20, strike ''(2)'' and insert ''(1)''.

On page 72, line 23, strike ''(3)'' and insert ''(2)''.

On page 73, line 1, strike ''(4)'' and insert ''(3)''.

On page 73, line 17, strike ''(5)'' and insert ''(4)''.

On page 73, line 23, strike ''(6)'' and insert ''(5)''.

On page 74, strike lines 7 through 22 and insert the following:

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall submit a report

On page 75, between lines 2 and 3, insert the following:

(f) CONFORMING AMENDMENT.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

On page 114, strike lines 13 and 14.

On page 128, line 24, strike ''134(b)(7)'' and insert ''134(b)''.

SA 4834. Mr. JEFFORDS (for himself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows;

On page 11, line 8, strike ''terrorism, natural disasters,'' and insert ''terrorism''.

On page 11, strike lines 6 through 13 and insert the following:

homeland threats within the United States; and

(C) reduce the vulnerability of the United States to terrorism and other homeland threats.

On page 12, line 23, strike ''emergency preparedness and response,''.

On page 13, strike lines 3 through 5 and insert the following:

transportation security and critical infrastructure protection.

On page 15, line 14, insert ''and the Director of the Federal Emergency Management Agency'' after ''Defense''.

On page 16, strike lines 13 through 16.

On page 16, line 17, strike ''(15)'' and insert ''(14)''.

On page 16, line 20, strike ''(16)'' and insert ''(15)''.

On page 16, line 24, strike ''(17)'' and insert ''(16)''.

On page 17, line 4, strike ''(18)'' and insert ''(17)''.

On page 17, line 8, strike ''(19)'' and insert ''(18)''.

Beginning on page 68, strike line 14 and all that follows through page 75, line 3.

On page 75, line 3, strike ''**135**'' and insert 134''.

On page 103, line 13, strike ''**136**'' and insert 135''.

On page 103, line 17, strike ''T2137'' and insert 136''.

On page 109, line 10, strike ''of the Department''.

On page 112, line 5, strike ''**138**'' and insert 137''.

On page 112, line 10, strike ''T2139'' and insert 138''.

On page 112, between lines 4 and 5, insert the following:

(f) COORDINATION WITH FEDERAL EMERGENCY MANAGEMENT AGENCY.—

(1) IN GENERAL.—In carrying out all responsibilities of the Secretary under this section, the Secretary shall coordinate with the Director of the Federal Emergency Management Agency.

(2) CONFORMING AMENDMENT.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

On page 114, line 6, strike ''140'' and insert 139''.

On page 114, strike lines 13 and 14.

On page 115, line 3, strike ''in the Department'' and insert ''within the Federal Emergency Management Agency''.

On page 116, line 21, strike ''Department'' and insert ''Federal Emergency Management Agency''.

Beginning on page 128, strike line 22 and all that follows through page 129, line 5, and insert the following:

(a) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this section.

(b) PUBLIC HEALTH EMERGENCY.—During the

On page 129, strike lines 15 and 16 and insert the following:

(c) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving,

On page 186, line 25, and page 187, line 1, strike ''emergency preparation and response,''.

On page 187, insert ''emergency preparedness and response,'' after ''assets,''.

Beginning on page 161, strike line 19 and all that follows through page 162, line 2, and insert the following:

(b) BIENNIAL REPORT.—Not later than 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary shall submit to Congress a report assessing the resources and requirements of executive agencies relating to border security.

SA 4835. Mr. DEWINE (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. DOMENICI, Mr. THURMOND, Ms. CANTWELL, Mr. HELMS, Mr. ALLARD, Mr. LIEBERMAN, Mr. CARPER, and Mr. DODD) submitted an amendment intended to be proposed by him to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 45, line 20, strike ''$75,695,000'' and insert ''$72,695,000''.

On page 85, line 3, strike ''$20,831,000'' and insert ''$17,831,000''.

On page 85, line 19, strike ''$921,741,000'' and insert ''$927,741,000''.

On page 85, line 20, strike ''until expended'' and insert ''until expended, of which not less than $10,000,000 shall be made available for the Next Generation of Lighting Initiative''.

SA 4836. Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. CARPER, and Mr. TORRICELLI) submitted an amendment intended to be proposed by him to the hill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . RAIL SECURITY ENHANCEMENTS.

(a) EMERGENCY AMTRAK ASSISTANCE.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak—

(A) $430,000,000 for systemwide security upgrades, including the reimbursement of extraordinary security related costs determined by the Secretary of Transportation to have been incurred by Amtrak since September 11, 2001, and including the hiring and training additional police officers, canine-assisted security units, and surveillance equipment; and

(B) $778,000,000 to be used to complete New York tunnel life safety projects and rehabilitate tunnels in Washington, D.C., and Baltimore, Maryland.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) PLAN REQUIRED.—Except for extraordinary security-related costs determined by the Secretary of Transportation to have been incurred by Amtrak since September 11, 2001, which are subject to subparagraph (3)(C) of this paragraph, the Secretary may not make amounts available to Amtrak for obligation or expenditure under paragraph (1)—

(A) for implementing systemwide security upgrades until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, after consultation with the head of the department exercising the authority granted by section 114 of title 49, United States Code, if that department is not the Department of Transportation, a plan for such upgrades;

(B) for completing the tunnel life safety and rehabilitation projects until Amtrak has submitted to the Secretary of Transportation, and the Secretary has approved, an engineering and financial plan for such projects; and

(C) Amtrak has submitted to the Secretary of Transportation such additional information as the Secretary may require in order to ensure full accountability for the obligation or expenditure of amounts made available to Amtrak for the purpose for which the funds are provided.

(4) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary of Transportation shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in paragraph (3)(B)—

(A) consider the extent to which rail carriers other than Amtrak use the tunnels;

(B) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(C) obtain financial contributions or commitments from such other rail carriers if feasible.

(5) REVIEW OF PLAN.—The Secretary of Transportation shall complete the review of the plan required by paragraph (3) and approve or disapprove the plan within 45 days after the date on which the plan is submitted by Amtrak. If the Secretary determines that the plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving a modified plan from Amtrak, the Secretary shall either approve the modified plan, or if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, release the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(6) 50-PERCENT TO BE SPENT OUTSIDE THE NORTHEAST CORRIDOR.—The Secretary of Transportation shall ensure that up to 50

percent of the amounts appropriated pursuant to paragraph (1)(A) is obligated or expended for projects outside the Northeast Corridor.

(7) ASSESSMENTS BY DOT INSPECTOR GENERAL.—

(A) INITIAL ASSESSMENT.—Within 60 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report—

(i) identifying any overlap between capital projects for which funds are provided under such funding documents, procedures, or arrangements and capital projects included in Amtrak's 20-year capital plan; and

(ii) indicating any adjustments that need to be made in that plan to exclude projects for which funds are appropriated or obligated pursuant to paragraph (1).

(B) OVERLAP REVIEW.—The Inspector General shall, part of the Department's annual assessment of Amtrak's financial status and capital funding requirements review the obligations and expenditure of funds under each such funding document, procedure, or arrangement to ensure that the expenditure and obligation of those funds are consistent with the purposes for which they are provided under this Act.

(8) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this subsection shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

(9) PROHIBITION ON USE OF EQUIPMENT FOR EMPLOYMENT-RELATED PURPOSES.—An employer may not use closed circuit television cameras purchased with amounts authorized by this section for employee disciplinary or monitoring purposes unrelated to transportation security.

(b) RAIL POLICE OFFICERS.—Section 28101 of title 49, United Stated Code, is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

SA 4837. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill H.R. 4085, to amend title 38, United States Code, to provide a cost-of-living increase in the rates of compensation for veterans with service-connected disability and dependency and indemnity compensation for surviving spouses of such veterans to expand certain benefits for veterans and their survivors, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans' Compensation Cost-of-Living Adjustment Act of 2002''.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2002, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2002.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2002, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2003, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

Amend the title to read: ''An Act to increase, effective as of December 1, 2002, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.''.

SA 4838. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill S. 2237, to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes; as follows:

Strike all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Benefits Improvement Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.
Sec. 102. Compensation for hearing loss in paired organs.
Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.
Sec. 104. Modification of authorities on Medal of Honor Roll special pension.
Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.
Sec. 106. Extension of income verification authority.

TITLE II—EDUCATION MATTERS

Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.
Sec. 202. Clarifying improvement of various education authorities.

TITLE III—HOUSING MATTERS

Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

TITLE IV—OTHER BENEFITS MATTERS

Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.
Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.
Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.
Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME DISABILITY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED MASTECTOMIES.

(a) IN GENERAL.—Section 1114(k) is amended by inserting ''of half or more of the tissue'' after ''anatomical loss'' the second place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) is amended—

(1) by striking ''total deafness'' the first place it appears and inserting ''deafness compensable to a degree of 10 percent or more''; and

(2) by striking ''total deafness'' the second place it appears and inserting ''deafness''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 is amended by adding at the end the following new section:

''§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

''(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who served on active military, naval, or air service during a period specified by the Secretary under subsection (b)(1) and was assigned during the period of such service to a military occupational specialty or equivalent described in subsection (b)(2) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

''(b)(1) A period referred to in subsection (a) is a period, if any, that the Secretary determines in regulations prescribed under this section—

''(A) during which audiometric measures were consistently not adequate to assess individual hearing threshold shift; or

''(B) with respect to service in a military occupational specialty or equivalent described in paragraph (2), during which hearing conservation measures to prevent individual hearing threshold shift were unavailable or provided insufficient protection for members assigned to such military occupational specialty or equivalent.

''(2) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

''(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 103(c) of the Veterans Benefits Improvement Act of 2002.

''(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent, and during each period, identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed during such period to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

''(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

''(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

''(A) publish the determination in the Federal Register; and

''(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

''(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.''.

(2) The table of sections at the beginning of chapter 11 is amended by inserting after the item relating to section 1118 the following new item:

''1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.''.

(b) PRESUMPTION REBUTTABLE.—Section 1113 is amended by striking ''or 1118'' each place it appears and inserting ''1118, or 1119''.

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form of acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and adequacy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in a representative sample of individuals who were discharged or released from service in the Armed Forces following World War II, the Korean conflict, and the Vietnam era, and in peacetime during the period from the end of the Vietnam era to the beginning of the Persian Gulf War, and during the Persian Gulf War, with such sample to be selected so as to reflect an appropriate distribution of individuals among the various Armed Forces;

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs; and

(F) assess when, if ever—

(i) audiometric measures became adequate to evaluate individual hearing threshold shift; and

(ii) hearing conservation measures to prevent individual hearing threshold shift were available and provided sufficient protection for members assigned to each military occupational specialty or equivalent identified under subparagraph (E).

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(4) For purposes of paragraph (2)(D), the terms ''World War II'', ''Korean conflict'', ''Vietnam era'', and ''Persian Gulf War'' have the meanings given such terms in section 101 of title 38, United States Code.

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during each such year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department health care facilities in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF HONOR ROLL SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking ''$600'' and inserting ''$1,000, as adjusted from time to time under subsection (e)''.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following:

''(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).''.

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date

of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2002.

(d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—(1) The Secretary of Veterans Affairs shall pay, in a lump sum, to each person who is in receipt of special pension payable under section 1562 of title 38, United States Code, an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension during such month under laws for eligibility for special pension in effect at the beginning of such month.

SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS.

(a) IN GENERAL.—Section 5301(a) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by designating the last sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by adding at the end the following new paragraph:

''(3)(A) For purposes of this subsection, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

''(B) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited.

''(C)(i) Any person who enters into an agreement that is prohibited under subparagraph (A), or an agreement or arrangement that is prohibited under subparagraph (B), shall be fined under title 18, imprisoned for not more than one year, or both.

''(ii) This subparagraph does not apply to a beneficiary with respect to compensation, pension, or dependency and indemnity compensation to which the beneficiary is entitled under a law administered by the Secretary.''.

(b) EFFECTIVE DATE.—Paragraph (3) of section 5301(a) of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to any agreement or arrangement described in such paragraph that is entered into on or after the date of the enactment of this Act.

(c) OUTREACH.—The Secretary of Veterans Affairs shall, during the five-year period beginning on the date of the enactment of this Act, carry out a program of outreach to inform veterans and other recipients or potential recipients of compensation, pension, or dependency and indemnity compensation benefits under the laws administered by the Secretary of the prohibition on the assignment of such benefits under law. The program shall include information on various schemes to evade the prohibition, and means of avoiding such schemes.

SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHORITY.

(a) TITLE 38, UNITED STATES CODE.—Section 5317(g) is amended by striking ''September 30, 2008'' and inserting ''September 30, 2011''.

(b) INTERNAL REVENUE CODE.—Section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended by striking ''September 30, 2003'' and inserting ''September 30, 2011''.

TITLE II—EDUCATION MATTERS

SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) is amended in the first sentence by striking ''fiscal years 2001 and 2002, $14,000,000'' and inserting ''fiscal years 2003, 2004, and 2005, $18,000,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDUCATION AUTHORITIES.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended by striking ''on or''.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking ''employment in a high technology industry'' and inserting ''employment in a high technology occupation in a high technology industry''.

(2)(A) The heading for section 3014A is amended to read as follows:

''§ 3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry''.

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

''3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.''.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—Section 3035(b) is amended—

(1) in paragraph (1), by striking ''paragraphs (2) and (3) of this subsection,'' and inserting ''paragraphs (2), (3), and (4),''; and

(2) by adding at the end the following new paragraph:

''(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Educations Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.''.

(d) LICENSING OR CERTIFICATION TESTS.—(1) Section 3232(c)(1) is amended by striking ''a licensing'' and inserting ''a particular licensing''.

(2) Section 3689 is amended—

(A) in subsection (b)(1)(B), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''; and

(B) in subsection (c)(1)(A), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''.

(3) Section 3689(c)(1)(B) is amended by striking ''the test'' and inserting ''such test, or a test to certify or license in a similar or related occupation,''.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' ASSISTANCE.—Section 3512(a) is amended—

(1) in paragraph (3), by striking ''paragraph (4)'' in the matter preceding subparagraph (A) and inserting ''paragraph (4) or (5)'';

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

(3) by inserting after paragraph (3) the following new paragraph (4):

''(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;''; and

(4) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

TITLE III—HOUSING MATTERS

SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.

(a) THREE-YEAR EXTENSION OF AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 is amended by striking ''during fiscal years 1993, 1994, and 1995'' and inserting ''through fiscal year 2005''.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking ''Interest rate adjustment provisions'' and inserting ''Except as provided in subsection (c)(1), interest rate adjustment provisions'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

''(c) Adjustable rate mortgages that are guaranteed under this section shall include adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

''(1) are not subject to subsection (b)(1);

''(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

''(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

''(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b).''.

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs shall exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

TITLE IV—OTHER BENEFITS MATTERS

SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MOBILIZED BY STATES FOR HOMELAND SECURITY ACTIVITIES AS MILITARY SERVICE UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking ''and all'' and inserting ''all''; and

(B) by inserting before the period the following: '', and all members of the National Guard on service described in the following sentence''; and

(2) in the second sentence, by inserting before the period the following: '', and shall include service in the National Guard, pursuant to a call or order to duty by the Governor of a State, upon the request of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, to perform full-time duty under section 502(f) of title 32, United States Code, for purposes of carrying out homeland security activities''.

SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

''(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.''.

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

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

(2) by inserting after subsection (f) the following new subsection (g):

''(g) A flag may not be furnished under this section on behalf of a deceased person described in section 2411(b) of this title.''.

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

''(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

''(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

''(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking ''The prohibition'' and inserting ''In the case of a person described in subsection (b)(1) or (b)(2), the prohibition''; and

(2) by striking ''or finding under subsection (b)'' and inserting ''referred to in subsection (b)(1) or (b)(2), as the case may be,''.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

SEC. 501. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended by striking ''if the finding is clearly erroneous'' and inserting ''if the finding is adverse to the claimant and the Court determines that the finding is unsupported by substantial evidence of record, taking into account the Secretary's application of section 5107(b) of this title''.

(b) SCOPE OF AUTHORITY.—That subsection is further amended—

(1) in the matter preceding paragraph (1), by striking ''this chapter'' and inserting ''section 7252(a) of this title''; and

(2) in paragraph (4), as amended by subsection (a) of this section, by inserting ''or reverse'' after ''set aside''.

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT.—That section is further amended by adding at the end the following new subsection:

''(e)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title.

''(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.''.

(d) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Veterans Claims—

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.

SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—(1) Subsection (a) of section 7292 is amended in the first sentence by inserting after ''the validity of'' the following: ''a decision of the Court on a rule of law or of''.

(2) Subsection (c) of that section is amended—

(A) in the first sentence, by inserting after ''the validity of'' the following: ''a decision of the Court of Appeals for Veterans Claims on a rule of law or of''; and

(B) in the second sentence, by striking ''such court'' and inserting ''the Court of Appeals for the Federal Circuit''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS OF AUTHORITY AND REQUIREMENTS TO ASSIST CLAIMANTS.

(a) RETROACTIVE APPLICABILITY.—Except as specifically provided otherwise, the provisions of sections 5102, 5103, 5103A, and 5126 of title 38, United States Code, as amended by section 3 of the Veterans Claims Assistance Act of 2000 (Public Law 106–475; 114 Stat. 2096), apply to any claim—

(1) filed on or after November 9, 2000; or

(2) filed before November 9, 2000, and not final as of that date.

(b) READJUDICATION OF CERTAIN CLAIMS.—If the United States Court of Appeals for Veterans Claims, the United States Court of Appeals for the Federal Circuit, or the Supreme Court renders a decision during the period beginning on April 24, 2002, and ending on the date of the enactment of this Act holding that section 3(a) of the Veterans Claims Assistance Act of 2000 is not applicable to a case covered by the decision because such section 3(a) was not intended to be given retroactive effect, the Secretary of Veterans Affairs shall, upon request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by the Veterans Claims Assistance Act of 2000, as if Board of Veterans' Appeals most recent denial of the claim concerned had not occurred.

Amend the title to read as follows: ''A bill to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Thursday, September 26, 2002 at 9:30 a.m. in SD–406 to conduct a business meeting to consider the following items:

Legislation:

S. 606, the Ombudsman Reauthorization Act of 2001

S. 2065, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2002

S. 2715, a bill to provide an additional extension of the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001

S. 2730, Restore the Apalachicola River Ecosystem Act of 2002

S. 2847, Crane Conservation Act of 2002

S. 2897, the Marine Turtle Conservation Act of 2002

S. 2928, the Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002

S. 2975, a bill to authorize the project for hurricane and storm damage reduction, Morganza, Louisiana, to the Gulf of Mexico, Mississippi River and Tributaries

S. 2978, a bill to modify the project for flood control, Little Calument River, IN

S. 2983, a bill to authorize a project for navigation, Chickamauga Lock and Dam, TN

S. 2984, a bill to authorize a project for ecosystem restoration at Smith Island, MD

S. 2985, the Anthrax Cleanup Assistance Act of 2002

S. 2999, a bill to authorize the project for environmental restoration, Pine Flat Dam, Fresno County, California.

H.R. 1070, the Great Lakes Legacy Act of 2002

H.R. 2595, a bill to direct the Secretary of the Army to convey a parcel of land to Chatham County, GA

H.R. 3908, the North American Weltands Conservation Reauthorization Act of 2002

H.R. 4044, a bill to authorize the Secretary of the Interior to provide assistance to the State of Maryland for implementation of a program to eradicate nutria and restore marshland damaged by nutria

H.R. 4727, the Dam Safety and Security Act of 2002

H.R. 4807, a bill to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge.

Courthouse Naming:

S. 2332, a bill to designate the Federal building and United States courthouse to be constructed at 10 East Commerce Street in Youngstown, Ohio, as the ''Nathaniel R. Jones Federal Building And United States Courthouse''.

Resolutions:

Committee Resolution for U.S. Army Corp of Engineers' study in the Chesapeake Bay Watershed, MD

Committee Resolution for the U.S. Army Corp of Engineers' study in Fall River Harbor, MA

Committee Resolution for the U.S. Army Corp of Engineers' study in Elliott Bay, WA

Numerous building and lease resolutions.

Other Items:

Subpoenas for new source review documentation to the Environmental Protection Agency and the Department of Energy.

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, September 26, 2002 at 10:30 a.m. to hold a hearing on Iraq.

AGENDA

Witnesses: The Honorable Madeleine K. Albright, Former Secretary of State, Chairman, National Democratic Institute, Washington, DC; The Honorable Henry A. Kissinger, Former Secretary of State, CEO, Kissinger Associates, Inc., New York, NY.

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, September 26, 2002 at 2:30 a.m. to hold a hearing on Iraq.

AGENDA

Witness: The Honorable Colin L. Powell, Secretary of State, Washington, DC.

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 Internet Education: Exploring the Benefits and Challengers of Web-Based Education during the session of the Senate on Thursday, September 26 2002, at 10:00 a.m. in SD–430.

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, September 26, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Intra-tribal Leadership Disputes and Tribal Governance.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Judicial Nominations'' on Thursday, September 26, 2002 in Dirksen Room 106 at 10:00 a.m.

Panel I: The Honorable John W. Warner, United States Senator (R–VA); The Honorable Charles E. Grassley, United States Senator (R–IA); The Honorable Tom Harkin, United States Senator (D–IA); The Honorable Phil Gramm, United States Senator (R–TX); The Honorable Kent Conrad, United States Senator (D–ND); The Honorable Byron Dorgan, United States Senator (D–ND); The Honorable Kay Bailey Hutchison, United States Senator (R–TX); The Honorable Robert Torricelli, United States Senator (D–NJ); The Honorable George Allen, United States Senator (R–VA); The Honorable Jon Corzine, United States Senator (D–NJ).

Panel II: Miguel Estrada, nominated to the D.C. Circuit.

Panel III: Stanley Chesler, to be United States District Court Judge for the District of New Jersey; Daniel Hovland, to be United States District Court Judge for the District of North Dakota; James Kinkeade, to be United States District Court Judge for the Northern District of Texas; Linda Reade, to be United Sates District Court Judge for the Northern District of Iowa; Freda Wolfson, to be United States District Court Judge for the District of New Jersey.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Select Committee on intelligence be authorized to meet during the session of the Senate on Thursday, September 26, 2002 at 10:00 a.m. to hold a joint hearing with the House Permanent Select Committee on Intelligence concerning the Joint Inquiry into the events of September 11, 2002.

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 Thursday, September 26, 2002 from 10:00 a.m.–12:00 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 1040 through 1046 and 1048 through 1051; that the nominations be confirmed, the motions to reconsider be laid upon the table; that any statements thereon be printed in the RECORD; that the President be immediately notified of the Senate's action; and the Senate return to legislative session, all without any intervening action or debate.

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

The nominations considered and confirmed are as follows:

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Michelle Guillermin, of Maryland, to be Chief Financial Officer Corporation for National and Community Service.

NATIONAL COUNCIL ON DISABILITY

Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

David Wenzel, of Pennsylvania, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The Senate will now return to legislative session.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 111

Mr. REID. Mr. President, I ask unanimous consent when the Senate receives from the House H.J. Res. 111, a continuing resolution to fund the Government at 2002 levels and terms therein until October 4, that the joint resolution be considered read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

MEASURE READ THE FIRST TIME—S.J. RES. 45

Mr. REID. Mr. President, S.J. Res. 45 was introduced earlier today by Senators DASCHLE and LOTT and is now at the desk. I therefore ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will report the joint resolution by title for the first time.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 45) to authorize the use of United States Armed Forces against Iraq.

Mr. REID. Mr. President, I now ask for its second reading but object to my own request on behalf of the minority.

The ACTING PRESIDENT pro tempore. Objection having been heard, the joint resolution will receive its second reading on the next legislative day.

MEASURE READ THE FIRST TIME—S. 3009

Mr. REID. Mr. President, S. 3009 was introduced earlier today by Senator WELLSTONE and others and is now at the desk. I ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 3009) to provide economic security for America's workers.

Mr. REID. Mr. President, I now ask for its second reading but object to my own request.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bill will receive its second reading on the next legislative day.

MEASURE READ THE FIRST TIME—H.R. 4691

Mr. REID. Mr. President, I understand that H.R. 4691 is at the desk, and I ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (H.R. 4691) to prohibit certain abortion-related discrimination in governmental activities.

Mr. REID. Mr. President, I ask for its second reading and object to my own request.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be read a second time on the next legislative day.

MODIFICATION OF CONFEREES TO H.R. 4628

Mr. REID. Mr. President, I ask unanimous consent that the list of conferees for H.R. 4628, the intelligence authorization, be modified to include, from the Committee on Armed Services, Senators REED of Rhode Island and WARNER.

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

VETERANS' AND SURVIVORS' BENEFITS EXPANSION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent the Veterans' Affairs Committee be discharged from further consideration of H.R. 4085 and the Senate proceed to its consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4085) to amend title 38, United States Code, to provide a cost-of-living increase in the rates of compensation for veterans with service-connected disability and dependency and indemnity compensation for surviving spouses of such veterans, to expand certain benefits for veterans and their survivors, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I thank my colleagues in the Senate for their support of this legislation that will provide a cost-of-living adjustment to veterans' compensation for next year. I thank my colleagues on the Veterans' Affairs Committee, ranking member ARLEN SPECTER, for his commitment to our Nation's veterans.

The Veterans' Compensation Cost-of-Living Adjustment Act of 2002 directs the Secretary of Veterans Affairs to increase, as of December 1, 2002, the rates of veterans' disability compensation, as well as compensation for eligible dependents and surviving spouses. The legislation raises compensation by the same percentage as the increase provided to Social Security recipients.

It is particularly important that we move this legislation as soon as possible. Veterans and their families depend on the cost-of-living increase to ensure that their well-deserved benefits are not eroded by inflation. Veterans' disability compensation rates must keep pace with the increasing cost of living.

I ask unanimous consent that the text of the legislation be printed in the RECORD following this statement.

Mr. REID. Mr. President, I ask unanimous consent that the Rockefeller substitute amendment at the desk be agreed to; the act, as amended, be read a third time, passed, and the motion to reconsider be laid on the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

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

The amendment (No. 4837) was agreed to, as follows:

AMENDMENT NO. 4837

(Purpose: To propose a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans' Compensation Cost-of-Living Adjustment Act of 2002''.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2002, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2002.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2002, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2003, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

Amend the title to read: ''An Act to increase, effective as of December 1, 2002, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.''.

The bill (H.R. 4085), as amended, was read the third time and passed.

The amendment to the title was agreed to.

VETERANS BENEFITS IMPROVEMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 542, S. 2237.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2237) to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Matter to be stricken is shown in black brackets. Matter to be added is shown in italic.]

S. 2239

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 ''Veterans Hearing Loss Compensation Act of 2002''.

[SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

[(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) of title 38, United States Code, is amended by striking ''total'' both places it appears.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

[SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

[(a) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following new section:

[''§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

[''(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who while on active military, naval, or air service was assigned to a military occupational specialty or equivalent described in subsection (b) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

[''(b) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

[''(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 3(c) of the Veterans Hearing Loss Compensation Act of 2002.

[''(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

[''(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

[''(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

[''(A) publish the determination in the Federal Register; and

[''(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

[''(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.''.

[(2) The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1118 the following new item:

[''1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.''.

[(b) PRESUMPTION REBUTTABLE.—Section 1113 of title 38, United States Code, is amended by striking ''or 1118'' each place it appears and inserting ''1118, or 1119''.

[(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

[(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

[(A) review and assess available data on occupational hearing loss;

[(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

[(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

[(i) determine how much exposure to such form or acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

[(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

[(I) immediate or delayed onset;

[(II) cumulative;

[(III) progressive; or

[(IV) any combination of subclauses (I) through (III);

[(D) review and assess the completeness and accuracy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in individuals who were discharged or released from service in the Armed Forces during the period beginning on December 7, 1941, and ending on the date of the enactment of this Act upon their discharge or release from such service; and

[(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs.

[(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

[(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

[(2) The report under paragraph (1) shall include the following:

[(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

[(B) Of the claims referred to in subparagraph (A)—

[(i) the number of claims for which disability compensation was awarded, set forth by year;

[(ii) the number of claims assigned each disability rating; and

[(iii) the total amount of disability compensation paid on such claims during such years.

[(C) The total cost to the Department of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

[(D) The total number of veterans who sought treatment in Department of Veterans Affairs health facilities care in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

[(i) the number of veterans per year; and

[(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

[(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Benefits Improvement Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.
Sec. 102. Compensation for hearing loss in paired organs.
Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.
Sec. 104. Modification of authorities on Medal of Honor Roll special pension.
Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.
Sec. 106. Extension of income verification authority.

TITLE II—EDUCATION MATTERS

Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.
Sec. 202. Clarifying improvement of various education authorities.

TITLE III—HOUSING MATTERS

Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

TITLE IV—OTHER BENEFITS MATTERS

Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.

Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.

Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.

Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.

Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME DISABILITY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED MASTECTOMIES.

(a) IN GENERAL.—Section 1114(k) is amended by inserting ''of half or more of the tissue'' after ''anatomical loss'' the second place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) is amended by striking ''total'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 is amended by adding at the end the following new section:

''§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

''(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who served on active military, naval, or air service during a period specified by the Secretary under subsection (b)(1) and was assigned during the period of such service to a military occupational specialty or equivalent described in subsection (b)(2) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

''(b)(1) A period referred to in subsection (a) is a period, if any, that the Secretary determines in regulations prescribed under this section—

''(A) during which audiometric measures were consistently not adequate to assess individual hearing threshold shift; or

''(B) with respect to service in a military occupational specialty or equivalent described in paragraph (2), during which hearing conservation measures to prevent individual hearing threshold shift were unavailable or provided insufficient protection for members assigned to such military occupational specialty or equivalent.

''(2) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

''(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 103(c) of the Veterans Benefits Improvement Act of 2002.

''(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent, and during each period, identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed during such period to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

''(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

''(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

''(A) publish the determination in the Federal Register; and

''(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

''(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.''.

(2) The table of sections at the beginning of chapter 11 is amended by inserting after the item relating to section 1118 the following new item:

''1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.''.

(b) PRESUMPTION REBUTTABLE.—Section 1113 is amended by striking ''or 1118'' each place it appears and inserting ''1118, or 1119''.

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form of acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and adequacy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in a representative sample of individuals who were discharged or released from service in the Armed Forces following World War II, the Korean conflict, and the Vietnam era, and in peacetime during the period from the end of the Vietnam era to the beginning of the Persian Gulf War, and during the Persian Gulf War, with such sample to be selected so as to reflect an appropriate distribution of individuals among the various Armed Forces;

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs; and

(F) assess when, if ever—

(i) audiometric measures became adequate to evaluate individual hearing threshold shift; and

(ii) hearing conservation measures to prevent individual hearing threshold shift were available and provided sufficient protection for members assigned to each military occupational specialty or equivalent identified under subparagraph (E).

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(4) For purposes of paragraph (2)(D), the terms ''World War II'', ''Korean conflict'', ''Vietnam era'', and ''Persian Gulf War'' have the meanings given such terms in section 101 of title 38, United States Code.

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a

report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during each such year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department health care facilities in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF HONOR ROLL SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking ''$600'' and inserting ''$1,000, as adjusted from time to time under subsection (e)''.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following:

''(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).''.

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2002.

(d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—(1) The Secretary of Veterans Affairs shall pay, in a lump sum, to each person who is in receipt of special pension payable under section 1562 of title 38, United States Code, an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension during such month under laws for eligibility for special pension in effect at the beginning of such month.

SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS.

(a) IN GENERAL.—Section 5301(a) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by designating the last sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by adding at the end the following new paragraph:

''(3)(A) For purposes of this subsection, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

''(B) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited.

''(C)(i) Any person who enters into an agreement that is prohibited under subparagraph (A), or an agreement or arrangement that is prohibited under subparagraph (B), shall be fined under title 18, imprisoned for not more than one year, or both.

''(ii) This subparagraph does not apply to a beneficiary with respect to compensation, pension, or dependency and indemnity compensation to which the beneficiary is entitled under a law administered by the Secretary.''.

(b) EFFECTIVE DATE.—Paragraph (3) of section 5301(a) of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to any agreement or arrangement described in such paragraph that is entered into on or after the date of the enactment of this Act.

(c) OUTREACH.—The Secretary of Veterans Affairs shall, during the five-year period beginning on the date of the enactment of this Act, carry out a program of outreach to inform veterans and other recipients or potential recipients of compensation, pension, or dependency and indemnity compensation benefits under the laws administered by the Secretary of the prohibition on the assignment of such benefits under law. The program shall include information on various schemes to evade the prohibition, and means of avoiding such schemes.

SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHORITY.

(a) TITLE 38, UNITED STATES CODE.—Section 5317(g) is amended by striking ''September 30, 2008'' and inserting ''September 30, 2011''.

(b) INTERNAL REVENUE CODE.—Section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended by striking ''September 30, 2003'' and inserting ''September 30, 2011''.

TITLE II—EDUCATION MATTERS

SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) is amended in the first sentence by striking ''fiscal years 2001 and 2002, $14,000,000'' and inserting ''fiscal years 2003, 2004, and 2005, $18,000,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDUCATION AUTHORITIES.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended by striking ''on or''.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking ''employment in a high technology industry'' and inserting ''employment in a high technology occupation in a high technology industry''.

(2)(A) The heading for section 3014A is amended to read as follows:

''§ 3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry''.

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

''3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.''.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—Section 3035(b) is amended—

(1) in paragraph (1), by striking ''paragraphs (2) and (3) of this subsection,'' and inserting ''paragraphs (2), (3), and (4),''; and

(2) by adding at the end the following new paragraph:

''(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Educations Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.''.

(d) LICENSING OR CERTIFICATION TESTS.—(1) Section 3232(c)(1) is amended by striking ''a licensing'' and inserting ''a particular licensing''.

(2) Section 3689 is amended—

(A) in subsection (b)(1)(B), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''; and

(B) in subsection (c)(1)(A), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''.

(3) Section 3689(c)(1)(B) is amended by striking ''the test'' and inserting ''such test, or a test to certify or license in a similar or related occupation,''.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' ASSISTANCE.—Section 3512(a) is amended—

(1) in paragraph (3), by striking ''paragraph (4)'' in the matter preceding subparagraph (A) and inserting ''paragraph (4) or (5)'';

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

(3) by inserting after paragraph (3) the following new paragraph (4):

''(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;''; and

(4) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

TITLE III—HOUSING MATTERS

SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.

(a) THREE-YEAR EXTENSION OF AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 is amended by striking ''during fiscal years 1993, 1994, and 1995'' and inserting ''through fiscal year 2005''.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking ''Interest rate adjustment provisions'' and inserting ''Except as provided in subsection (c)(1), interest rate adjustment provisions'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

''(c) Adjustable rate mortgages that are guaranteed under this section shall include adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

''(1) are not subject to subsection (b)(1);

''(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

''(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

''(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b).''.

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs shall exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

TITLE IV—OTHER BENEFITS MATTERS

SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MOBILIZED BY STATES FOR HOMELAND SECURITY ACTIVITIES AS MILITARY SERVICE UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking ''and all'' and inserting ''all''; and

(B) by inserting before the period the following: '', and all members of the National Guard on service described in the following sentence''; and

(2) in the second sentence, by inserting before the period the following: '', and shall include service in the National Guard, pursuant to a call or order to duty by the Governor of a State, upon the request of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, to perform full-time duty under section 502(f) of title 32, United States Code, for purposes of carrying out homeland security activities''.

SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

''(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.''.

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

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

(2) by inserting after subsection (f) the following new subsection (g):

''(g) A flag may not be furnished under this section on behalf of a deceased person described in section 2411(b) of this title.''.

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

''(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

''(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

''(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking ''The prohibition'' and inserting ''In the case of a person described in subsection (b)(1) or (b)(2), the prohibition''; and

(2) by striking ''or finding under subsection (b)'' and inserting ''referred to in subsection (b)(1) or (b)(2), as the case may be,''.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

SEC. 501. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended by striking ''if the finding is clearly erroneous'' and inserting ''if the finding is adverse to the claimant and the Court determines that the finding is unsupported by substantial evidence of record, taking into account the Secretary's application of section 5107(b) of this title''.

(b) SCOPE OF AUTHORITY.—That subsection is further amended—

(1) in the matter preceding paragraph (1), by striking ''this chapter'' and inserting ''section 7252(a) of this title''; and

(2) in paragraph (4), as amended by subsection (a) of this section, by inserting ''or reverse'' after ''set aside''.

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT.—That section is further amended by adding at the end the following new subsection:

''(e)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title.

''(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.''.

(d) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Veterans Claims—

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.

SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—(1) Subsection (a) of section 7292 is amended in the first sentence by inserting after ''the validity of'' the following: ''a decision of the Court on a rule of law or of''.

(2) Subsection (c) of that section is amended—

(A) in the first sentence, by inserting after ''the validity of'' the following: ''a decision of the Court of Appeals for Veterans Claims on a rule of law or of''; and

(B) in the second sentence, by striking ''such court'' and inserting ''the Court of Appeals for the Federal Circuit''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS OF AUTHORITY AND REQUIREMENTS TO ASSIST CLAIMANTS.

(a) RETROACTIVE APPLICABILITY.—Except as specifically provided otherwise, the provisions of sections 5102, 5103, 5103A, and 5126 of title 38, United States Code, as amended by section 3 of the Veterans Claims Assistance Act of 2000 (Public Law 106–475; 114 Stat. 2096), apply to any claim—

(1) filed on or after November 9, 2000; or

(2) filed before November 9, 2000, and not final as of that date.

(b) READJUDICATION OF CERTAIN CLAIMS.—If the United States Court of Appeals for Veterans Claims, the United States Court of Appeals for the Federal Circuit, or the Supreme Court renders a decision during the period beginning on April 24, 2002, and ending on the date of the enactment of this Act holding that section 3(a) of the Veterans Claims Assistance Act of 2000 is not applicable to a case covered by the decision because such section 3(a) was not intended to be given retroactive effect, the Secretary of Veterans Affairs shall, upon request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by the Veterans Claims Assistance Act of 2000, as if Board of Veterans' Appeals most recent denial of the claim concerned had not occurred.

Amend the title to read as follows: ''A bill to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.''.

Mr. REID. Mr. President, I ask unanimous consent that the Rockefeller substitute amendment be agreed to; that the committee amendment, in the nature of a substitute, as amended, be agreed to; that the bill, as amended, be read the third time and passed; that the amendment to the title be agreed to; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4838) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. ROCKEFELLER. MR. President, as chairman of the Committee on Veterans' Affairs, I urge the Senate to pass

S. 2237, the proposed ''Veterans Benefits Improvement Act of 2002,'' as modified by a manager's amendment which I developed with the committee's ranking member, Senator SPECTER. I will describe the provisions of the amendment in a moment.

The pending omnibus measure would touch many parts of veterans' lives, from increasing pensions for those who have earned the Medal of Honor to ensuring that veterans' appeals get more than a cursory review. I thank Ranking Member SPECTER and his staff for their significant contributions to a bill I believe will substantially improve the benefits provided to those who have served our Nation.

S. 2237 as reported, which I will refer to as the ''committee bill,'' improves numerous veterans' benefits. I will highlight some of the provisions of which I am most proud.

Congress last year authorized VA to offer special monthly compensation to women who had lost one or both breasts, including through surgery, as a result of their military service. VA subsequently released regulations that limited eligibility for this benefit to women who had suffered complete loss of all breast tissue through simple or radical mastectomy. Even if such a restriction does not influence medical decisions, it fails to acknowledge that tissue-sparing treatments still create physical, emotional, and financial challenges to returning to health. Section 101 of the Committee bill would extend eligibility for benefits to women veterans who have experienced service-connected loss of half or more of a breast's tissue.

The number of claims that veterans submit for hearing loss and tinnitus grows each year, and hearing disorders now account for two of the most commonly claimed disabilities. In order to settle these claims, VA staff must determine whether a veteran's hearing loss is as likely to be linked to noise exposure during service as to other causes, a tough decision made even harder by incomplete medical records and uncertain clinical evidence. Aging veterans—many of whom received no hearing evaluation upon discharge from service—now struggle to prove that their hearing problems resulted from damage suffered decades ago, while VA battles a staggering backlog of claims. Not only must veterans with hearing loss wait for assistance, but all veterans must accept the delays that arise as VA sorts through an enormous number of hearing loss claims without a clear scientific standard on past exposures.

Section 103 of the committee bill would help VA and veterans understand whether service in certain military specialties might be associated with an increased risk of hearing loss later in life. The committee bill would require VA to contract with an independent scientific organization, such as the National Academy of Sciences, to review evidence on acoustic trauma during military service. Experts would be asked to consider the types of noise exposure that could contribute to hearing disorders, and to determine whether servicemembers' hearing loss would be immediate or cumulative. The scientists would also determine when the audiometric data collected by the military services became adequate for VA to assess individual exposures during subsequent hearing loss claims.

The committee bill would also require that VA review its own records on hearing loss or tinnitus in veterans, and estimate the cost of adjudicating these claims under the current system. With this information, Congress and VA should be in a better position to decide whether evidence warrants service connection of hearing loss or tinnitus for certain veterans, so that their claims can be decided as quickly and fairly as possible.

We currently provide a special pension of recipients of the Medal of Honor to recognize, in some small measure, their extraordinary heroism. Congress has periodically increased this pension to keep pace with inflation and the needs of its recipients, but these increases have been irregular in amount and frequency. For some recipients, delays between the dates of the recipient's act of valor and the actual awarding of the Medal of Honor have resulted in lower aggregate amounts of special pension, based only on differences in the timing of the official recognition.

Section 104 of the committee bill would increase the Medal of Honor special pension from $600 to $1,000. Beginning next year, the pension amount would be adjusted annually with inflation. Finally, it would provide for a one-time, lump-sum payment in the amount of pension the recipient would have received between the date of the act of valor and the date that the recipient's pension actually commenced. I want to thank Senators SPECTER and HUTCHINSON for their leadership on this issue, and for assisting the committee in reaffirming our commitment to these heroes.

Section 401 of the committee bill would extend certain protections currently offered to National Guard members called up for national defense to include those who may have been called up for homeland security activities but not federalized. The Soldiers and Sailor's Civil Relief Act of 1940, SSCRA, protects active duty servicemembers and their families from evictions, foreclosures, and certain legal judgements while they serve the Nation in federally funded national defense missions. However, SSCRA protections do not cover National Guard members called up under title 32 of the United States Code, which places the servicemembers under the command of their State Governors.

Following the events of September 11, many National Guard members activated under title 32 guarded commercial airports at the request of the Federal Government, serving for 4 to 6 months. Although they served a national mission, their title 32 status denied them SSCRA protections. Furthermore, the National Defense Authorization Act for Fiscal Year 2003, as passed by the Senate, specifically allows National Guard members to be called up for full-time homeland security duty under title 32. Should this provision be enacted into law, it is likely that National Guard members will be called upon more frequently to serve in this status.

Section 401 of the committee bill would expand SSCRA protections to include National Guard members serving full-time for homeland security purposes under title 32 upon an order of the Governor of a State, by request of the head of a Federal law enforcement agency, and with the concurrence of the Secretary of Defense. As America relies increasingly on the National Guard and reservists to support its all-volunteer forces, we must be sure that all of our servicemembers can focus on their duties when they leave home to serve their Nation.

Sections 501 and 502 of the committee bill would ensure that veterans receive a full judicial review when appealing claims denied by VA.

A long-standing tenet of veterans law is that the veteran receives the ''benefit of the doubt.'' This ''benefit of the doubt'' rule is unique in administrative law and states that when the evidence in support of benefits is in equipoise the benefit of the doubt must be given to the veteran, recognizing the tremendous sacrifices made by the men and women who have serve in our Armed Forces. A number of veterans service organizations have expressed concern that the current appellate process is overly deferential to VA findings of fact that are adverse to veteran claimants. Specifically, these groups argue that the ''clearly erroneous'' standard applied by the U.S. Court of Appeals for Veterans Claims, CAVC, when reviewing Board of Veterans' Appeals, BVA, cases results in veteran claims receiving only cursory review on appeal, not allowing for full application of the ''benefit of the doubt'' rule.

Section 501 of the committee bill would change the standard of review the CAVC applies to BVA findings of fact from ''clearly erroneous'' to ''unsupported by substantial evidence'' with an explicit reference to VA's application of the ''benefit of the doubt'' provision. This would clearly instruct the court to perform a searching review of BVA findings of fact, yet allow the CAVC to give deference to BVA findings based on specific evidence.

Section 502 of the committee bill would improve appellate review of veterans claims by expanding the Federal Circuit's authority to review CAVC decisions based on rules of law that are not derived from a specific statute or regulation. This change would allow the Federal circuit to review comprehensively any CAVC decisions of law that adversely affect appellants.

Section 503 of the committee bill would allow nonattorney practitioners admitted to practice before the CAVC without the signature of a supervising attorney, such as veterans service organization representatives, to be awarded fees under the Equal Access to Justice Act. Currently, attorneys and nonattorney practitioners supervised by attorneys who represent claimants that satisfy certain statutory requirements may receive compensation for their services pursuant to the EAJA. This would allow well-deserved compensation to organizations that provide invaluable assistance to veterans.

The Veterans Claims Assistance Act of 2000, VCAA, required VA to take very specific steps to help veterans prepare their benefits claims, such as informing claimants of medical or lay evidence or helping them obtain evidence necessary to substantiate a claim. The Federal circuit, in two recent decisions—Dyment v. Principi and Bernklau v. Principi—found that certain provisions of the VCAA pertaining to VA's duty to assist cannot be applied retroactively to claims pending at the time of enactment. Section 504 states explicitly that VA's duty to assist will be applied retroactively to cases that were ongoing either at the various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment.

Section 504 of the committee bill would make it clear that VA's duty to assist can be applied retroactively to cases that were either ongoing within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment. This clarification would give full force to the congressionally mandated duty to assist claimant veterans, and provide crucial assistance to the men and women who sacrified so much in service to our Nation.

I now turn to the manager's amendment, which would modify a section of the committee bill on evaluating service-connected hearing loss.

Section 102 of the committee bill, as modified by the manager's amendment, would address an issue of fairness for veterans who have both service-connected and non-service-connected hearing loss. Currently, when evaluating veterans' service-connected disabilities in paired organs or extremities—such as kidneys, lungs, feet, or hands—VA is authorized to consider any degree of damage to both organs, even if only one resulted from military service. However, total deafness in both ears is required for special consideration of hearing loss.

The committee bill would eliminate the ''total deafness'' requirement, allowing VA to consider partial non-service-connected hearing loss in one ear when rating disability for vetearns with at least 10 percent compensable service-connected hearing loss in the other ear. This change would mirror exceptions made for other ''paired'' organs and extremities and would help ensure fair compensation for veterans whose hearing has been more greatly impaired by service than it would have been had they not served.

In conclusion, I urge my colleagues to support these improvements to veterans benefits. In light of our increased military commitments—abroad and on American soil—this represents a critical bipartisan commitment to our Nation's Veterans.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The amendment to the title was agreed to.

The bill (S. 2237), as amended, was read the third time and passed, as follows:

S. 2237

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Benefits Improvement Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.
Sec. 102. Compensation for hearing loss in paired organs.
Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.
Sec. 104. Modification of authorities on Medal of Honor Roll special pension.
Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.
Sec. 106. Extension of income verification authority.

TITLE II—EDUCATION MATTERS

Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.
Sec. 202. Clarifying improvement of various education authorities.

TITLE III—HOUSING MATTERS

Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

TITLE IV—OTHER BENEFITS MATTERS

Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.
Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.
Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.
Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND PENSION MATTERS

SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME DISABILITY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED MASTECTOMIES.

(a) IN GENERAL.—Section 1114(k) is amended by inserting ''of half or more of the tissue'' after ''anatomical loss'' the second place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) is amended—

(1) by striking ''total deafness'' the first place it appears and inserting ''deafness compensable to a degree of 10 percent or more''; and

(2) by striking ''total deafness'' the second place it appears and inserting ''deafness''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 is amended by adding at the end the following new section:

''§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

''(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who served on active military, naval, or air service during a period specified by the Secretary under subsection (b)(1) and was assigned during the period of such service to a military occupational specialty or equivalent described in subsection (b)(2) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

''(b)(1) A period referred to in subsection (a) is a period, if any, that the Secretary determines in regulations prescribed under this section—

''(A) during which audiometric measures were consistently not adequate to assess individual hearing threshold shift; or

''(B) with respect to service in a military occupational specialty or equivalent described in paragraph (2), during which hearing conservation measures to prevent individual hearing threshold shift were unavailable or provided insufficient protection for members assigned to such military occupational specialty or equivalent.

''(2) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

''(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 103(c) of the Veterans Benefits Improvement Act of 2002.

''(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent, and during each period, identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed during such period to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

''(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

''(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

''(A) publish the determination in the Federal Register; and

''(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

''(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.''.

(2) The table of sections at the beginning of chapter 11 is amended by inserting after the item relating to section 1118 the following new item:

''1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.''.

(b) PRESUMPTION REBUTTABLE.—Section 1113 is amended by striking ''or 1118'' each place it appears and inserting ''1118, or 1119''.

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form of acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and adequacy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in a representative sample of individuals who were discharged or released from service in the Armed Forces following World War II, the Korean conflict, and the Vietnam era, and in peacetime during the period from the end of the Vietnam era to the beginning of the Persian Gulf War, and during the Persian Gulf War, with such sample to be selected so as to reflect an appropriate distribution of individuals among the various Armed Forces;

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs; and

(F) assess when, if ever—

(i) audiometric measures became adequate to evaluate individual hearing threshold shift; and

(ii) hearing conservation measures to prevent individual hearing threshold shift were available and provided sufficient protection for members assigned to each military occupational specialty or equivalent identified under subparagraph (E).

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(4) For purposes of paragraph (2)(D), the terms ''World War II'', ''Korean conflict'', ''Vietnam era'', and ''Persian Gulf War'' have the meanings given such terms in section 101 of title 38, United States Code.

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during each such year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department health care facilities in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF HONOR ROLL SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking ''$600'' and inserting ''$1,000, as adjusted from time to time under subsection (e)''.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following:

''(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).''.

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2002.

(d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—(1) The Secretary of Veterans Affairs shall pay, in a lump sum, to each person who is in receipt of special pension payable under section 1562 of title 38, United States Code, an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension during such month under laws for eligibility for special pension in effect at the beginning of such month.

SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS.

(a) IN GENERAL.—Section 5301(a) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by designating the last sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by adding at the end the following new paragraph:

''(3)(A) For purposes of this subsection, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

''(B) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited.

''(C)(i) Any person who enters into an agreement that is prohibited under subparagraph (A), or an agreement or arrangement that is prohibited under subparagraph (B), shall be fined under title 18, imprisoned for not more than one year, or both.

''(ii) This subparagraph does not apply to a beneficiary with respect to compensation, pension, or dependency and indemnity compensation to which the beneficiary is entitled under a law administered by the Secretary.''.

(b) EFFECTIVE DATE.—Paragraph (3) of section 5301(a) of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to any agreement or arrangement described in such paragraph that is entered into on or after the date of the enactment of this Act.

(c) OUTREACH.—The Secretary of Veterans Affairs shall, during the five-year period beginning on the date of the enactment of this Act, carry out a program of outreach to inform veterans and other recipients or potential recipients of compensation, pension, or dependency and indemnity compensation benefits under the laws administered by the Secretary of the prohibition on the assignment of such benefits under law. The program shall include information on various schemes to evade the prohibition, and means of avoiding such schemes.

SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHORITY.

(a) TITLE 38, UNITED STATES CODE.—Section 5317(g) is amended by striking ''September 30, 2008'' and inserting ''September 30, 2011''.

(b) INTERNAL REVENUE CODE.—Section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended by striking ''September 30, 2003'' and inserting ''September 30, 2011''.

TITLE II—EDUCATION MATTERS

SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) is amended in the first sentence by striking ''fiscal years 2001 and 2002, $14,000,000'' and inserting ''fiscal years 2003, 2004, and 2005, $18,000,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDUCATION AUTHORITIES.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended by striking ''on or''.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking ''employment in a high technology industry'' and inserting ''employment in a high technology occupation in a high technology industry''.

(2)(A) The heading for section 3014A is amended to read as follows:

''§ 3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry''.

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

''3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.''.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—Section 3035(b) is amended—

(1) in paragraph (1), by striking ''paragraphs (2) and (3) of this subsection,'' and inserting ''paragraphs (2), (3), and (4),''; and

(2) by adding at the end the following new paragraph:

''(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Educations Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.''.

(d) LICENSING OR CERTIFICATION TESTS.—(1) Section 3232(c)(1) is amended by striking ''a licensing'' and inserting ''a particular licensing''.

(2) Section 3689 is amended—

(A) in subsection (b)(1)(B), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''; and

(B) in subsection (c)(1)(A), by inserting ''and with such other standards as the Secretary may prescribe,'' after ''practices,''.

(3) Section 3689(c)(1)(B) is amended by striking ''the test'' and inserting ''such test, or a test to certify or license in a similar or related occupation,''.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' ASSISTANCE.—Section 3512(a) is amended—

(1) in paragraph (3), by striking ''paragraph (4)'' in the matter preceding subparagraph (A) and inserting ''paragraph (4) or (5)'';

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

(3) by inserting after paragraph (3) the following new paragraph (4):

''(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;''; and

(4) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

TITLE III—HOUSING MATTERS

SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.

(a) THREE-YEAR EXTENSION OF AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 is amended by striking ''during fiscal years 1993, 1994, and 1995'' and inserting ''through fiscal year 2005''.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking ''Interest rate adjustment provisions'' and inserting ''Except as provided in subsection (c)(1), interest rate adjustment provisions'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

''(c) Adjustable rate mortgages that are guaranteed under this section shall include adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

''(1) are not subject to subsection (b)(1);

''(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

''(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

''(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b).''.

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs shall exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

TITLE IV—OTHER BENEFITS MATTERS

SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MOBILIZED BY STATES FOR HOMELAND SECURITY ACTIVITIES AS MILITARY SERVICE UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking ''and all'' and inserting ''all''; and

(B) by inserting before the period the following: '', and all members of the National Guard on service described in the following sentence''; and

(2) in the second sentence, by inserting before the period the following: '', and shall include service in the National Guard, pursuant to a call or order to duty by the Governor of a State, upon the request of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, to perform full-time duty under section 502(f) of title 32, United States Code, for purposes of carrying out homeland security activities''.

SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

''(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.''.

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

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

(2) by inserting after subsection (f) the following new subsection (g):

''(g) A flag may not be furnished under this section on behalf of a deceased person described in section 2411(b) of this title.''.

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

''(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

''(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

''(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking ''The prohibition'' and inserting ''In the case of a person described in subsection (b)(1) or (b)(2), the prohibition''; and

(2) by striking ''or finding under subsection (b)'' and inserting ''referred to in subsection (b)(1) or (b)(2), as the case may be,''.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

SEC. 501. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended by striking ''if the finding is clearly erroneous'' and inserting ''if the finding is adverse to the claimant and the Court determines that the finding is unsupported by substantial evidence of record, taking into account the Secretary's application of section 5107(b) of this title''.

(b) SCOPE OF AUTHORITY.—That subsection is further amended—

(1) in the matter preceding paragraph (1), by striking ''this chapter'' and inserting ''section 7252(a) of this title''; and

(2) in paragraph (4), as amended by subsection (a) of this section, by inserting ''or reverse'' after ''set aside''.

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT.—That section is further amended by adding at the end the following new subsection:

''(e)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title.

''(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.''.

(d) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Veterans Claims—

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.

SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—(1) Subsection (a) of section 7292 is amended in the first sentence by inserting after ''the validity of'' the following: ''a decision of the Court on a rule of law or of''.

(2) Subsection (c) of that section is amended—

(A) in the first sentence, by inserting after ''the validity of'' the following: ''a decision of the Court of Appeals for Veterans Claims on a rule of law or of''; and

(B) in the second sentence, by striking ''such court'' and inserting ''the Court of Appeals for the Federal Circuit''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS OF AUTHORITY AND REQUIREMENTS TO ASSIST CLAIMANTS.

(a) RETROACTIVE APPLICABILITY.—Except as specifically provided otherwise, the provisions of sections 5102, 5103, 5103A, and 5126 of title 38, United States Code, as amended by section 3 of the Veterans Claims Assistance Act of 2000 (Public Law 106–475; 114 Stat. 2096), apply to any claim—

(1) filed on or after November 9, 2000; or

(2) filed before November 9, 2000, and not final as of that date.

(b) READJUDICATION OF CERTAIN CLAIMS.—If the United States Court of Appeals for Veterans Claims, the United States Court of Appeals for the Federal Circuit, or the Supreme Court renders a decision during the period beginning on April 24, 2002, and ending on the date of the enactment of this Act holding that section 3(a) of the Veterans Claims Assistance Act of 2000 is not applicable to a case covered by the decision because such section 3(a) was not intended to be given retroactive effect, the Secretary of Veterans Affairs shall, upon request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by the Veterans Claims Assistance Act of 2000, as if Board of Veterans' Appeals most recent denial of the claim concerned had not occurred.

ORDERS FOR MONDAY, SEPTEMBER 30, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, September 30; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for the transaction of morning business until 2 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Republican leader or his designee; that at 2 p.m., the Senate resume consideration of the homeland security bill.

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

PROGRAM

Mr. REID. Mr. President, another cloture motion was filed on the Gramm-Miller amendment to the homeland security bill. Senators, therefore, have until 1 p.m. on Monday to file first-degree amendments. We expect to reconsider the vote by which cloture was not invoked on the Gramm amendment to the homeland security bill at approximately 5:30 Monday evening.

ADJOURNMENT UNTIL 1 P.M., MONDAY, SEPTEMBER 30, 2002

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 7:34 p.m., adjourned until Monday, September, 30, 2002, at 1 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 26, 2002:

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

MICHELLE GUILLERMIN, OF MARYLAND, TO BE CHIEF FINANCIAL OFFICER, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

NATIONAL COUNCIL ON DISABILITY

GLENN BERNARD ANDERSON, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

MILTON APONTE, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

BARBARA GILLCRIST, OF NEW MEXICO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

GRAHAM HILL, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

MARCO A. RODRIGUEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR TERM EXPIRING SEPTEMBER 17, 2005.

DAVID WENZEL, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

GLEN BERNARD ANDERSON, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

BARBARA GILLCRIST, OF NEW MEXICO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

GRAHAM HILL, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

MARCO A. RODRIGUEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE ON THE SENATE.